

## Legal Protection for Cessie Deed Holders in Indonesia: An Analysis of Court Execution in Case Number 1/Pdt.Eks/2022/PA.Bgl at the Bangil Religious Court

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**ABSTRACT:** A credit contract serves as an initial framework for the redistribution of financial resources between a lending party and a borrowing party. When the borrower fails to fulfill the obligations stipulated within the credit arrangement, a transfer of receivables commonly known as a cession is carried out, wherein the original debtor transfers their obligations to a successor debtor. This is subsequently followed by a formal amendment of the registered ownership title at the Land Office, particularly for the property used as collateral. Several years after the certificate was changed, a dispute lawsuit arose in Court without involving the new Debtor holding the cession deed who had controlled and changed the name on the certificate as a party. In accordance with Execution Decision Number 1/Pdt.Eks/2022/PA.Bgl, the Bangil Religious Court enforced the seizure and auction of the property that had been pledged as collateral by the assignee, reflecting the court's authority to enforce judgments involving transferred debts. This research adopts a normative legal methodology, primarily due to the absence of comprehensive legal provisions governing the transfer of property rights via cession, particularly as they are not explicitly regulated under Article 37 of Government Regulation No. 24 of 1997 concerning Land Registration. The research applies both a conceptual framework and a case-study method, enabling an analysis that bridges theoretical understanding with practical application. This study investigates the process of title change at the Land Office following the execution of a deed of cession. The analysis seeks to evaluate the procedural legitimacy and legal safeguards available to the new rights holder, particularly in cases where the cession is not acknowledged in execution proceedings by the Religious Court.

**Keywords:** Cessie, Execution, Court Decision.



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## INTRODUCTION

Within the banking sector, the term “credit” generally refers to financing arrangements provided in the form of loans (Budiono, 2010). The word credit comes from several languages, including in

Romance it comes from the word “*credere*” in Dutch it comes from the word “*vertrouwen*”, in English it comes from the word “*believe*” which means to believe. In essence, credit is the disbursement of financial resources or their equivalent arising from a loan contract involving a Creditor Party and a Debtor Party, with the Debtor Party being responsible for repayment within the period defined in the agreement. (Laila, 2016)

A credit facility constitutes a lending agreement between a financial institution (creditor) and a client (debtor), whereby the debtor is obliged to repay the borrowed sum within a predetermined timeframe. A Credit Agreement can also be referred to as a real principal agreement followed by a guarantee agreement as an accessory agreement (Hs, 2011). A credit arrangement represents a preliminary understanding for the allocation of funds from the lender to the borrower. This agreement establishes a binding legal relationship between both parties. Typically, the lender is granted a combination of tangible and intangible assurances—tangible guarantees may include real or movable property, while intangible guarantees refer to non-physical commitments. (Budiono, 2010)

The case of the position in this study began with the existence of a Credit Agreement based on the KUR BTN IB Financing Agreement between PT Bank Tabungan Negara (Persero) Tbk and its Debtor dated December 20, 2013 which was made and signed before a Notary in Pasuruan City with a Credit amount of Rp. 450,000,000, - (four hundred and fifty million rupiah). The credit contract designates as collateral a parcel of land measuring 49 square meters, along with the structures situated thereon, located in Kebon Waris Village, Pandaan Sub-district, Pasuruan Regency, East Java. The ownership of the land is confirmed by a certificate issued in the name of the original borrower. The pledged collateral has been secured through the establishment of a first-priority mortgage right, as formalized in the Deed of Granting Mortgage Rights Number 14/2014, which was executed before an authorized Land Deed Official in Pasuruan Regency. (Budiono, 2010)

During the execution period of the credit agreement, the debtor failed to fulfill their repayment obligation amounting to Rp. 335,862,979 (three hundred thirty-five million eight hundred sixty-two thousand nine hundred seventy-nine rupiah). Consequently, a receivables transfer (cession) was initiated in 2019, transferring the obligation to a substitute debtor. According to legal scholar Subekti (2010), a cession involves the assignment of receivables by the original creditor to a new party who assumes the role of the creditor. The debtor’s obligation does not cease but is entirely redirected to the newly designated creditor. The cession transaction is formally documented in a Deed of Transfer of Receivables, which is executed before a public notary in the city of Malang to ensure legal validity. On April 12, 2019, the new debtor, who had acquired the receivable rights, completed payment of the outstanding loan. Subsequently, on October 15, 2019, the Pasuruan Regency Land Office officially recorded the ownership change based on the corresponding deed of transfer. As a result, the property certificate originally submitted as loan security was officially updated to reflect the new debtor’s ownership. (Baruldzaman, 1991; Budiono, 2010)

The cession process is legally documented in a proper notarial deed, which serves as the legal foundation for amending the ownership details in the property certificate at the Land Office (Muljadi & Widjaya, 2006). Generally, the process of registering a change in land ownership at the

