

The Force of Law of The Agreement on The Transfer of The Right To Charge Receivables (*Cessie*) Against The Right of Dependents

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ABSTRACT

Based on Law no. 4 of 1996 concerning Mortgage on Land and Objects Related to Land stipulates that mortgage rights must be reinforced by the means of an authentic deed in the form of a Mortgage Granting Deed made before Land Deed Officer (PPAT), and registered at the Land Office with a valid Mortgage Certificate issued. This study aims to examine the transfer of the receivable (cessie) in the case of mortgages that are not registered at the Land Office and are not recorded in a land title certificate, as well as legal protection of third parties as buyers in good faith who occupy the subject of mortgage in the process of transfer of the receivable (cessie). This legal analysis uses a normative juridical method in approaching the relevant provisions of the law. The data collection method used is literature study with qualitative data analysis. The results indicate that the transfer of the receivable (cessie) cannot immediately proceed to the stage of ownership rights transfer and buyers in good faith who have complied with the provisions of SEMA No. 4 of 2016 must first seek additional legal protection of their rights.

ABSTRAK

Berdasarkan ketentuan pada Undang-Undang No. 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah mengatur bahwa hak tanggungan harus dibuat dalam bentuk akta otentik berupa Akta Pemberian Hak Tanggungan yang dibuat di hadapan PPAT, dan didaftarkan di Kantor Pertanahan untuk diterbitkan Sertifikat Hak Tanggungan. Penelitian bertujuan untuk mengetahui kekuatan hukum perjanjian pengalihan hak tagih atas piutang (*cessie*) terhadap hak tanggungan yang tidak didaftarkan di Kantor Pertanahan dan tidak dicatatkan pada sertifikat hak atas tanah, serta perlindungan hukum pihak ketiga sebagai pembeli beritikad baik yang menguasai objek hak tanggungan dalam perjanjian pengalihan hak tagih atas piutang (*cessie*). Penulisan hukum ini menggunakan metode yuridis normatif dengan pendekatan secara perundang-undangan. Metode pengumpulan data yang digunakan yaitu studi kepustakaan dengan analisis data secara kualitatif. Hasil penelitian menunjukkan bahwa perjanjian *cessie* tidak dapat serta merta memindahkan hak kepemilikan atas suatu objek tanggungan, dan pembeli dengan itikad baik yang telah memenuhi ketentuan dalam SEMA No. 4 Tahun 2016 wajib mendapatkan perlindungan hukum.

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I. INTRODUCTION

Land and buildings are basic needs needed by everyone. The high sales value of these objects makes many people choose to take advantage of the credit facilities provided by the Bank to buy them. Based on Article 1 Number 11 of Law No. 10 of 1998 concerning Banking, it is stated as follows: "*Credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between the bank and another party that obliges the borrower to pay off his debt after a certain period of time with the provision of interest*"

In this case, the party who needs the funds submits a credit application to the bank as the fund provider, by attaching supporting documents as a requirement for credit application. The bank will verify data regarding the correctness of the identity of its prospective customers, either directly or through electronic means owned by financial service providers (CHD)).(Peraturan Otoritas Jasa Keuangan Nomor 12/POJK.01/2017 Tentang Penerapan Program Anti Pencucian Uang Dan Pencegahan Pendanaan Terorisme Di Sektor Jasa Keuangan, n.d.) In addition to verifying data, the bank is also obliged to carry out Customer Due Diligence (CDD) procedures for prospective customers to ensure that the data in the documents attached as supporting data is correct and in accordance with the original. (Peraturan Otoritas Jasa Keuangan Nomor 12/POJK.01/2017 Tentang Penerapan Program Anti Pencucian Uang Dan Pencegahan Pendanaan Terorisme Di Sektor Jasa Keuangan, n.d.)

The Bank has the authority to refuse credit applications from customers who do not meet the criteria or requirements for crediting by the bank. In the event that the credit application is approved by the bank, the bank will submit a *Credit Decree or Offering Letter*.(Peraturan Otoritas Jasa Keuangan Nomor 12/POJK.01/2017 Tentang Penerapan Program Anti Pencucian Uang Dan Pencegahan Pendanaan Terorisme Di Sektor Jasa Keuangan, n.d.) Prospective Debtors are required to sign and return the Credit Decree or Offering Letter to the bank in accordance with the specified time limit. If the prospective Debtor has agreed to the offer given in the Credit Decree, the bank will prepare a Credit Agreement, as well as other supporting documents to be signed jointly by and between the bank and the debtor. Credit Agreement is the principal agreement for the arising of the receivables relationship between the debtor and the creditor.

