

The Urgency of the Bank's Notification Letter to the Customer for the Transfer of Receivables to Other Parties

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Abstract

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Credit utilization to meet needs and support lifestyles carries potential negative consequences if individuals disregard the established terms and conditions. Often overlooked amidst increasing demand for credit are the associated costs, benefits, and risks of the credit product. Consequently, customers or consumers lacking adequate repayment capacity who allocate credit towards consumption exacerbate the issue of non-performing credit. Credit restructuring serves as a mechanism to alleviate borrowers' obligations to the Bank. However, the restructuring process is not invariably successful. Failure in restructuring efforts can contribute to a rise in Non-Performing Loans (NPL), thereby diminishing the quality of the Bank's assets. To mitigate NPL levels, a common strategy involves the transfer of bad debts through a cession mechanism or the assignment of collection rights (receivables) from creditors to third parties. Cession, however, can introduce challenges concerning the collection methods employed by these third-party assignees. Frequently encountered problems include the protection of consumers from unethical collection practices, the valuation of transferred receivables, and the potential for conflicts of interest between Financial Service Providers (PUJK) and third parties. The regulation of receivables transfer or collection rights within the financial services sector is addressed in the Financial Services Authority Regulation (POJK) Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector. Nevertheless, consumers frequently lodge complaints with the OJK regarding the absence of notification when PUJK transfers receivables to a third party. This lack of notification presents PUJK with a future reputational risk. Addressing this issue, this paper will examine the impact of a cession conducted without a notification letter and propose a mechanism for submitting such notification, recommending its inclusion within the provisions of POJK Number 22 of 2023.

Abstrak

Penggunaan kredit sebagai sarana pemenuhan kebutuhan dan gaya hidup dapat berimplikasi negatif apabila masyarakat dalam mengakses kredit tidak memperhatikan syarat dan ketentuan sebelumnya. Biaya, manfaat dan resiko dari produk kredit dimaksud sering terabaikan seiring kebutuhan akan kredit dari masyarakat yang meningkat. Namun demikian, nasabah atau konsumen yang tidak memiliki kemampuan bayar mumpuni serta mengalokasikan kredit tersebut ke area konsumtif, menambah permasalahan kredit dimaksud menjadi tidak lancar. Untuk mengatasi hal tersebut,

Kata Kunci:

*Pengalihan Piutang,
Perlindungan Nasabah,
Surat Pemberitahuan Bank.*

restrukturisasi kredit merupakan salah satu jalan untuk melonggarkan kewajiban kepada Bank. Proses restrukturisasi tidak selalu berjalan sesuai harapan. Kegagalan restrukturisasi ini dapat mendorong peningkatan Non Performing Loan (NPL) pada Bank, yang berujung pada penurunan kualitas aset Bank. Untuk menurunkan tingkat NPL dimaksud, salah satu strategi yang lazim digunakan adalah pengalihan kredit macet melalui mekanisme cessie atau pengalihan hak tagih (piutang) dari kreditur kepada pihak ketiga. Cessie dapat menimbulkan beberapa masalah terkait mekanisme penagihan yang dilakukan oleh pihak ketiga (cessor). Masalah yang sering muncul meliputi perlindungan konsumen dari tindakan penagihan yang tidak etis, penetapan nilai tagihan yang dialihkan, dan potensi konflik kepentingan antara PUJK dan pihak ketiga. Pengaturan pengalihan piutang atau hak tagih di sektor jasa keuangan telah diatur pada Peraturan Otoritas Jasa Keuangan (POJK) Nomor 22 Tahun 2023 tentang Pelindungan Konsumen dan Masyarakat di Sektor Jasa Keuangan. Namun demikian, konsumen sering mengadukan kepada OJK terkait dengan tidak adanya surat pemberitahuan jika terjadi pengalihan piutang dari PUJK kepada pihak ketiga. Hal ini menimbulkan resiko reputasi bagi PUJK di kemudian hari. Atas hal tersebut, dalam makalah ini akan diulas bagaimana dampak cessie yang dilakukan tanpa surat pemberitahuan adanya cessie dan bagaimana mekanisme penyampaian surat pemberitahuan atas cessie dimaksud yang seharusnya dapat ditambahkan pada klausula ketentuan POJK Nomor 22 Tahun 2023.