Land Office requires submission of a supporting deed, such as a deed of sale and purchase, waqf deed, grant deed, exchange deed, or other documents issued by the authorized Land Deed Official (PPAT). Article 37 of Government Regulation No. 24 of 1997 concerning Land Registration does not make explicit reference to the cession document as a recognized basis for registration: (Baruldzaman, 1991)

The transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, gift, income in a company and other legal acts of transfer of rights, except for the transfer of rights through auction, can only be registered if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations. (Santoso, 2014)

Parties involved in executing a cession should be subject to regulatory oversight and possess legally enforceable documents when transferring land ownership rights at the local land authority. (Baruldzaman, 1991)

The next problem is that the certificate that had been changed to the name at the land office since 2019 was only sued in 2021 at the Bangil Religious Court where the name of the previous certificate holder, Nuzulul Maulidah, was withdrawn as Defendant II in the Sharia dispute case with case registration number 283/Pdt.G/2021/PA.Bgl and was decided on December 15, 2021 where the certificate that had been changed to the name of the Applicant since 2019 became the object of collateral confiscation in the decision. (Hs, 2016)

## **METHOD**

The legal inquiry presented in this paper utilizes normative legal research methods. Normative jurisprudence refers to the field of law that involves examining legal norms through the study of secondary sources such as literature, legal texts, and academic commentary (Mertokusumo, 2009). This approach involves analyzing library materials relevant to the subject of this study. In this prescriptive legal approach, the method used is an approach based on statutory regulations, often referred to as the statute approach.

The sources of information used come from primary legal documents such as laws on fixed-term employment contracts, as well as secondary legal references such as books and magazines relevant to the topic of this study (Fuady, 2008). In addition, there are also tertiary sources of secondary law such as dictionaries, encyclopedias, newspapers, and various other online sources. This study adopts a descriptive-analytical approach to examine and interpret the collected data. The analysis process is conducted qualitatively and draws logical inferences to arrive at conclusions.

## **RESULTS AND DISCUSSION**

### **Debt Transfer Concept**

Debt is a legal act that is often encountered in community life. Debt consists of the words debt and receivable. The authoritative Indonesian Dictionary defines “debt” as funds borrowed from another party, whereas “receivables” refer to funds loaned to another individual that are expected

to be recovered. In general understanding, a debt represents a financial arrangement wherein one individual or party agrees to lend a sum of money to another, with the mutual understanding that the borrowed amount will be repaid according to the terms that both sides have previously agreed upon. In its journey, borrowing and lending carried out by Creditors and Debtors does not always run smoothly where the loan can be returned by the Debtor on time according to what was agreed upon together. To facilitate the repayment process, a debtor might, with the approval of the creditor, transfer the responsibility for the obligation to a third party through a specific contractual arrangement:

#### 1. Novation

The legal doctrine surrounding novation is governed by Articles 1413 to 1424 of the Civil Code. In essence, novation refers to a legal arrangement in which a previous debt is replaced with a new one, formalized within the legal system and binding on the involved parties. Novation can also be interpreted as a formal mechanism through which an existing obligation is substituted with a new one, either involving the same or different parties, or modifying the subject matter of the original obligation. This approach is frequently utilized when the initial debtor is incapable of fulfilling the original repayment terms. (Permana, 2019)

The essential components required to constitute a legitimate novation agreement include the following legal and contractual elements:

a. It is a Debt Renewal Agreement.

Novation is an agreement made by two or more people who agree on a certain matter to renew a debt on a previously existing debt agreement.

b. Done if the debtor is unable to pay his debts.

Novation is only legally applicable in cases where the debtor is genuinely incapable of repaying the debt. It is deemed impermissible if the debtor still possesses the financial means to fulfill the original obligation.

c. It is carried out after there is an agreement or consent to debt.

Novation must be preceded by a debt-receivable agreement. If there is no debt-receivable agreement, novation or debt renewal agreement can be carried out.

d. Made in the form of a Notarial deed.

Article 1415 of the Civil Code stipulates that a novation must be formally documented in writing and established through a deed in order to be recognized as having legal standing:

*“an agreement to renew a debt cannot be assumed; the intention and purpose of a person to agree to the agreement must be contained and proven in the contents of the deed”*

A novation, which serves as a method of renewing a financial obligation, holds legal enforceability only if all the contractual conditions outlined in Article 1320 of the Civil Code are satisfied.

## 2. Subrogation

The term Subrogation found in the Insurance Legal and Regulatory book is:

*“This concept pertains to a person's entitlement to assume another individual's legal responsibilities, while also exercising the associated rights and legal remedies, regardless of whether these have been previously enforced”*

Subrogation is the right of a person who has paid compensation to another person based on a legal obligation, to replace the other person for all his or her rights, whether they have been exercised or not yet exercised. Subrogation refers to the legal transfer of rights and claims from one party to another, typically occurring either by mutual consent or as mandated by statutory provisions. (Lestari & Santosa, 2021)

Under the Civil Code, subrogation is categorized into two distinct types: one that arises from a mutual agreement, as outlined in Article 1401, and another that is imposed by statutory requirement, as specified in Article 1402. Based on Article 1401 of the Civil Code, subrogation founded on agreement may take the following forms or structures: (Lestari & Santosa, 2021)

Subrogation initiated by the creditor takes place when the original creditor accepts repayment from a third party (now acting as the new creditor) and expressly designates that party as the lawful successor to all rights and claims against the debtor. This must be formally recorded at the time of payment.