To avoid all credit risks, the bank can bind a credit guarantee to the debtor as an *assesoir* agreement of the credit agreement. The Bank must ensure that the binding value of the guarantee can cover the maximum amount of credit granted by the bank to the debtor. In providing this value, the bank must also anticipate the occurrence of bad debts and outstanding costs that exceed the maximum credit value due to interest arrears and other costs that have not been repaid by the debtor. The object used as collateral by the Debtor must be able to provide legal certainty to the Creditor, meaning that the item can be executed at any time to pay off the debt of the debtor.(Anatami, 2012) In addition, the legality of ownership of rights to objects that are used as collateral/collateral must be clear and correct as evidenced by proof of ownership of the object. (A. Wangsawidjaja Z, 2021).

After the determination of the object to be used as the object of collateral, then the debtor and creditor sign a collateral binding agreement. The dating of the guarantee binding agreement must be made after the date of signing the credit agreement. This is because without a credit agreement as the principal agreement, the guarantee binding agreement will not exist. In order to carry out the binding of collateral perfectly, the bank will ask the Land Deed Making Officer (PPAT) to make a Deed of Binding of Dependent Rights, and then regurgitate the issuance of a Certificate of Dependent Rights to the Land Agency.(A. Wangsawidjaja Z, 2021)

Whereas as previously mentioned, the credit agreement between the creditor and the Debtors have many risks, including the possibility of bad debts caused by debtors who cannot pay off their debts, but other obstacles can also occur from banks that are experiencing bankruptcy. In such case, the creditor may transfer his receivables to a third party. This is as provided in Article 613 Paragraph 1 BW, which states: "The surrender of receivables - receivables in the name and other bodily treasury, is carried out by way of making an authentic deed or under the hand, by which the right to the treasury is devolved to another person."

The transfer of receivables to third parties is commonly known as *cessie content*. *Cessie* is the transfer of the right of collection of the old creditor to the new creditor against the debtor's debt. So in this case the new creditor is entitled to replace the position of the old creditor in order to collect his receivables to the debtor and the debtor is obliged to repay his debt to the new creditor. In other words, when relating to the provisions in Article 613 BW with the provisions in Article 584 BW which reads:

"Title to an item cannot be obtained other than by taking to be owned, by attachment, by lapse of time, by inheritance, either by statute or by will, and by appointment or surrender on the basis of a civil event for the transfer of title, made by the person entitled to do so to the goods."

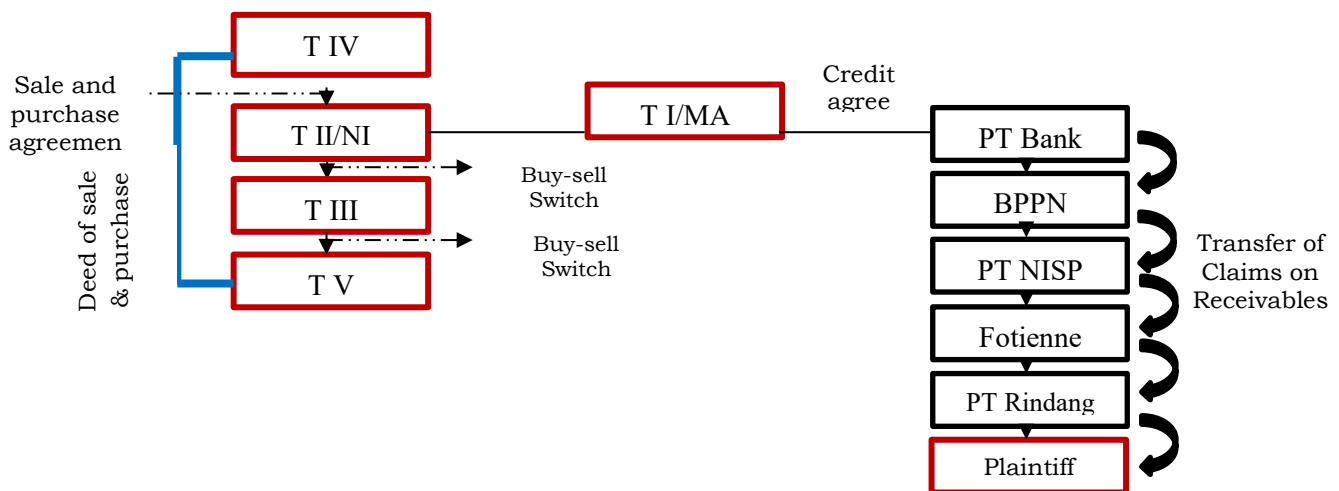
Article 584 BW mentions the method of acquiring property rights to land, including by appointment or surrender based on a civil event. If referring to these provisions, then property rights can be obtained if they are based on a civil event, and provided that the surrender of property rights is handed over by the rightful party, it means that the party is able to prove that it has the authority to have rights to the land. (Rachmad Setiawan dan J. Satrio, 2010) However, not a few disputes regarding the right of ownership arise which are based on the transfer of the right to charge or *cessie*.