A. INTRODUCTION

Along with the rapid development in the financial services sector, both conventional and technology-based, consumers are often faced with various risks and uncertainties related to the products and/or services used. Facing the various risks faced by the community, the government is required to be present in ensuring that the risks in question can be mitigated properly. The government must ensure that consumers are well protected from possible abuse, unclear information, and injustice in the financial services sector. The form of this government presence can be expressed in the form of applicable regulations and forms of supervision carried out by state institutions in the financial services sector. The principle of consumer protection in this sector aims to achieve a balance between the rights of consumers and Financial Services Business Actors (PUJK), including Banks as PUJK. On the other hand, this protection also provides a sense of trust, ease of access to financial services, and protection from potential financial risks that can be detrimental. Consumer protection in the financial services sector has a very important role for financial system stability and economic growth in a country. Without adequate consumer protection, the public will not have confidence in the financial products and services offered by existing financial service institutions.

The era of consumer protection in Indonesia began with the enactment of Law Number 8 of 1999 concerning Consumer Protection (UUPK) on April 20, 2000. The need for laws and regulations specifically regulating consumer protection became an urgent matter to be fulfilled considering the condition of Indonesia at that time after the recovery from the global financial crisis in 1998. The UUPK was prepared to realize national economic development in the era of

globalization which can support the growth of the business world so that it is able to produce a variety of goods and/or services that can improve people's welfare. In addition, the UUPK was prepared in anticipation of the impact of the increasingly open national market as a result of economic globalization as well as an effort to increase consumer awareness, knowledge, concern, ability and independence to protect themselves, as well as to develop responsible business behavior attitudes in order to improve the dignity and dignity of consumers.¹

In line with this, the enactment of Law Number 21 of 2011 concerning the Financial Services Authority (OJK Law), the government established the OJK with the OJK's goal being able to protect the interests of consumers and the public. Therefore, OJK places consumer protection as one of the priority programs by setting a policy direction for the future that is in line with the current dynamics. The consumer protection provided by the OJK is considered important considering the complexity of activities in the financial services sector. The establishment of the OJK in Indonesia is inseparable from the consequences of the economic crisis in 1997 and follows the trend of the Central Bank in several countries including the United Kingdom (1997), Germany (1949), Japan (1998) which wants the Central Bank to be independent, free from interference by any party, the OJK tries to imitate some of the practices that have been used by other countries.²

Based on the survey results, the literacy and inclusion index of Indonesian people shows that the financial services sector, especially the banking sector, is still ranked at the top compared to other sectors, both in terms of literacy and inclusion indexes. This is because PUJK in the banking sector has many consumers or customers, compared to other sectors. Based on the results of the 2022 National Survey on Financial Literacy and Inclusion (SNLIK), the public literacy index in the banking sector reached 49.93%, while the inclusion index reached 74.03%.³ From this data, it can be interpreted that there are still many people in utilizing products and/or services in the banking sector, who do not understand well the risks, costs, benefits and other knowledge of products and/or services in the banking sector that are accessed.

Based on the results of the survey data, it can be interpreted that there are still many consumers in the banking sector who decide to buy products and/or services from their PUJK without fully understanding the risks, costs, benefits and other things.

One of the Bank's products that is most accessed by the public is credit products. The credit growth rate in Indonesia continues to show a positive trend. Even though economic conditions

¹ Financial Consumer Protection Strategy 2013 – 2027, Consumer Education and Protection, OJK, print I, 2017, Page 2

² Zainal Asikin, 2015, Introduction to Indonesian Banking Law, Jakarta, Raja Grafindo Persada, pp. 50-51

³ National Survey of Financial Literacy and Inclusion (SNLIK) in 2022.

are in the post-pandemic recovery phase, credit activity in various financial sectors, especially banks, continues to increase. In April 2024, total loans in Indonesia will reach IDR 7,310.7 trillion, with *year-on-year* growth of 13.09%.⁴ This shows that the banking sector has managed to maintain growth momentum amid global economic turmoil.

