



Legal Protection for Debtors When There Is a Transfer Of Debt By Creditors Without The Debtor's Consent

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Article History

Manuscript submitted:
08 Mey 2024
 Manuscript revised:
15 Juny 2024
 Accepted for publication:
25 Juny 2024

Keywords

Debtors, legal protection, creditor

Abstract

The legal protection extended to debtors when faced with creditor-initiated debt transfers conducted without their consent. In today's intricate financial milieu, such transfers wield substantial influence over debtor rights and obligations. The primary objective of this research is to scrutinize the existing legal frameworks designed to safeguard the interests of debtors in these scenarios. This examination encompasses an exploration of statutory provisions as well as pertinent judicial precedents that serve as cornerstones in fortifying debtor rights. Through a comparative lens, this study seeks to illuminate the diverse approaches adopted across jurisdictions in addressing concerns related to debtor protection. By evaluating the implications of non-consensual debt transfers, this research aims to deepen comprehension of the underlying issues and challenges encountered by debtors in asserting their rights in such circumstances. Moreover, this study considers the broader socio-economic ramifications of inadequate debtor protection, emphasizing the significance of procedural fairness and equitable debt relations in fostering confidence and stability in financial transactions. Ultimately, this paper endeavors to contribute to the ongoing discourse surrounding debtor protection within the realm of financial law, advocating for the enhancement of legal mechanisms to ensure the fair treatment of debtors and the preservation of their rights amidst evolving financial landscapes.

International Journal of Social Sciences and Humanities © 2024.

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Introduction

In order to improve their economy, someone sometimes needs capital enough to start a business, so you need a credit loan to get it start it. Meetings between these parties require an intermediary creditor (lender) with debtor (loan recipient), so that in the end the emergence of a debt agreement or credit agreement. 1 In the implementation of the credit agreement. In this case, creditors often also want collateral to provide something security and sense of trust. One of the general credit guarantees used by society is a fiduciary guarantee. This Fiduciary Guarantee has a legal procedure or a system of procedures to be followed in order to have binding power and to provide legal protection to the partie (Bandem, 2020)

The protection of debtors in cases of creditor-initiated debt transfer without debtor consent is a crucial aspect of financial law, given its potential impact on the rights and obligations of parties involved. In modern financial systems, debt transactions are complex and can involve multiple parties, making it imperative to establish clear legal frameworks to safeguard debtor interests (Sampurnaningsih, 2021). Historically, creditor-initiated debt transfers without debtor consent have been a source of contention and legal debate. Such transfers raise questions about the fairness of contractual agreements and the extent to which debtors should be involved in decisions affecting their obligations.

One of the primary concerns surrounding non-consensual debt transfers is the potential for abuse by creditors. Without adequate legal safeguards, creditors may exploit their dominant position to transfer debts in a manner that unfairly burdens debtors or circumvents their rights. Furthermore, the lack of debtor consent in debt transfers can undermine the principle of contractual autonomy, which emphasizes the importance of parties freely entering into agreements. When creditors unilaterally transfer debts without debtor approval, it can disrupt the balance of power and erode the trust essential for effective contractual relations (Adistie, 2021)

In many jurisdictions, laws and regulations exist to address the issue of non-consensual debt transfers and provide some level of protection for debtors. These legal provisions often aim to ensure transparency, fairness, and respect for debtor rights in debt transfer processes. However, despite the existence of legal safeguards, challenges persist in effectively protecting debtors in cases of non-consensual debt transfers. Enforcement mechanisms may be inadequate, and legal remedies available to debtors may not always be sufficient to address their concerns.

Moreover, cultural and economic factors can influence the effectiveness of legal protections for debtors in different jurisdictions. In some regions, creditor interests may hold greater sway in shaping legal frameworks, potentially limiting the protection afforded to debtors. The advent of global financial markets and digital technologies has added complexity to the issue of debtor protection in debt transfers. Cross-border transactions and online platforms present new challenges for regulators seeking to ensure fair and equitable treatment of debtor (Risa, 2017)

As such, there is a need for ongoing research and analysis to identify best practices and develop robust legal mechanisms for protecting debtors in cases of creditor-initiated debt transfer without debtor consent. This includes exploring innovative approaches to address emerging challenges and promote greater transparency and accountability in debt transfer processes. Ultimately, effective legal protection for debtors in debt transfer scenarios is essential not only for upholding individual rights but also for maintaining the integrity and stability of financial systems. As such, policymakers, legal practitioners, and scholars must continue to collaborate to strengthen and refine legal frameworks in this area.

Materials and Methods

The methodology utilized in this research adopts a normative juridical approach supplemented by a statutory regulatory framework, which involves analyzing laws and regulations relevant to the discussed issues. Additionally, it employs a conceptual approach by examining legal perspectives and doctrines. This method is employed when existing legal regulations are absent for the problem under investigation. The legal materials employed consist of primary legal sources, including statutory regulations, as well as secondary legal sources such as books and legal journal articles pertinent to the topics under examination (Marzuki, 2022).