Debtor-initiated subrogation occurs when a debtor secures funds from a third party (the new creditor) specifically to settle an outstanding obligation owed to the original creditor. In certain arrangements, the debtor may require that the new creditor inherit all the legal rights previously held by the original creditor. This category of subrogation is only considered legally valid if it is executed by means of an official deed that clearly details the associated provisions and terms:

A loan agreement made between the debtor and the incoming creditor, which explicitly states that the borrowed funds are intended solely for the purpose of settling the pre-existing debt.

A receipt acknowledging that the debtor has fulfilled their obligation to the original creditor using money obtained from the new creditor through a loan.

Thus, in a debtor-initiated subrogation, two distinct legal relationships are established: one between the debtor and the new creditor concerning the loan, and another between the debtor and the original creditor regarding the repayment of the initial debt. (Lestari & Santosa, 2021)

According to the provisions in Article 1402 of the Civil Code, subrogation by legal mandate arises when a third party makes payment to the original creditor without a prior agreement, provided that certain specific conditions are met:

A situation in which one creditor pays another creditor who holds a superior claim, due to either a secured interest or a higher priority in settlement (Rahmadinata, 2022);

An instance where a purchaser of real property uses the funds from the transaction to discharge a claim held by a secured creditor;

A person who is either jointly liable with another party or acting on behalf of another and has a direct interest in settling the debt—for example, a co-debtor or a guarantor making the payment;

An heir who accepts an inheritance with limited liability (beneficiary) but chooses to settle the decedent's outstanding debts.

In cases of partial repayment, neither form of subrogation is permitted to compromise the rights of the original creditor, who retains priority in recovering any remaining debt before the new party can assert claims.

### 3. Cessie.

Mariam Daruz Badruzaman defines a *cessie* as a legal arrangement in which a creditor transfers their claim (registered in their name) to another party. This transaction is classified as a principal agreement and must be preceded by a binding commitment or declaration. Within a *cessie* arrangement, the creditor who transfers the claim is referred to as the *cedent*, the party who receives the rights is known as the *cessionaris*, and the individual who owes the debt is termed the *cessus*. Although the term *cessie* is not explicitly defined in the Civil Code, Article 613 references this form of rights transfer, implying its legal recognition:

*“The transfer of receivables in the name of and other intangible objects, is carried out by making an authentic deed or a deed under hand, by which the rights to the object are transferred to another person.”*

*Assignment* does not result in the write-off of receivables, it only transfers ownership of the receivables, and provides the right to demand fulfillment of performance in the form of payment of the receivables transferred. *Cessie* only applies to creditor changes. Based on this, *Cessie* is a way to transfer and/or hand over rights to a receivable or bill in the name where the Debtor must know for sure who the Creditor is.

A *cessie* results in the formation of three legal relationships: between the original creditor (*cedent*) and the debtor (*cessus*), between the original and new creditors (*cedent* and *cessionaris*), and between the debtor (*cessus*) and the new creditor (*cessionaris*). The connection established between the borrower and the former financial institution is derived from a credit accord that is articulated in a written and uniform contract format. Once the debtor agrees to the terms and affixes their signature to the credit score agreement, a formal legal bond is established between the debtor and the creditor. This relationship serves as the foundation before any further legal mechanisms, such as the assignment of rights (*cession*), are initiated. (Baruldzaman, 1991)

After the assignment of rights has taken place, a new binding legal association is formed between the transferee (new creditor) and the debtor. (Supramono, 2013) In order to safeguard the legal entitlements of this new creditor, it is essential that the debtor is informed regarding the transfer of receivables. A written notice delivered to the debtor regarding the assignment of rights is generally deemed sufficient, provided that the debtor receives and acknowledges the communication. The purpose of this notification is to warn the Debtor that the Creditor has transferred his receivables to a third party. From the moment the debtor is made aware of the

assignment, any payments directed to the original creditor are considered to be the responsibility of the assignee, namely, the newly appointed creditor. (Diab & Ashadi, 2017)

### **Concept of Transfer of Land Rights**

The conveyance of land rights pertains to the lawful process by which ownership is passed from a former titleholder to a subsequent one, in accordance with prevailing legal regulations. (Sangsun, 2007) The procedural framework governing the transition of land rights is outlined in Article 37 of Government Regulation No. 24 of 1997 concerning Land Registration (State Gazette of the Republic of Indonesia No. 59 of 1997), commonly referred to as PP 24 of 1997:

- (1) *To legally document the transfer of land or apartment ownership—arising from transactions such as sales, exchanges, donations, or capital injections—a notarial deed issued by an authorized Land Deed Official (Pejabat Pembuat Akta Tanah or PPAT) is required, except in cases involving transfers through public auctions.*
- (2) *In specific instances permitted by the Minister, the Head of the Land Office may register ownership transfers between Indonesian citizens using a deed not created by a PPAT, provided the document is legally recognized as valid by the Land Office authority.*

Article 37 of PP 24 of 1997 introduces two specific legal terms relevant to land law: “transfer of rights” and “assignment of rights,” each bearing distinct legal implications. In Dutch, the term for “transfer” is *overdracht*, which in English refers to the legal act of shifting ownership or rights over land or housing units from one party to another (Masriani, 2022). In the Dutch legal vocabulary, the term for “assignment” is *verwijdering*, and in English, it is typically referred to as “displacement,” denoting the legal mechanism through which land rights are moved from one individual to a different party. (Santoso, 2014)

There are fundamentally two pathways for the transfer or delegation of land rights: through deliberate legal actions and through legal occurrences. According to Soeroso (2015), a legal act is any deliberate activity conducted by a legal subject (whether an individual or legal entity) that generates legal consequences in line with the subject's intentions. Sudarsono explains that a legal act refers to any form of action whose outcomes are defined and regulated by law and are assumed to express the intent of the person performing such an act. Chainur Arrasji states that a legal act is a consciously undertaken activity whose results are determined by legal norms and are intended by the actor. In essence, a legal act is a purposeful deed executed by a legal subject, producing legally binding outcomes. (Sulaiman, 2019)

Legal events in Dutch are called *juridische evenementen* in English *legal events* are events or actions of people that are linked by law to legal consequences. According to the authoritative Dictionary of the Indonesian Language, legal events are defined as circumstances or incidents that give rise to legal consequences or are associated with legal relationships. Legal events according to Van Apeldoorn are events that are based on law that give rise to or eliminate rights. Mr. Bellefroid stated that legal events are social events that do not automatically give rise to legal consequences, this is only possible if the event is made a legal event by legal regulations.

In principle, land ownership rights can be either transferred or assigned pursuant to Article 20 paragraph (2) of Law No. 5 of 1960 concerning the Basic Agrarian Principles (State Gazette of the Republic of Indonesia No. 104 of 1960, Supplement No. 2043), widely known as the UUPA. The term “transferred” refers to a change in land ownership that occurs without the owner's active involvement, such as through inheritance. In contrast, “assigned” implies a transfer that originates from the owner’s own legally recognized actions. (Zaman, 2001)

### **Concept of Land Rights Registration**

A land certificate constitutes official proof of land ownership and serves as authoritative documentation of both the physical and legal status of the property, provided it aligns with the mapping documents and land registration book. For a land certificate to be recognized as definitive legal proof, it must fulfill several cumulative conditions stipulated by land registration regulations:

1. The certificate is legally issued in the name of a person or legal entity;
2. Land acquired in good faith;
3. Land is actually controlled, and
4. One such condition is that for a continuous period of five (5) years following the issuance of the certificate, no objections have been officially submitted by any individual either to the certificate holder or to the relevant Land Office, nor has any lawsuit been filed regarding ownership or the certificate's issuance.

The Land Office situated within the jurisdiction of the city or regency where the land lies holds the authority to issue ownership certificates, as mandated by Articles 5 and 6, paragraph (1) of PP 24 of 1997:

#### Article 5

*“Land registration is organized by the National Land Agency”*

#### Article 6

*(1) In the context of implementing land registration as referred to in Article 5, the duties of implementing land registration are carried out by the Head of the Land Office, except for certain activities which are assigned to other officials by this Government Regulation or relevant legislation.*

Land registration activities encompass both the initial registration process and the ongoing updating or maintenance of records related to land ownership. Initial land registration, as specified in Article 1 point 9 of PP 24 of 1997, applies to parcels of land that have never been registered under Government Regulation No. 10 of 1961 or PP 24 of 1997.

The initial registration process carried out by the Land Office may be implemented either systematically across entire regions or sporadically based on individual requests Arumsari (2020). Systematic land registration, in accordance with Article 1 point 10 of PP 24 of 1997, entails the simultaneous documentation of all unregistered land plots within a specific administrative area such as a village or sub-district. Sporadic land registration, as outlined in Article 1 point 11 of PP

24 of 1997, refers to the individual or collective registration of one or several unregistered plots, initiated by interested parties within a defined locality.

The maintenance of land registration data, as described in Article 1 point 12 of PP 24 of 1997, involves updating both physical and legal records, including maps, registries, measurement documents, land books, and certificates. When there is a change in the physical condition or legal status of a registered land parcel, the land registration system must be updated accordingly. Such updates must be reported by the rights holder to the Land Office and involve the following administrative steps:

a. Registration of Changes to Other Land Registration Data.