There are several factors supporting credit growth in Indonesia, including an increase in the level of community needs, lifestyle, and external factors such as the pandemic.⁵ Based on Article 1 number 11 of Law Number 10 of 1998 concerning Banking, applying for credit is a reasonable thing to do both for working capital, investment and consumptive needs.⁶ One example of using credit, namely working capital loans, is something that business owners should do in order to increase their business. Most people make credit used to meet their needs and lifestyle allowances.

However, the use of credit as a means of meeting needs and lifestyles can have negative implications if people do not pay attention to the previous terms and conditions in accessing credit. The costs, benefits and risks of the credit product in question are often overlooked as the need for credit from the public increases. In addition, customers or consumers who do not have the ability to pay and allocate the credit to the consumptive area, adding to the credit problem in question to be not smooth. This causes people as consumers in the financial services sector to experience liquidity difficulties so that the credit that is their obligation experiences a stuck-in condition. To overcome this, many consumers propose credit restructuring as a shortcut to loosen obligations to banks. The restructuring is in the form of changes in payment schedules, interest rate reductions, or credit tenor extensions aimed at helping consumers meet their obligations.⁷

The restructuring process did not always go as expected. Some restructurings have failed because the debtors' ability to pay has not also recovered, while the economic conditions of the debtors themselves continue to deteriorate. The failure of this restructuring may encourage an increase in *Non-Performing Loans* (NPLs) in the Bank, leading to a decline in the quality of the Bank's assets. As of February 2024, OJK noted that *the net* NPL of the banking sector was at the level of 0.82%. This figure increased from the previous month of 0.79%.⁸ To reduce the NPL rate, one of the commonly used strategies is the transfer of bad loans through the *cessie mechanism* or the transfer

⁴ <https://www.ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Documents/Pages/Sektor-Jasa-Kuangan-Terjaga-Stabil-dan-Didukung-Kinerja-Intermediasi-yang-Semakin-Kuat/Siaran%20Pers%20RDKB%20Mei%202024.pdf>

⁵ Rahmawati, D. A. (2021). *Analysis of Strategies for Handling Non-Performing Loans in Retail People's Business Credit (KUR) Products at Bank Rakyat Indonesia Surabaya Pahlawan Branch* (Doctoral dissertation, bulk takedown 2021).

⁶ Article 1 number 11 of Law Number 10 of 1998

⁷ Widaningtyas, S. A., Murwadi, T., & Mulyati, E. (2022). Settlement of Bad Financing at Business Loan Facilities in the Marketplace in Practice. *Journal of Socio-Humanities Sciences*, 6(1), 302-315.

⁸ <https://keuangan.kontan.co.id/news/waspada-npl-perbankan-mulai-naik-di-awal-tahun-2024>

of collection rights (receivables) from creditors to third parties, usually collection institutions.⁹ *Cessie* is an attractive option for PUJK to reduce NPL expenses from its balance sheet.

However, the practice of *cessie* can pose several new challenges, especially related to the collection mechanism carried out by third parties (*cessors*). Issues that often arise include consumer protection from unethical billing actions, the determination of the value of transferred bills, and potential conflicts of interest between PUJK and third parties.¹⁰

In response to this, the OJK as a regulator in the financial services sector has issued Financial Services Authority Regulation (POJK) Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector, which in one of its chapters regulates the transfer of billing rights for the credit. However, consumers often complain to the OJK regarding the absence of notification if there is a transfer of receivables from PUJK to a third party, so that the consumer still complains about PUJK after the *cessie* is made. This poses a reputational risk for PUJK in the future. The regulation in the provision also does not clearly regulate how a notification letter from the Bank should be delivered to its consumers who are made a *cessie*.

For this, the author tries to analyze the impact of a *cessie* carried out without a notice of the *cessie* in question and how the mechanism for submitting a notification letter for the *cessie* should be added to the clause of the provisions of POJK Number 22 of 2023 concerning the Protection of Consumers and the Community in the Financial Services Sector.