One of the disputes arising in connection with the existence of the receivables *ha katas* (*cessie*) is as stated in Judgment No. 1121/Pdt.G/2020/PN.Tng Jo. No. 130/Pdt/2022/PT.Btn filed by ES as Plaintiff to MA as Defendant I, NI as Defendant II, PTT as Defendant III, Developer XX as Defendant IV, CDS as Defendant V, PT STC as Defendant VI, and Head of the Land Office of South Tangerang Regency c.q Ministry of Agrarian and Spatial Planning of the Republic of Indonesia as Defendant VII, and Notary MK as Co-Defendant I and Notary AT as Co-Defendant II. Defendant V (CDS) is a party who is currently physically authorizing the Object of The Suit under the Deed of Sale and Purchase made by and between Developer XX and Defendant V (CDS) on June 2, 2008. For approximately 7 (seven) years in possession of the Object of the Suit, Defendant V (CDS) has never received any information stating that the house is in dispute, or any signs of irregularities in the ownership of the Object of the Suit. As of 2020, Defendant V (CDS) accepted the suit filed by Plaintiff (ES) over the Object of the Suit. The plaintiff (ES) claimed to be a new creditor under *Cessie Binding Deed* No. 72 dated November 26, 1997. In his suit, Plaintiff (ES) asked Defendant V (CDS) to hand over the land of the Object of The Suit and The Certificate of Building Use Rights belonging to Defendant V (CDS) to ES. Based on the description above, this study will discuss the following: What is the legal force of the transfer of the right to charge over receivables (*cessie*) against the right of dependents? And What is the legal protection of third parties as good faith buyers who control the object of dependent rights in the transfer of the right to collect receivables (*cessie*)?

II. RESEARCH METHOD

This research is carried out in a normative juridical manner, meaning that the research is carried out by referring to library materials, so that it focuses on examining the application of positive legal rules or norms. (Ibrahim, 2006) This research was conducted with a statutory approach, especially the provisions in the Civil Code and Law No. 4 of 1996 concerning Dependent Rights to Land and Objects Related to Land ("Law No. 4 of 1996"). The data collection method used is a literature study with quality data analysis.

III. RESULTS AND DISCUSSION



(Table 1. Position Case)

1. The Position of The Plaintiff (ES)

Based on the facts revealed at the trial and the results of the examination (inzaghe case file) it was found that the beginning of the dispute in the case was based on the existence of Credit Agreement Letter No. HI/97L/7321/BT dated November 26, 1997 between PT Bank Bali and Defendant I ("Letter of Credit Agreement"), in this case Defendant I also signed Deed of Debt Recognition No. 71 dated November 26, 1997 ("Deed of Debt Recognition"). As collateral for the debt, Defendant I granted bail in the form of land of the Object of the Case, which in fact belonged to his wife, Defendant II (NA), which subsequently became the Object of Cessie in the Cessie Binding Deed No. 72 dated November 26, 1997.

Furthermore, not long after the time of the chaos of PT Bank Bali, on September 19, 2000, PT Bank Bali traded and handed over receivables to the National Banking Restructuring Agency, which on June 17, 2003 was resold by the National Banking Restructuring Agency to PT NISP Sekuritas, and transferred to Fotienne Capital, Ltd. on September 23, 2008 until finally on September 23, 2008 the receivables were transferred back to PT Rindang Sejahtera Finance and last purchased by ES on February 28, 2020.

2. The Position of The Defendants

The Object of The Case Land is land owned by Defendant VI (PT STM) and managed by Defendant IV (Developer XX) as a developer who is in direct contact with the buyer. On November 26, 1997, the

land of the Object of The Suit was purchased by Defendant II (NI) under Land Sale and Purchase Agreement No. 1339/SPJT/XX/XII/1995 between Defendant IV (Developer XX) and Defendant II (NI) and Minutes of Land Handover No. 1625/C3/M/BASTT/BSD/XI/97 dated November 26, 1997 between Defendant IV (Developer XX) as the party who gave up the land with Defendant II (NI) as the buyer. Furthermore, on March 15, 2007, Defendant II (NI) transferred the rights to the land of the Object of the Case to Defendant III (PTT) under the Agreement on the Transfer of Rights to Land Puspita Loka in BSD City No.1339A / PPH-1 / BSD / III / 2007 which was made and signed by Defendant II (NI) as the Party transferring the land and all its rights and obligations with Defendant III (PTT) as the party who received the land and all its rights and obligations, and Defendant IV (Developer XX) as the Developer who granted permission for the transfer of land and all its rights and obligations. In this case, after the transfer of the land of the Case Object, Defendant III (PTT) has taken care of the application for a Building Permit dated May 21, 2007, which has received approval from the Regent of Tangerang based on the Decree of the Regent of Tangerang No. 648.3/937-DBP/2007 dated July 3, 2007.