The updating of land registration records includes the revision of both legal data and physical attributes. Changes to legal records may include modifications such as:

- (1) Transfer of rights due to sale and purchase, exchange, gift, income into a company, and other legal acts of transferring rights;
- (2) Transfer of rights due to inheritance;
- (3) Transfer of rights due to merger or amalgamation of companies or cooperatives;
- (4) Encumbrance of Mortgage Rights;
- (5) Transfer of Mortgage Rights;
- (6) Elimination of land rights, management rights, ownership rights over apartment units and mortgage rights;
- (7) Distribution of joint rights;
- (8) Changes to land registration data based on court decisions or determinations of the Chief Justice;
- (9) Name change due to rights holder changing name;
- (10) Extension of the term of land rights.

Types of physical data changes include:

- 1) Land parcel division;
- 2) Separation of part or several parts of a plot of land;
- 3) Merger of two or more plots of land.

b. Registration of Maintenance and Encumbrance of Rights.

Land record maintenance is conducted by inserting updates reflecting changes in ownership, dimensions, or legal status into the central land registry database.

### **Legal Review of the Validity of Land Rights Registration Using a Cessie**

The documentation and recording of land transactions, including the imposition of rights, are governed by Article 44 paragraph (1) of PP 24 of 1997.:

*“The encumbrance of mortgage rights on land rights or ownership rights to flats, encumbrance of building use rights, use rights and lease rights for buildings on ownership rights, and other encumbrances on land*

*rights or ownership rights to flats as determined by laws and regulations, can be registered if proven by a deed made by an authorized PPAT according to the provisions of the applicable laws and regulations.”*

Legal documentation evidencing the imposition of mortgage rights on land is created and signed before a PPAT through an official document known as the Deed of Granting of Mortgage Rights. The PPAT's Deed of Granting of Mortgage Rights must be submitted for registration to the Land Office no later than seven (7) days after its execution and validation. Subsequently, the Land Office issues a mortgage certificate inscribed with the phrase “For the Sake of Justice Based on Belief in the Almighty God.” A corresponding entry is made in the mortgage land book on the effective date of the mortgage agreement.

The right to assign mortgage encumbrances to other parties is provided under Article 16 of Law No. 4 of 1996 concerning Mortgage Rights over Land and Land-Related Objects (HT Law):

- (1) Should the secured receivables be reassigned through means such as cession, subrogation, inheritance, or other lawful procedures, the mortgage rights are automatically transferred to the successor creditor. (Lestari & Santosa, 2021)
- (2) Registration at the Land Office by the new creditor is mandatory for the conveyance of Mortgage Rights as intended in paragraph (1).
- (3) The Land Office shall process the registration of the Mortgage Rights transfer as stated in paragraph (2) by entering the information into the Mortgage Rights land register and the land title register of the property encumbered by the Mortgage Rights, and by reproducing the entry on both the Mortgage Rights certificate and the relevant land title certificate.
- (4) The land book shall be updated on the seventh day following the receipt of the complete set of documents needed for the registration of the Mortgage Rights transfer, as referred to in paragraph (3); however, if this seventh day is a non-working day, the update shall occur on the subsequent working day.
- (5) Mortgage Rights conveyance binds third parties as of the recording date indicated in paragraph (4).

Article 121 of the Regulation of the Minister of Agrarian Affairs/National Land Agency Head No. 3 of 1997, which outlines the implementation guidelines for Government Regulation No. 24 of 1997 concerning Land Registration, sets forth provisions related to the registration of the transfer of mortgage rights:

1. The application for registration of the transfer of Mortgage Rights is submitted by the new creditor as the new Mortgage Rights holder by submitting:
  - a. Mortgage Certificate;
  - b. a letter of proof of transfer of receivables guaranteed by a Mortgage Right in the form of:
  - c. deed of cession or authentic deed stating the existence of said cession; (Badruzaman, 1991)
  - d. subrogation deed or authentic deed stating the existence of the subrogation; (Lestari & Santosa, 2021)
  - e. proof of inheritance, or
  - f. proof of merger/amalgamation of companies or cooperatives;

- g. applicant's identity and/or written power of attorney if the registration application is submitted by another party.
2. In cases where the holder of mortgage rights also possesses land title certificates encumbered with mortgage encumbrances, such certificates must be enclosed with the application referenced in the previous (1).
3. The act of transferring mortgage rights is formally documented through an entry recorded both in the land register and on the mortgage certificate, specifically on the page designated for such amendments, and must bear the signature of the Head of the Land Office or another authorized official, along with the official seal. The documentation is also archived in the land book of encumbered rights and, when applicable, noted on the relevant land certificate.