B. RESEARCH METHODS

This research uses a normative juridical method, which is a legal research approach that relies on literature studies to examine principles, norms, and laws and regulations relevant to the issues raised. This approach was chosen because the research focuses on the urgency of the obligation to notify the bank to customers in the context of the transfer of receivables to third parties, which is legally related to the principles of transparency, consumer protection, and the validity of legal relations between legal subjects. In addition to the normative approach, this research is also supported by a conceptual approach to examine legal doctrines and theories related to the rights and obligations of the parties in banking agreements and *cessie*.

The data sources in this study consist of primary data and secondary data. Primary data is obtained through interviews with banking legal practitioners, bank officials who handle credit, and contract or contract or engagement law experts, who can provide empirical perspectives and actual

⁹ Cahyono, A. B. (2004). *Cessie* as a form of transfer of receivables in the name. *Lex Jurnalica*, 2(1), 17969.

¹⁰ NURWANDANY, N. (2023). Legal protection for debtors for the withdrawal of fiduciary guarantee objects after the decision of MK Number 2/PUU-XIX/2021.

practices in the field regarding receivables transfer notices. Meanwhile, secondary data includes primary legal materials such as the Civil Code (KUHPdata), Law Number 10 of 1998 concerning Banking, and relevant Financial Services Authority (OJK) regulations. In addition, secondary legal materials in the form of legal literature, scientific journals, and court decisions that discuss similar issues are also used to strengthen theoretical foundations and normative analysis.

Data collection techniques were carried out through systematic literature studies of laws and regulations, legal documents, and scientific references, as well as semi-structured interviews with key informants. The data obtained was then analyzed qualitatively using legal interpretation techniques, namely interpreting normative provisions based on applicable legal principles and doctrines. This analysis is also carried out using an argumentative approach to evaluate the extent to which the obligation to notify the bank to the customer in the transfer of receivables contributes to the legal protection of the customer and prevents potential legal disputes in the future.

C. RESULTS AND DISCUSSION

C.1. Notice of *Cessie*

According to Prof. Subekti quoted by Puteri Nataliasari, *Cessie* is a transfer of receivables rights, which is actually the replacement of the old receivable, which in this case is called *a cedent*, with a new receivable, which in this relationship is called *a cessionary*. The transfer must be carried out with an authentic deed or under hand. In order for the transfer to take effect against the debtor, *the cessie deed* must be officially notified to him. The rights of receivables are considered to have been transferred at the time the cessie deed is made.¹¹

The obligation to notify the transfer of receivables rights to the debtor/debtor must be carried out by the Bank as a creditor or receivable party. The provisions that govern this matter are:

Article 613 of the Civil Code is the main legal basis for a legal act called "*Cessie*", precisely consisting of three paragraphs, namely:

- 1) *The assignment of receivables in the name and other intangible objects is done by making an authentic deed or under the hand, by which the rights to the material are delegated to another person.*
- 2) *Such a surrender to the debtor has no effect, except after the surrender has been notified to him, or approved and acknowledged in writing.*

¹¹ Puteri Nataliasari. Transfer of Receivables by Cessie and Consequences to Guarantee of Dependent Rights and Fiduciary Guarantees. Thesis of the Faculty of Law, Master of Notary Program, University of Indonesia, 2010;

3) *The submission of each receivable due to the letter of bringing is carried out by the submission of the letter, the submission of each receivable because of the letter of appointment is carried out by the submission of the letter accompanied by an endorsement.*

Furthermore, based on POJK Number 22 of 2023 concerning the Protection of Consumers and the Community in the Financial Services Sector, especially Article 52, it is regulated that:

(1) In the event that PUJK carries out the transfer of billing rights to other parties based on credit or financing agreements with consumers, PUJK is obliged to comply with the procedures for the transfer of billing rights to other parties in accordance with the provisions of laws and regulations.

(2) The transfer of the right of collection to another party as intended in paragraph (1) shall:

- a. contained in the credit or financing agreement; and
- b. notified to the consumer or approved by the consumer.