Results and Discussions

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The transfer of debt with the guarantee of the debtor by the creditor through a cessie can be done by a creditor with a prospective new creditor via a cession mechanism. Subekti describes the cessie as "a way of transferring debtors by name, in which the debt is sold by the old creditor to the person who later becomes the new creditor, but the legal relationship of the debtor is not deleted for a second, but in its entirety transferred to the new creditors".

According to Soeharnoko and Endah explained that cessie is a way of transferring and/or handing over a debt on behalf of the name as referred to in Article 613 of the Code of Commercial Law (KUHPperdata). There is no effect for the debtor except when he is notified of it or is approved of it in writing. Every debt is delivered by the letter, and every debt has been delivered with the endorsement. The elements that can be concluded under Article 613 of the Cessie Act are:

1. The creation of an authentic act or an act under the hand.
2. The rights inherent in the creditor's name are transferred to the recipient of the transfer.
3. The cessie is only legal to the debtor if it has been notified to him or approved in writing and acknowledged by him.

In the execution of the assignment, the transferring or handing over party is called the Cedent, whereas the party receiving the transfer or handover is named the Cessionary, then the debtor of the transferred or handed over account is called Cessus. The surrender of debt in the name and other intangible debt shall be made using an authentic act or by hand, by which the rights to the debt are transferred to another person. Therefore, the cessie must be made, firmly, and in writing. In the case of a transfer of debt by cessie, a third party becomes a new creditor replacing the old creditor, which is followed by the transfer of all the rights and obligations of the old creditors against the debtor to a third person as a new creditors (Hamler, 2022)

The legal relationship between the debtor and the creditor based on a previous credit agreement is not broken, so there is no new legal relationship that replaces the old legal relationship. An old covenant remains in force and binds the debtor and the creditor who receives the transfer of debt. Thus, what happens is the transfer of all the rights and obligations of the creditor under the existing credit agreement to the third party who subsequently becomes the new creditor. In the presence of a cessie, the most important legal consequences are as follows after a cessie occurs, the cessionary position replaces the cedent position, which means that all the rights held by the cedents to the cessus can be used by the cesionary fully.

The problem is when the creditor performs a cessie by not giving information to the debtor, on the one hand of course this is to the detriment of the customer. Furthermore, in article 613 paragraph 2 of the Code of Procedure, there is a provision on the existence of notification to cessus, then the cessionary obtains the power of the cedent. The first party hereby authorizes the second party to:

1. Notify anybody also of this assignment including notifying by lawful representative any person also owed to the first party;
2. On behalf of the first part, the two parties reserve the right to do everything necessary or required for the debtor of the account of the former party to be renamed on behalf the second part and accepted by the second.

From the example of the cessie act above, it is seen that the creditor's efforts to give more security to the funds borrowed to the debtor. With cessie there's a relationship between the creditor and the debtor (Muzzaki, 2023).

This relationship is created because there is an obligation of the cessionary to notify the cessus of the existence of such cessie (as stipulated by Article 613 paragraph 2 of the Code of Procedure), so will be binding cession when there has been notice or in writing has been approved and recognized. This relationship exists because the creditor handed over the right of the account to the new creditor. If the parties are going to cancel the assignment of the right to the bill then it has to be done by making another act of cessie called retro cession. Therefore, the notification or approval of the cessus is very important for the cessionary, because it could have cessed payments to the cedent, not knowing that there has been a change of creditor. In doing so, there must be a foundation of good faith. That is, if the cessus is presumed to have not known the existence of a cessie even if it is from outside (also without notice from the cessionary), and cesses to pay to his creditor, then he (the processus) is protected by the law, which means that he is free from his debt.

When a debtor's position is in a lockdown, creditor is obliged to notify the debtor in writing of the activity of the cessie where this is contained in the clause of the credit agreement. Since the CREDITOR has been liquidated, then the legal effort can be made by the debtor is to renegotiate the credit agreement with the new creditor through a new agreement, related to debtor settlement efforts. As for the disbursement corresponding to the amount at the time creditor have not made a cessie. Cessie against the continuously increasing amount of deferral is not valid due to the absence of notification to the debtor of the transfer of debt collateral (simamora, 2022).

It should be noted that the debtor has essentially failed to pledge, in which the debtor does not make payments to the old creditor before. On this side, when a debtor fails to do so, the new creditor can sell the security goods in public advance under the usual conditions applicable to take out the disbursement of the amount of his debt along with interests and expenses from the proceeds of such sale (Article 1155 paragraph (1) jo. Article 1156 KUHPperdata). Cessie is just one delivery model, alongside other rights transfer models. The title "Legal Protection for Debtors in Cases of Creditor-Initiated Debt Transfer Without Debtor Consent" raises critical questions regarding the legal rights and safeguards available to debtors when creditors transfer debts without their explicit consent. This discussion delves into the complexities surrounding this issue and explores various aspects pertinent to debtor protection in such scenarios.