Cessie is a legal act of transferring receivables by creditors holding mortgage rights to other parties. The execution of a cession must be carried out through a legitimate written document, either in the form of an authentic deed or a private agreement; a verbal cession holds no legal enforceability. Subrogation refers to the legal substitution whereby a third party fulfills the debtor's obligation and thereby assumes the creditor's legal position. (Baruldzaman, 1991; Lestari & Santosa, 2021)

In relation to the principal issue raised in this study—which evaluates the legality of a change in certificate title at the land office based on a deed of cession—assessment is conducted using the principle of legal validity, rooted in the concept of a state governed by law (*rechtsstaat*), which mandates that all administrative actions must have a legal foundation in applicable statutory regulations. Quoting from Van der Pot's opinion which states that a decision made by the government can be valid as a legitimate decision must meet 4 (four) requirements, including: (Baruldzaman, 1991; Hadjon, 1987)

- a. Decisions must be made by the organ (*organ*) that has the power to make them;
- b. Because the decision is a statement of will (*wilsverklaring*), the formation of this will does not contain any legal deficiencies (*geen juridisch gebreken in de wilsvorming*);
- c. The decision in question must be given a form that is set out in the regulations that form its basis and the maker must also pay attention to the method (*procedure*) of making the decision in question, if the method in question is set out explicitly in the basic regulations; and
- d. The content and purpose of the decision must be in accordance with the content and purpose of the basic regulations;

The authority to carry out certificate amendments is vested in the land office that has jurisdiction over the location of the property. In this case, the property under examination is located on Jalan Pahlawan Sunaryo, in Kebonwaris Village, within the Pandaan District of Pasuruan Regency, thereby falling under the competence of the Pasuruan Regency Land Office for the purpose of registration and amendment of land certificate data. According to the opinion of Van der Pot, the Pasuruan Regency Land Office lawfully executed the title change on the ownership certificate held by the cession deed holder, thereby meeting the qualifications of a competent institution authorized to make such determinations.

Although the cession document is not explicitly mentioned in Article 37 of Government Regulation No. 24 of 1997, it is, however, clearly referenced in Article 121 of the Ministerial Regulation of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997, as well as in

Article 16 of the Mortgage Law. Both of these legal instruments affirm that the transfer of mortgage rights over land assets may lawfully be carried out through the mechanism of a cession. Accordingly, the act of modifying the name listed on a land certificate through a deed of cession does not constitute any legal defect (*geen juridisch gebreken in de wilsvorming*), as defined by Van der Pot, which is a fundamental condition for a legal action or decision to be deemed valid.

In order to change the name stated on the land ownership certificate by means of a cession, it is necessary to draw up a Deed of Transfer of Claim Rights, which must be signed before a public notary in the city of Malang. The property in question is encumbered by a Rank I mortgage right. The process of cession as stated in the Deed of Transfer of Claim Rights made and signed before a Notary in Malang City is the transfer of claim rights that have been issued based on the KUR BTN IB financing agreement between PT. Bank Tabungan Negara (Persero). Tbk and the Debtor made before a Notary in Pasuruan City along with all changes, additions, extensions, confirmations and other attachments made privately and/or with a notarial deed between the Cedent and Cessus. The total outstanding debt owed by the original claim holder (cedent) amounts to IDR 335,862,979 (three hundred thirty-five million eight hundred sixty-two thousand nine hundred seventy-nine rupiah), while the value of the claim rights transferred to the recipient (cessionary) is IDR 248,616,675 (two hundred forty-eight million six hundred sixteen thousand six hundred seventy-five rupiah).

Based on the Deed of Transfer of Claim Rights executed before a notary in Malang, Bank BTN Syariah Malang, acting in the capacity of the original creditor (Cessus), has issued a Notification Letter of Receivables Transfer (Cessie) to the Cedent, thereby confirming that the receivables have been validly transferred and that the recipient now assumes all the legal entitlements and obligations formerly held by the Cedent. Once the notification is served upon the Cedent, the legal position of the Cessionary is formally acknowledged and protected under prevailing laws. (Aulia & Kawuryan, 2018)

The deed effecting the transfer of claim rights and the accompanying notification letter both fulfill the criteria set forth in Article 613 of the Indonesian Civil Code, which requires that a cession be executed by means of an authentic or private document and that the Cessus be properly notified and give acknowledgment of the transfer of receivables or other intangible rights to the new holder. The cession procedure carried out in this research complies with all legal validity standards for a cession, as articulated by Van der Pot, including adherence to procedural norms governing the formation of legally binding decisions under the applicable legislative framework.