Based on the above provisions, any transfer of receivables or collection rights from creditors, in this case the Bank as a PUJK must be notified to its customers/debtors/consumers of the transfer of the receivables. If the transfer is not notified to the Debtor, then there is no consequence for the debtor (debtor). Furthermore, based on POJK Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector, it is explained that the obligation to notify the Consumer must be notified to the Consumer through the means of correspondence agreed between the Consumer and the PUJK. Notice to the consumer includes informing the value of the transferred billing rights.

Based on the provisions in question, it can be analyzed that there are 2 (two) things as a legal result if the notification is not made by the PUJK, namely:

1) The handover of receivables or the transfer of receivables will have no effect at all to the debtor and the applicable legal relationship remains as it is, namely between the debtor and the Bank.

2) PUJK that does not carry out this procedure can be interpreted as PUJK does not carry out the applicable provisions of both the Civil Code and POJK Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector. PUJK that violates the provisions as referred to in paragraphs (1) to (3) is subject to administrative sanctions in the form of: written warning; restriction of products and/or services and/or

business activities for part or in whole; freezing of products and/or services and/or business activities for part or in full; dismissal of managers; administrative fines; revocation of product and/or service licenses; and/or revocation of business licenses. Sanctions as intended are imposed with or without the imposition of a written warning sanction. Fines are imposed at a maximum of Rp15,000,000,000.00 (fifteen billion rupiah).

However, further arrangements related to the submission of receivables or the transfer of receivables without the notification letter, which should have been in force as before, namely between the debtor and the Bank, still do not exist. Factually, the receivables have been transferred by the Bank and the collection has been carried out by other parties, but because the notification by the Bank to its customers is not there, whether the Bank is obliged to withdraw the transfer of the receivables in question or not. This requires further regulation in order to protect the rights of consumers for the transfer of receivables.

On the other hand, notifications made by the Bank or PUJK will encounter problems again if the Debtor changes address and does not update customer data to the Bank. The notification submitted by the Bank cannot be received directly by the customer. The bank is only dropping its obligation in submitting the notification letter of transfer of the receivables to its customers who have already experienced the collection of the stuck. The purpose and content of the letter in question are not conveyed to the customer, even though administratively the letter is sent, the letter in question has proof of delivery. Therefore, a special arrangement is needed for the submission of receivables transfer notification letters in the financial services sector, including from banks in it.

C.2. Arrangements for Submission of *Cessie Notification Letter*

The submission of the notification letter of transfer of receivables from the Bank to the consumer must be ensured that the letter in question is received by the person concerned. This is important to be a concern because it mitigates the risk of future disputes between the two parties. The transfer of receivables from the Bank to a third party makes the previous legal relationship between the Bank and the consumer deleted, will be able to run as it should if the customer or consumer has understood this process beforehand.

The right of consumers to obtain certainty from a fair and responsible PUJK or Bank is highly prioritized in accordance with the principles of consumer protection in Indonesia. If PUJK delivers a letter to its customers or consumers, it is necessary to ensure that the letter in question is received or conveyed to the customer, not just the administration that is delivered. Consumer protection is all efforts that ensure legal certainty, and is expected to be a fortress to

eliminate arbitrary actions that harm business actors just for the sake of consumer protection. Therefore, consumer protection is very necessary to be enforced because it is related to the obligations and rights of consumers and PUJK. Fair treatment and responsible business behavior are principles that prioritize fair, non-discriminatory, and responsible actions from PUJK in running a business with attention to the interests of consumers.

Therefore, an arrangement is needed related to the delivery of this letter in order to provide legal certainty in it, especially from the consumer side. Legal certainty is important to pay attention to because legal certainty is one of the products of the law or more specifically it is a product of legislation. Law is a positive thing that is able to regulate the interests of every human being in society and must always be obeyed even though the positive law is considered unfair. The unbalanced consumer side if aligned with the PUJK, the regulation on the consumer side needs to be strengthened so as to create a balanced climate. In line with the principle of consumer protection, it is also stated that compliance enforcement is a principle that focuses on PUJK actions to ensure compliance with consumer protection provisions based on the provisions of laws and regulations in the financial sector.