On March 13, 2008, Defendant III (PTT) transferred the land of the Case Object to Defendant V (CDS) under Land Rights Transfer Agreement No.1339B/PPH-2/BSD/III/2008. Defendant V has conducted a dispute at the Tangerang National Land Office based on the results of the check, it is stated that SHGB No. 00307 / Lengkong Gudang Timur Village covering an area of 180 m² on behalf of Defendant VI (PT STM) is clean not in dispute and is not burdened with Dependent Rights or not used as debt guarantee so that land rights can be transferred to Defendant V.

On June 2, 2008, Defendant V made and signed a Deed of Sale and Purchase No.75/2008 between Japrano Jap as the attorney of Defendant IV (Developer XX) who is also the power of attorney of Defendant VI (PT STM), before Defendant II (AT), with the transaction value paid in full by Defendant V (CDS) directly. After all administrative requirements were complete, on September 2, 2008 the transfer of land rights was administratively recorded in SHGB No. 00307/Lengkong Gudang Timur Village dated May 28, 2001 covering an area of 180 m² on behalf of Defendant V (CDS).

That in Case Decision No. 1121/Pdt.G/2020/PN.Tng Jo. No. 130/Pdt/2022/PT.Btn, the Panel of Judges of the Tangerang Court has not examined the subject matter of the case, because based on its consideration the lawsuit filed by ES is lacking. That even though in its decision the Panel of Judges has not entered into the examination of the subject matter of the case, the author is interested in researching further about the case, because there are some irregularities in the case, namely the Plaintiff (ES) still bought the right to charge from PT Rindang Sejahtera Finance (as the Seller), even though the Plaintiff (ES) has learned that the Land Rights Certificate is not controlled by PT Rindang Sejahtera Finance, There is no record on the Land Book owned by the South Tangerang Regency Land Office (Defendbanding VII) and the Building Use Rights Certificate No. 00307/2001 (Vide T-V-5) which shows that the Object of Dispute is being a guarantee for a debt, and the statements and evidence submitted and submitted by Defendant IV (Developer XX) as housing developer, Defendant VI (PT STM) as the initial owner of the land of the Object of the Case, and Defendant VII as the Land Office of South Tangerang Regency, with Defendant V (CDS) are the same and correspondent to each other.

3. The Legal Force of the Cessie Agreement Against the Right of Dependents to Land

The term dependent rights is known in Law No. 5 of 1960 concerning the Basic Regulations of Basic Agrarian Principles ("Law No. 5 of 1960"), Law No. 4 of 1996 and in the field of the insurance industry. In the general explanation, Article 4 of Law No. 4 of 1996 states:

“dependent rights are collateral rights to land for the repayment of certain debts, which give a position of precedence to certain creditors over other creditors. In a sense, that if the debtor defaults on the promise, the creditor holding the Dependent Right is entitled to sell through a public auction the land used as collateral under the provisions of the relevant laws and regulations, with the right to precede it from other creditors.”

According to Sutarno, dependent rights are guarantees derived from an agreement between creditors and debtors that give birth to treasury guarantees, namely dependent rights. The right of dependents gives a feeling of security to the creditor if at any time the debtor defaults, so that the creditor has the right to sell the object of the guarantee.(H. M. Arba dan Diman Ade Mulada, 2020) The holder of dependent rights has privileges in terms of legal protection therefore has the following authority:

- a. *Droid De Preference*, i.e. the creditor who holds the dependent right holds the position that takes precedence over other creditors.(Budi Harsono, 2013) In this case, if the Debtor defaults, the creditor who has the right to take precedence over the other creditor will greatly benefit because the creditor has the right to obtain receivable payments from the proceeds of the sale of the dependent right object.(H. M. Arba dan Diman Ade Mulada, 2020)
- b. *Droid de Suite*, i.e. the right that the creditor holding the collateral right to land has to remain entitled to sell the object of the dependent right, even if the object has been transferred its rights to another party.(I Ketut Oka Setiawa, 2019)
- c. The creditor can still request his right to the object of the guarantee of dependent rights, even if the debtor / grantor of dependent rights is declared bankrupt. The object of the guarantee of such dependent rights is not included in the bankruptcy boedel.(Budi Harsono, 2013).
- d. Dependent rights cannot be divided even if the credit payment is made in installments, but the dependent right still burdens each object for the remaining outstanding debt.(Budi Harsono, 2013)
- e. There is a certainty of the date of an object of dependent rights that provides security and legal certainty for the holder of dependent rights.(Budi Harsono, 2013)

The privilege protects the weakness of the legal protection provided to the holder of dependent rights under Article 1131 of the Civil Code, which in the provision provides that the debtor's property is a guarantee of repayment of the debt against all creditors, so that if the sale of the object of guarantee of dependent rights is not enough to pay off all debts of the debtor, then the creditor only gets payment in balance with the amount of his receivables. With the legal protection provided to dependent rights holders, it can create a sense of security for the dependent rights holder to claim his rights, in this case the creditor cannot sue the debtor's property that has been transferred to another party.(Budi Harsono, 2013).