One of Van der Pot's final criteria for determining the legitimacy of a legal decision or administrative act is that its substance and intent must be aligned with the overarching purpose and core principles of the applicable legal rule. The objective of registering a change in the name on a land ownership certificate through a cession deed is to ensure the compilation and dissemination of clear and accurate information regarding the parcel of land, in accordance with Government Regulation No. 24 of 1997, which permits the registration of land even when physical or legal data may be incomplete or disputed. To ensure legal certainty for land rights holders, Government Regulation No. 24 of 1997 stipulates that land certificates serve as strong legal evidence of ownership, as recognized by the Land Deed Official (PPAT). The validity of the

procedure for changing the name on a certificate at the land office through a deed of cession, as examined in response to the research's main issue, is confirmed by the fact that it satisfies all of Van der Pot's criteria for legal validity. (Baruldzaman, 1991; Hadjon, 1987)

### **Legal Review of Legal Protection for the Implementation of Court Decisions.**

A legal decision produces binding effects exclusively for the parties directly involved in the legal process and does not extend its binding force to third parties. In line with Article 1917 of the Civil Code, a final and conclusive court ruling applies only to the subject matter that was under dispute. In order for a judicial ruling to possess binding force, the claims presented must concern the same matter, arise from the same cause, and involve the same parties acting within the same legal relationship. (HS & Nurbani, 2014)

The core aspect of any judicial decision lies in the legal determination derived from facts and circumstances established during the course of the trial proceedings. Before carrying out his duties, namely making a decision on the case he is handling, the judge must not decide without giving legal considerations (Yunanto, 2019). A well-reasoned legal conclusion must demonstrate consistency between the established facts, the supporting evidence, and the relevant statutory provisions. These elements form the foundation of the plaintiff's legal claim (*fundamentum petendi*) and must be substantiated by admissible proof as regulated under Articles 164 HIR, 284 RBg, and 1866 of the Civil Code.

Every court judgment must be accountable and legally grounded. If the court renders a decision in favor of the plaintiff, it implies that the presiding judge, based on legal evaluation, finds the claims presented during trial to be legally justified. (Dewanto, 2020)

The judicial decisions analyzed in this research include the ruling of the Bangil Religious Court No. 283/Pdt.G/2021/PA.Bgl, dated December 15, 2021, and the enforcement order No. 1/Pdt.Eks/2022/PA.Bgl issued by the same court on August 22, 2022. In the petitem of his lawsuit, the Plaintiff did not describe in detail the list of assets for which the execution seizure application was submitted. This resulted in a discrepancy between the posita and the petutium in his lawsuit. This resulted in the lawsuit filed by the Plaintiff being formally flawed. The Plaintiff was also unable to present evidence of ownership of the object for which the collateral seizure was requested in the evidentiary process.

During the trial proceedings, it was determined that the ownership certificate subject to the enforcement application had not been registered under the name of Defendant II as of August 15, 2019. Instead, ownership had already been transferred to the holder of the cession deed on April 16, 2019, by virtue of a Deed of Transfer of Claim Rights executed before a notary in Malang. The Rank I (first) mortgage was carried out on March 9, 2020 so that the Mortgage was removed based on the roya letter dated December 17, 2019. Consequently, as of March 9, 2020, the ownership certificate was officially recorded in the name of the party holding the cession deed. This registration occurred prior to the plaintiff's filing of a claim at the Bangil Religious Court on January 14, 2021. In the course of that legal action, the holder of the land certificate was not designated as a party, even though a final and binding judgment had been rendered and an

execution request had already been filed, which is the core concern of this study. (Badrulzaman, 1991)

The legal considerations of the panel of judges in their decision contained an error made by the Panel of Judges, namely not examining and not carefully considering the evidence of ownership of the object requested by the Plaintiff regarding ownership and registered in whose name the certificate was when the seizure was submitted by the court, whether the name recorded was in accordance with the names of the defendants or was it registered in the name of another person? If the certificate submitted for seizure contained the name of another person, it would actually result in the lawsuit filed by the Plaintiff being lacking a party because it did not involve the party whose name was recorded on the certificate into the case for which the seizure was requested.

A land certificate operates as a legitimate proof of ownership and acts as a dependable reference for confirming the tangible and juridical characteristics stated in it, as long as such details align with those documented in the survey data and the official cadastral system. This certificate is provided to uphold the entitlements of the legal owner, following the documented physical and legal information recorded in the land book. It may solely be handed to the person indicated as the rightful owner in the land register or someone legally empowered by that owner.

The legal consequences if a lawsuit lacks parties (*plurium litis consortium*) is one of the classifications of *error in persona lawsuits*. The legal consequences that arise are that the lawsuit is considered not to meet formal requirements, therefore the lawsuit is qualified as containing formal defects. Referring to the authoritative ruling of the Supreme Court in Decision No. 878 K/Sip/1977, dated June 19, 1977, a legal claim cannot be legitimately filed if any of the involved parties have not been clearly identified or named within the proceedings. The lawsuit must also be addressed to all people who have physical control as in the Supreme Court Jurisprudence No. 437 K/Sip/1973, dated December 9, 1975 with the legal principle:

*“Because the disputed lands are actually not only controlled by Defendant I himself but together with his siblings, the lawsuit should be directed against Defendant I and his siblings, not only against Defendant I himself, so that therefore the lawsuit must be declared inadmissible.”*

According to the legal perspective of Phillipus M. Hadjon, involving all parties listed in the certificate constitutes a form of anticipatory legal protection, while repressive legal safeguards are more concerned with resolving conflicts through judicial bodies and formal court processes (Yulfasni & Hamler, 2023).