POJK Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector, especially Article 52, has stipulated that:

(1) In the event that PUJK carries out the transfer of billing rights to other parties based on credit or financing agreements with consumers, PUJK is obliged to comply with the procedures for the transfer of billing rights to other parties in accordance with the provisions of laws and regulations.

(2) The transfer of the right of collection to another party as intended in paragraph (1) shall:

- a. contained in the credit or financing agreement; and
- b. notified to the consumer or approved by the consumer.

The explanation in the above article is as follows: "Notification to the Consumer is made through the means of correspondence agreed between the Consumer and the PUJK. Notice to the Consumer includes informing the value of the transferred billing rights."

In this provision, it is not regulated how the procedure should be related to the delivery of this notification letter to the consumer. Referring to Article 50 of POJK Number 22 of 2023 above, it has been regulated regarding the procedure for notifying debtors/consumers, but this rule is enforced if there is a change in provisions related to credit or financing products that

result in additional obligations, reduction of benefits and/or rights to consumers. Meanwhile, the notification of transfer of receivables or *cessies* is not regulated further. Therefore, adjustments to the rules related to this are necessary.

The author conveyed that for Article 52 of POJK Number 22 of 2023 which regulates *cessie* to be added to the following arrangements:

Article 52

(1) In the event that PUJK carries out the transfer of billing rights to other parties based on credit or financing agreements with consumers, PUJK is obliged to comply with the procedures for the transfer of billing rights to other parties in accordance with the provisions of laws and regulations.

(2) The transfer of the right of collection to another party as intended in paragraph (1) shall:

- a. contained in the credit or financing agreement; and
- b. notified to the consumer or approved by the consumer.

(3) Notification to consumers, PUJK must:

- 1) notify the consumer of the transfer of the billing right;
- 2) confirm the receipt of the letter to the consumer; and
- 3) pouring consumer confirmation in the form of documents, and/or other means that can be used as evidence.

(4) Confirmation to the Consumer is made no later than 30 (thirty) after the notification letter is submitted to the consumer.

(5) If the consumer has been given the time as intended in paragraph (4) and the consumer does not submit the confirmation, PUJK considers the consumer to agree to the change.

Explanation: "Consumer confirmation" is confirmed personally to the consumer to obtain information from the consumer. Examples of other means that can be used as evidence: telephones, cell phones, or recorded video calls; and/or electronic mail submitted by the Consumer to PUJK.

If the provisions are enforced, the principle of balance of hope will be realized between consumers and PUJK. Consumer rights are protected, PUJK rights are protected and PUJK

obligations can also be carried out responsibly. Thus, potential disputes in the future between PUJK or banks and customers or consumers can be mitigated better from the beginning.

In addition, it is necessary to add regulations related to what should be required by the Bank when *the cessie* has been made but the notification letter before *the cessie* is not delivered by the Bank to its customers.

D. CONCLUSION

Based on the results of the analysis, it can be concluded that any transfer of receivables or collection rights by creditors, in this case the Bank as a Financial Services Business Actor (PUJK), must be accompanied by an official notification to the debtor or consumer. This provision is in line with POJK Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector, which emphasizes that notifications must be submitted through the means of correspondence that have been agreed between the two parties. If the notification is not made, then the transfer of the receivables does not cause any legal consequences to the debtor. The information that must be submitted to the consumer is not only limited to the transfer notice, but also includes the value of the transferred billing rights.

In addition, more detailed regulatory adjustments are needed in POJK regarding the procedure for notifying the transfer of receivables by PUJK to its consumers. PUJK must not only send a notification, but also must ensure that consumers receive and confirm the letter. This confirmation must be proven in the form of documents or other legal means as legal evidence, such as phone recordings, video calls, or official emails from consumers. Moreover, rules are required that govern the Bank's obligations if the transfer of receivables has been carried out (*cessie*), but the prior notification is not delivered to the customer. This is important to ensure the protection of consumer rights and prevent potential legal disputes due to negligence in the administrative procedures for the transfer of receivables.

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