The granting of dependent rights must meet the conditions of speciality and conditions of publicity. What is meant by speciality requirements is the encumbrance of dependent rights carried out before the Land Deed Making Officer ("PPAT") in the form of a Deed of Grant of Dependent Rights ("APHT"), which includes the identity of the parties, domicile, a description of the debts pledged, the

value of the dependents, and an explanation of the object of the dependent rights.(Budi Harsono, 2013) Before the APHT maker is carried out, PPAT must first check the match of the land rights certificate that will be used as the object of guarantee with the lists at the Land Office. If the certificate is in accordance with the existing data, the Land Office will affix the stamp, paraf, and date of inspection on the certificate change page.(Budi Harsono, 2013)

After the fulfillment of the above speciality conditions, furthermore, in terms of the perfection of the binding of the guarantee of dependent rights, it is necessary to fulfill the conditions of publicity, namely the registration of the object of dependent rights by the Head of the Land Office. The Head of the Land Office will make a land book containing the files given from the PPAT. Furthermore, the Head of the Land Office records this on the certificate of rights to the land which is used as the object of guaranteeing dependent rights. With the creation of the land book, officially the dependent rights are considered to have been born and legally the creditor concerned is considered the holder of the dependent rights. Within 7 (seven) days after the creation of the land book, the Head of the Land Office issues a Certificate of Dependent Rights as a sign of the existence of dependent rights. The birth of dependent rights is calculated on the seventh day after the receipt of the necessary papers as a requirement in full or in other words according to the date of the certificate of dependent rights.(Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan, n.d.)

Dependent rights can be transferred if the receivables pledged by the dependent rights are transferred to another person. This is because the dependent rights are assessed, so they follow the transfer of receivables pledged with the object of the dependent rights, provided that the new creditor is required to register the transfer of dependent rights with the Land Office to be recorded on the dependent rights land book and the land book of the certificate of rights to the land concerned. In this case, the recording of the transfer of dependent rights is recorded on 2 (two) certificates, namely the dependent rights certificate, and the certificate of rights to the land in question. Registration of the transfer of Dependent Rights is carried out by the Head of the Land Office, which is submitted simultaneously with the submission of the dependent rights certificate, proof of its transfer, and the identity of the applicant.

One form of transfer of dependent rights can occur due to cessie.(H. M. Arba dan Diman Ade Mulada, 2020) As the author has previously stated, cessie is the transfer of the right of collection of receivables from the owner of the initial receivables called cedent, with a holder of new receivables or cessionaris.(Suharnoko dan Endah Hartati, 2005) What is meant by the owner of the receivables is the party who signs the Credit Agreement, for some reason the party transfers the right to collect its receivables to another party. In cessie, what is claimed is the right of collection of a receivable. So that since the transfer of the receivables, the new creditor has the right to collect the receivables to the debtor. The characteristics of Cessie include the transfer of the assessor agreement to a third party as a new creditor, in which case Cessie only applies to the debtor after the debtor has received notification of the transfer of the debt to the new creditor. Cessie must be made in a separate cessie deed.(H. M. Arba dan Diman Ade Mulada, 2020) Based on the provisions in Article 16 Paragraph 1 jo. Paragraph 2 of Law No. 4 of 1996 basically stipulates that the right of dependents can switch to a new creditor, for which the transfer must be registered with the Land Office.

When referring to the case in Case Decision No.1121/Pdt.G/2020/PN.Tng Jo. No. 130/Pdt/2022/PT.Btn, in SHGB No. XX/XX there is no record of granting dependent rights or records regarding the transfer of dependent rights to the land of the Case Object. On the registration page of the transfer of rights, there is only information that the certificate belongs to Defendant (VI)

PT STC issued on May 28, 2001, which was subsequently reversed in the name of Defendant V (CDS) based on the Deed of Sale and Purchase No. XX/2008 dated June 2, 2008. This is in accordance with the record in the Land Book belonging to the Head of the Tangerang Regency Land Office submitted as evidence in the trial, where it was found that there was no record in the Land Book stating that the land of the Case Object was being used as an object of dependent rights.