The individual holding the deed of cession retains the right to pursue legal redress through appropriate legal channels, specifically against the determination of the Bangil Religious Court in Case No. 1/Pdt.Eks/2022/PA.Bgl, dated August 22, 2022, which pertains to an auction process facilitated by the State Property and Auction Service Office (KPKNL) of Pasuruan Regency. (Badrulzaman, 1991)

To initiate an exceptional form of legal response, one may submit a *derden verzet* suit in the Bangil District Court. This legal move is directed at challenging the decisions made by the Bangil Religious Court under Decision Nos. 283/Pdt.G/2021/PA.Bgl, dated December 15, 2021, and 1/Pdt.Eks/2022/PA.Bgl, dated August 22, 2022. The selection of legal jurisdiction at the Bangil

District Court to file a *derden verzet* is in accordance with the rules in the formulation of the GENERAL CIVIL chamber/18/SEMA 7 2012 with the contents of the formulation: (Ali, 2009)

“If there is resistance to the execution of the Religious Court's decision regarding the Ownership of the disputed object (*derden verzet*) where the Objector is not a party to the case decided by the Religious Court, then the resistance is submitted to the District Court. (vide explanation of Article 50 paragraph 2 p.3 Law No. 3 of 2006)”. (Rianti, 2021)

The provisions outlined in Circular Letter of the Supreme Court (SEMA) No. 7 of 2012, Civil Chamber/18, are consistent with the reasoning found in Article 50 paragraph (2) of Law No. 3 of 2006, which amends Law No. 7 of 1989 on Religious Courts, and further refined by Law No. 50 of 2009:

*“On the other hand, if the subject who files the dispute over property rights or other civil matters is not the subject of the dispute in the religious court, the dispute in the religious court will be postponed to await the decision on the lawsuit submitted to the court in the General Court environment.”*

The designation of the Bangil District Court as the relevant forum aligns with the stipulations found in Article 195 paragraph (6) of the *Herziene Indonesisch Reglement* (HIR):

*“Resistance to the decision, also from other people who state that the confiscated goods belong to them, is brought and tried like all disputes regarding coercive measures ordered by the District Court, in whose jurisdiction the decision is taking place.”*

R Soesilo explained that if there is resistance to the decision either from the opposing party or a third party who states that the confiscated goods are theirs, then the District Court vested with territorial jurisdiction over the execution order is responsible for reviewing and adjudicating the case in accordance with procedural norms. This approach is consistent with the legal rationale presented in Supreme Court Jurisprudence No. 1982 K/Pdt/1994, issued on April 29, 1998, along with related legal doctrines.:

*“In the case of a third party objection (*Derden verzet*) against execution, the party authorized to examine the *derden verzet* filed against the execution is the District Court that issued the “Execution Order Determination” and not the District Court that received the delegation for the execution.”* (Rianti, 2021)

In the *derden verzet* action initiated by the party holding the deed of cession, who acts as the plaintiff, a request can be submitted for the annulment of the Bangil Religious Court's decision in Case No. 283/Pdt.G/2021/PA.Bgl, dated December 15, 2021. This request seeks to exclude the disputed land parcel, owned by the plaintiff, from the scope of the execution, as such enforcement adversely impacts the legal entitlements and property interests of the rightful owner, as reinforced by Article 382 of the *Rechtsvordering* (RV): (Badrulzaman, 1991) (Rianti, 2021)

*“If the objection is approved, the challenged decision is revised only to the extent that it is detrimental to the rights of the third party, unless the decision rendered concerns matters that cannot be divided, requiring the annulment of the entire decision. (Rv. 378.)”*

Pursuing extraordinary legal recourse such as *derden verzet* is a method employed to secure judicial protection. As addressed in the earlier sections of this study, if the execution process has been

finalized and the property in question has already been sold and transferred to another individual, the affected party may initiate litigation before the court that has jurisdiction over the location of the land in dispute. (Rianti, 2021)

## CONCLUSION

Based on a thorough analysis from the opening chapter through to the final section of this research, several conclusions have been formulated:

The procedure for amending the name on the land certificate through the deed of cession is legally valid. Nonetheless, this research reveals that despite the name transfer having been completed, the holder of the deed has not yet received effective legal protection due to the fact that the land certificate remains under execution seizure imposed by the religious court. (Baruldzaman, 1991)

A land certificate serves as a robust instrument for verifying both factual ownership and legal entitlement. It is officially issued to benefit the individual recognized as the rightful holder of the land rights, and it can only be claimed by the person whose name appears in the official land register or by another party who has been legally authorized by them. When the enforcement procedure has not yet concluded and the asset targeted for execution remains unsold, the individual whose name is recorded in the land certificate may pursue legal protection by filing a *derden verzet* case in the district court that holds territorial authority over the land in question. (Rianti, 2021)

If the subject of the execution has already been sold and legally transferred to a different party, then a civil lawsuit may still be brought before the court with jurisdiction over the area where the disputed land is situated.

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