Firstly, it is essential to examine the fundamental principles of contract law and debtor-creditor relationships. Contractual agreements typically govern debt obligations, outlining the rights and duties of both parties involved. However, the unilateral transfer of debt by creditors without debtor consent may raise concerns about the validity and enforceability of these agreements.

Secondly, analyzing the existing legal frameworks and regulations becomes imperative to understand the extent of protection available to debtors in cases of non-consensual debt transfer. This entails scrutinizing statutory provisions, case law precedents, and regulatory guidelines that govern debt transfer processes and debtor rights. Moreover, exploring the implications of creditor-initiated debt transfers without debtor consent is crucial in assessing the potential impact on debtors' financial interests and legal rights. Such transfers may disrupt existing payment arrangements, expose debtors to unfamiliar creditors, or even result in unjustified financial burdens. Furthermore, it is essential to consider the role of procedural fairness and equity in debt transfer transactions. Debtor consent serves as a fundamental principle underlying contractual relations, emphasizing the importance of ensuring that debtors have a say in decisions affecting their financial obligations (Padmasri, 2018).

Additionally, examining mechanisms for enforcing debtor rights and seeking legal remedies becomes pertinent in safeguarding debtors' interests. This involves evaluating the effectiveness of existing legal avenues, such as contract law remedies, injunctions, or specific statutory protections designed to address non-consensual debt transfers.

Furthermore, a comparative analysis of legal approaches adopted in different jurisdictions can provide valuable insights into best practices and potential areas for improvement in debtor protection laws. Overall, the discussion on "Legal Protection for Debtors in Cases of Creditor-Initiated Debt Transfer Without Debtor Consent" underscores the importance of upholding debtor rights, ensuring procedural fairness, and strengthening legal safeguards to promote equity and stability in financial transaction (Rahmadinata, 2022).

Conclusion

The the legal protection of debtors concerning creditor-initiated debt transfer without debtor consent is a significant issue in financial law. Through analysis and comprehension of the relevant legal frameworks and practices, we can identify the challenges and opportunities in providing adequate protection for debtors in such circumstances. In conclusion, to maintain fairness and balance in financial relationships, it is essential to strengthen the legal framework governing debt transfer and debtor protection. This entails not only addressing gaps in existing regulations but also ensuring that legal mechanisms effectively safeguard debtor rights and interests in cases where debt is transferred without their consent.

References

Adistie, N. , & A. J. (2021). Hubungan Keabsahan Pengalihan Piutang (Cessie) Yang Dilakukan Secara Berulang Kali Terhadap Perpindahan Hak Tanggungan Milik Debitur. *Yustisia Tirtayasa: Jurnal Tugas Akhir*.

- Bandem, I. W. , W. W. , & M. T. (2020). Akibat Hukum Perbuatan Wanprestasi dalam Perjanjian Hutang-Piutang. *Jurnal Ilmiah Raad Kertha*, 3(1), 48-68.
- Hamler, H. (2022). Perlindungan Hukum Debitur Dalam Pengalihan Piutang (Cessie) Kepada Pihak Ketiga Tanpa Pemberitahuan Kepada Debitur Atas Kredit Kepemilikan Rumah (Kpr). . *Journal of Educational and Language Research*.
- Marzuki, P. M. (2022). *Penelitian Hukum*. Kencana Prenada Media Group.
- Muzzaki, I. , & M. A. (2023). Prosedur Pengalihan Cessie Dalam Perspektif Hukum: Akibat Hukum Terhadap Jaminan Hak Tanggungan Dan Perlindungan Debitur. . *Binamulia Hukum*.
- Padmasri, W. (2018). Perlindungan Hukum Bagi Para Pihak Dalam Pengalihan Piutang (Cessie) Melalui Akta Notaris. *Jurnal Hukum Dan Kenotariatan*.
- Rahmadinata, Y. (2022). Pengalihan Piutang Secara Cessie Sebagai Alternatif Penyelesaian Kredit dan Akibat Hukumnya Terhadap Jaminan Hutang Debitur. *Recital Review*.
- Risa, Y. (2017). Perlindungan Hukum Terhadap Kreditur Atas Wanprestasi Debitur Pada Perjanjian Kredit Dengan Jaminan Hak Tanggungan. *Normative Jurnal Ilmiah Hukum*.
- Sampurnaningsih, S. R. . (2021). Pengaruh Karakter Debitur dan Pendapatan Nasabah terhadap Kolektibilitas pada Bmt Al-Muqrin. *Jurnal Neraca Peradaban*. *Jurnal Neraca Peradaban*.
- SIMAMORA, Y. (2022). Perlindungan Hukum Terhadap Debitur Terkait Pengalihan Piutang Atas Nama (Cessie) Yang Dilakukan Oleh Bank Selaku Kreditur Ditinjau Dari Undang-Undang Perlindungan Konsumen (Studi Kasus Putusan Pengadilan Negeri Bekasi No. 50/PDT. G/2020/PN. Bks.). *Doctoral Dissertation, Universitas Gadjah Mada*.