The provisions of Article 16 Paragraph 1 state that the right of dependents can be transferred if the receivables secured by the dependent rights are transferred *cessie*, but in this case what needs to be underlined is that the Plaintiff (ES) is the 5th (fifth) party who has received the transfer of receivables in 2020, while the certificate of land rights has been issued from 2001. It should be that if the transfer of receivables that have been transferred to several parties is correct, then the recipient of the transfer of receivables at that time has tried to collect his rights as a new creditor to Defendant I (MA) as a party to the credit agreement and provide information to the Tangerang Regency Land Office that the land of the Case Object is an object of dependent rights based on the Credit Agreement between PT Bak Bali and Defendant I (MA).

So that when Defendant V (CDS) checked the Land Book at the Tangerang Regency Land Office for the land of the Object of the Lawsuit, there was information that the land was being used as collateral. In fact, on May 13, 2008, the results of a check issued by the Tangerang National Land Agency Office were issued, which showed that legally the status of SHGB No. XX/XX on behalf of Defendant V (PT STC) was not in dispute and was not burdened with dependent rights or was not used as collateral for debt.

The *Cessie* Binding Deed made by and between the Plaintiff (ES) and PT Rindang Sejahtera Finance has not transferred ownership rights to a collateral item. To be able to transfer ownership rights to a collateral item requires its own legal action depending on the type of object that is the guarantee. Based on the provisions of Article 613 paragraph 1 of the Civil Code, it is a *lex generalist* which does not necessarily apply to collateral goods in the form of land, because to special provisions or specialist *lex* regarding guarantees are regulated based on the provisions in Law No. 4 of 1996. Meanwhile, legal provisions regarding the transfer of land rights include regulated in Law No. 5 of 1960, PP No. 24 of 1997, PP No. 37 of 1998 and other provisions, where the transfer must be made before the PPAT as an authorized official.

The cessie agreement based on the *Cessie* Binding Deed made by and between the Plaintiff (ES) and PT Rindang Sejahtera Finance is only consensual obligatoir as stated by Suharnoko, S.H., M.H and Endah Hartati, S.H., M.H., which basically explains that *cessie* is a way of transferring receivables in the name based on the provisions of Article 613 of the Civil Code. In the Civil Code system, the sale and purchase agreement, including the sale and purchase of receivables is only consensual obligatoir. This means that it has only laid down rights and obligations for the seller and buyer, but has not transferred ownership. (Suharnoko dan Endah Hartati, 2005) In addition, the definition of *cessie* itself is the right to collect receivables, not the transfer of rights to land objects/*hak atas tanah*, so that the Plaintiff (ES) cannot immediately ask the Tangerang District Court Judge Panel to cancel the Building Use Rights Certificate No. XX/XX

4. Legal Protection of Third Parties as Good Faith Buyers Who Control the Object of Dependent Rights In The *Cessie* Agreement

The application of good faith is not only carried out in the performance of contracts, but also in buying and selling transactions. Good faith means that a buyer at the time of purchasing the goods

has the belief that the seller is the legal owner of the goods he sells, which is obtained from the acquisition of legal property rights, where he does not know of any defects in the goods. (Subekti, 2002) Good faith must be applied from within one's soul so that each person realizes that he is part of society so as not to do things that harm the other party. (Prodjodikoro, 1964) The application of good faith to each of these people can avoid the presence of parties in a trade who are harmed because of the presence of one of the parties in bad faith.

Buying and selling in the Civil Code is defined as a reciprocal agreement between the seller and the buyer who promises a certain object, in which the seller acts to give up his property rights, and the buyer acts to pay the price of the object. (R. Subekti, 2014) Selanjutnya jual beli diatur dalam Pasal 1457 KUHPerdara yang menyebutkan :

"a sale and purchase is an agreement by which one party binds itself to give up a treasury, and the other party to pay the promised price."

In the implementation of the sale and purchase, the parties must have a legal relationship that requires a handover, which is carried out by the authorized party to hand over the object. (Satrio, n.d.) That the sale and purchase transaction carried out by defendant V (CDS) on the land of the Object of the Suit has been carried out under the provisions stipulated by Defendant IV as the Developer of the location of the land of the Object of the Suit. As previously stated, the Object of the Lawsuit is in the residential area developed by Defendant IV (Developer XX), where the land is owned by the original owner, namely Defendant VI (PT STC). So of course Defendant IV as the Developer has provisions regarding the mechanism of the sale and purchase process and the transfer of rights to the land to be carried out by prospective buyers in the area he developed.

Based on Article 14 of the Letter of Land Sale and Purchase Agreement of the Object of The Lawsuit No. 1339/SPJT/XX/XII/1995 dated November 26, 1997 between Defendant IV (Developer XX) and Defendant II (NI) stipulates that the transfer of land rights to land developed by Defendant IV (Developer XX) must be carried out with the approval of Defendant IV as the Developer and the owner of the origin of the land (Defendant VI/PT STC). The provisions of the Agreement also apply and are fully binding on third parties or other parties who wish to accept the transfer/operation of rights to the land of the Object of the Case. Thus, under the Said Agreement, any transfer of rights to land in the territory developed by Defendant IV (Developer XX) must involve and with the consent of Defendant IV (Developer XX).

Defendant V (CDS) received a transfer of rights to the disputed object's land directly from Defendant III (PTT) as evidenced by evidence in the form of Land Rights Transfer Agreement No.1339B/PPH/XX/III/2008 dated March 13, 2008. In connection with the Deed of Sale and Purchase made by and between Defendant IV (Developer XX), Defendant VI (PT STC), and Defendant V (CDS), then when referring to Article 20 of the Sale and Purchase Deed states:

"Both parties hereby promise to bind themselves to each other to carry out and sign the Deed of Sale and Purchase of the land before the authorized PPAT, namely when:

- 1. The house erected on such land by the Buyer has been fully completed and is ready to be occupied;*

2. *The Buyer has paid in full the entire sale price of the land as mentioned in Article 2 of this Agreement along with value added tax, fines, and other costs payable by the Buyer to XX under this Agreement;*
3. *Certificate of Building Use Rights on the land has been issued on behalf of XX by the competent Authority ...”*

“Protection must be given to a good faith buyer even if it is later discovered that the seller is an unauthorized person (the object of buying and selling land).”

“The original owner can only file a claim for damages against the Seller who is not entitled.”(Surat Edaran Mahkamah Agung Republik Indonesia Nomor 07 Tahun 2012 Tentang Rumusan Hukum Hasil Rapat Pleno Kamar Mahkamah Agung Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, Sub Kamar Perdata Umur Romawi IX, n.d.)

The Supreme Court, under the aforesaid SEMA, has granted legal protection to good faith buyers, and applied the principle of *nemo plus juris*, that is, the buyer has assumed good faith, even though the seller in selling his goods is not as a rightful party.(Leonita, 2010) Defendant V (CDS) before purchasing the rights to the land of the Object of the Lawsuit first applied the principle of prudence by checking with the Tangerang Regency Land Office. The sale and purchase transaction was carried out after a check from the Tangerang Regency Land Office which stated that the land of the Object of the Clean and Clear Lawsuit was not in dispute and was not used as collateral for dependent rights.

That the criteria for good faith buyers are protected by law under Supreme Court Circular No. 4 of 2016 concerning the Implementation of the Formulation of the Results of the 2016 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court, as follows:

- a. *Buying and selling the land object with valid procedures / procedures and documents as determined by the laws and regulations, namely, among others, the purchase of land before the Land Deed Making Officer, which has been preceded by research on the status of the land of the object of sale and purchase and based on the study shows that the land of the object of sale and purchase belongs to the seller, and the purchase is made at a reasonable price.*
- b. *Exercise caution by examining matters related to the object of the land promised, among others, the seller is a person who is entitled / has rights to the land that is the object of sale and purchase, in accordance with the proof of ownership, or the land / object being traded is not in the status of confiscated, or the land of the object being traded is not in the status of guarantee / dependent rights, or to land that is certified to have obtained information from BPN and a history of legal relations between such land with certificate holder.(Surat Edaran Mahkamah Agung RI Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2016 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, n.d.)*

In the implementation of the sale and purchase carried out by Defendant V (CDS) to Defendant III (PTT) and Defendant IV as developers have met the criteria for buyers in good faith, in which case Defendant V (CDS) has implemented procedures / laws and regulations, and conducted careful checks and examinations of physical data and juridical data on the land he wanted to buy, before and at the time of the transfer of land rights. That if the criteria of a good faith buyer have been met, even if in the future it is known that the land was purchased from an unauthorized party, or in this case an unauthorized seller, then the land that has been purchased by a good faith buyer cannot be contested by anyone. If the original landowner feels aggrieved by the sale and purchase, then the

original landowner can only file a claim for damages against the unauthorized seller, not to the good faith buyer.

In the application of the case, when the Plaintiff (ES) wants to purchase the right to collect receivables (cessie) but the Plaintiff (ES) does not hold a guarantee of payment of the debt at all, then it is already a risk of the Plaintiff (ES) if in the future the right to collect the receivables (cessie) is not paid. That the same affirmation is also contained in the Jurisprudence of the Supreme Court of the Republic of Indonesia Decision No.1816 K / Pdt / 1989 dated October 22, 1992, which in its consideration mentions:

“a buyer cannot be classified as a good faith buyer since the purchase process was carried out, if there is a buyer's inaccuracy during the purchase process, such as the buyer not checking the status of the seller's rights and status related to the object in question, so such a buyer is not entitled to legal protection from the transaction carried out”.

That in the jurisprudence, there are 2 (two) emphasises, namely the need to conduct research on the status of rights and research on the status of sellers (legal standing). Both conditions are compulsive in nature that must be met. The object and subject of the trade must be legal according to law. The object must be correct and its ownership status must be authorized by law, and the subject must correctly have a valid legal capacity so that it is authorized to carry out the transfer of rights to other parties. Based on the foregoing, it is seen that the Plaintiff (ES) did not meet the 2 (two) compulsive conditions, in which case the Plaintiff (ES) purchased the right to collect the right to receivables from the subject which was not true, did not have the legal capacity and was authorized to transfer rights to other parties causing the Plaintiff (ES) to not hold a guarantee of debt payment at all. Even if the Plaintiff (ES) purchases the right of charge or receivable (cessie) of the correct subject though, because his own inaccuracy causes the Plaintiff (ES) to hold no guarantee of payment of the debt at all and the consequences of his inaccuracy must be borne by the Plaintiff himself (ES).

IV. CONCLUSION

- 1) Based on the provisions of Article 613 of the Civil Code provides that receivables may be transferred to third parties as new creditors who are entitled to collect the rights of the old creditor to the debtor in connection with the credit agreement entered into by and between the old creditor and the debtor. Only me, a cessie agreement made by an old creditor with a new creditor cannot necessarily transfer ownership rights to an item of collateral. This is because the provisions in Article 613 of the Civil Code are lex generalist while the provisions regarding guarantees in the form of land are specifically regulated by lex specialists in Law No. 4 of 1996. In Article 10 Paragraph 1 Jo. Article 13 Paragraph 1 Jo. Article 14 of Law No. 4 of 1996 stipulates that dependent rights must be made in an authentic deed in the form of APHT which is then registered with the Head of the National Land Office for the issuance of a certificate of dependent rights. Information about an object being used as collateral or guarantee of dependent rights will be recorded on 2 (two) certificates, namely a certificate of land rights and a certificate of dependent rights, as well as if the dependent rights are transferred to a third party, then the new creditor must register the transfer to the National Land Office, and each transfer is recorded on each certificate. In fact, the Plaintiff (ES) in Case No. 1121/Pdt.G/2020/PN.Tng Jo. No. 130/Pdt/2022/PT.Btn did not meet the basic requirements regarding the aforesaid dependent rights, as evidenced by the absence of a record on the land rights certificate or the land book

stating that the Object of the Suit was being collateralized. The cessie agreement between the old creditor and the new creditor lays down only the rights and obligations for the seller and the buyer, but has not transferred ownership. So that the Plaintiff (ES) or the new creditor can only collect the right to his bill to the debtor, not cancel the certificate that has been issued on the land of the Object of the Lawsuit.

- 2) In the implementation of buying and selling, it is necessary to fulfill material requirements and formal requirements. The material requirement is that the seller is a party who has the right to make a sale of a certain object based on a valid proof. Meanwhile, the formal requirement is related to the existence of an authentic deed made before the PPAT, which is the basis for the transition or sale and purchase. Referring to the case in Case No. 1121/Pdt.G/2020/PN.Tng Jo. No. 130/Pdt/2022/PT.Btn, Defendant V (CDS) has purchased the land of the Object of The Lawsuit from the rightful party with valid evidence, as well as the approval of the developer of the location of the Object of the Lawsuit, with payments made in cash based on the provisions regulated by Defendant IV as the developer of the Object of The Suit. Furthermore, Defendant IV (developer XX) and Defendant V (CDS) made and signed a Deed of Sale and Purchase before Defendant II (AT) as a PPAT in Tangerang, which against the deed was registered with the Tangerang Regency Land Office to be recorded on the land book and reversed the name to be on behalf of Defendant V (CDS). Prior to the land sale and purchase process, Defendant V (CDS) had first checked the Object of the Lawsuit at the Tangerang Regency Land Office, and information was obtained that the land of the Object of the Lawsuit was not in dispute or used as collateral for a debt (clean and clear). Based on the results of the checks officially submitted by the Tangerang3 Regency Land Office, it was what made Defendant V (CDS) want to continue the sale and purchase transaction of the land object of the lawsuit. In the purchase of land rights to the Object of the Suit, Defendant V (CDS) has complied with the provisions of the Supreme Court Circular No. 4 of 2016, namely that the transfer of land rights is carried out based on purchases made before PPAT on a deaf basis, and before the purchase of land rights, the buyer has checked the rights to land in the competent authority. Furthermore, upon this check, information has been obtained that the status of the land of the object of sale and purchase is clean from the dispute and is not being collateralized (clean and clear). Because the purchases made by Defendant V (CDS) have complied with the provisions in SEMA No. 4 of 2016, Defendant V (CDS) is entitled to legal protection as a good faith buyer as stipulated in Item IX of the Supreme Court Circular (SEMA) No. 7 of 2012, which in essence the buyer in good faith is obliged to get legal protection, even though it turns out that the seller is an unauthorized party.

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