

## The Protection of Creditors as Fiduciary Recipients in Debt Transfers Without Good Faith in Credit Agreements (Study of Decision Number 132/PID.B/2023/PN.SPG)

Rajwa Khaicirinu Riyanto<sup>1)</sup> & Iwan Erar Joesoef<sup>2)</sup>

<sup>1)</sup>Faculty of Law, Universitas Pembangunan Nasional “Veteran” Jakarta, Indonesia,  
E-mail: [2210611089@mahasiwa.upnvj.ac.id](mailto:2210611089@mahasiwa.upnvj.ac.id)

<sup>2)</sup>Faculty of law, Universitas Pembangunan Nasional “Veteran” Jakarta, Indonesia,  
E-mail: [iwan.erar@upnvj.ac.id](mailto:iwan.erar@upnvj.ac.id)

**Abstract.** *One of the problems of a credit agreement is the transfer of debt (take over credit) underhand without the knowledge of the creditor as the fiduciary recipient. Therefore, this paper is conducted to analyze the protection for creditors as fiduciary recipients in the transfer of debt (take over credit) underhand without the knowledge of the creditor in one of the cases, namely Decision Number 132 / PID.B / 2023 / PN. Spg. This paper is a qualitative normative whose data collection uses literature studies and is analyzed using a statutory approach and a case approach. This study concludes that in the case of Decision Number 132 / PID.B / 2023 / PN.Spg, the debt transfer agreement (take over credit) between the debtor and a third party is invalid and null and void because it violates the objective principles in the terms of the agreement. The transfer of debt (take over credit) at PT Federal International Finance can be legal and in accordance with the law if it complies with the procedures determined by PT Federal International Finance as the creditor, one of which is by consulting and contacting and the agreement is known and approved by the creditor.*

**Keywords:** Credit; Debt; Protection; Transfers.

### 1. Introduction

The development of the economic sector in the current era of globalization is gaining increasing attention from the government as a step towards achieving a just and prosperous society, based on the foundations of the Republic of Indonesia, namely Pancasila and the constitution, the 1945 Constitution. The Unitary State of the Republic of Indonesia is a developing country that constantly strives to meet the needs of all its citizens. One such effort is through the provision of financing institutions, both through banks and non-bank financing institutions, to meet the economic needs of the community (N. Latukau, B. Wirarno, B. Sudjito, 2015). As defined in Article 1 of Law No. 10 of 1998, which is an amendment to Law No. 7 of 1992 on Banking, a bank is defined as “a business entity that collects funds from the public in the form of deposits and distributes them to the public in the

form of credit and/or other forms in order to improve the standard of living of the people.” According to the wording of this article, banks have two main functions in their business activities, the first being the collection of funds from the public and the second being the allocation of funds. The activity of collecting funds from the public can take the form of current accounts, savings accounts, and deposits, while the activity of allocating funds is an activity carried out by banks to channel funds back to the wider community through credit facilities, including the provision of credit for working capital, investment, and consumer credit.

Article 1 point 11 of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking defines credit as "the provision of money or bills that can be equated with it, based on a loan agreement or arrangement between a bank and another party that requires the borrower to repay the debt after a certain period of time with interest." Based on this definition, it can be understood that the legal relationship between the Bank as the creditor/lender and the debtor as the borrower is an agreement or loan agreement known as a credit agreement (Thomas Suyatno, 2007).

In credit financing agreements, problems are often encountered, one of which is the existence of other agreements that the debtor has drawn up without the knowledge of the creditor as the fiduciary recipient. As stated in Article 1 of Law No. 42 of 1999 concerning Fiduciary Guarantees, “The Fiduciary Recipient is an individual or corporation that has receivables whose payment is guaranteed by a Fiduciary Guarantee.” One case that is often carried out by debtors without the knowledge of creditors is the transfer of credit or debt to a third party, often referred to as a credit takeover. In legislation, this can be equated with novation or debt renewal, which is “the replacement of an old agreement with a new agreement with the consent of the parties.” However, there are many debtors who carry out credit takeovers that do not comply with the stipulated provisions. Debt transfer (takeover credit) can be carried out if it complies with the terms and conditions imposed as referred to in the laws and regulations and credit financing agreements. If the debt transfer (takeover credit) is only carried out privately without the consent of the financing company, it will have adverse legal consequences for the parties. One of the problems that may arise is when the third party fails to fulfill its obligation to pay installments and the debtor “washes its hands” of this default because the object is already in the hands of the third party, which is caused by an informal agreement regarding credit takeover between the debtor and the third party without the creditor's knowledge. The practice of informal credit takeover is still rampant in society, especially in motor vehicle transactions (<https://skorku.id>). As in the case of Decision Number 132/Pid.B/2023/PN.Spg, which will be analyzed in this article.

In this case, Hari Yanto Bin Sugiyanto, as the defendant, applied for and was approved for credit financing through PT. Federal International Finance for the

purchase of one (1) HONDA motorcycle at the CV. Mitra Setia Abadi dealership. After the defendant obtained 1 (one) unit of HONDA Vario 160 motorcycle from the CV. Mitra Setia Abadi dealer, the defendant transferred the object and the associated debt to FAUZAN (DPO) without the knowledge of PT. Federal International Finance as the Fiduciary Recipient. In making the installment payments, the defendant defaulted or failed to pay the installments to PT. Federal International Finance, causing PT. Federal International Finance's Pamekasan Branch to suffer a loss of Rp. 36,165,000 (thirty-six million one hundred sixty-five thousand rupiah). In the verdict on the case, the judge declared that the defendant, Hari Yanto Bin Sugiyanto, had been proven legally and convincingly guilty of committing the crime of fraud. The verdict was followed by a sentence of 2 (two) years imprisonment for the defendant.

The debt transfer (credit takeover) in this case did not comply with Indonesian laws and regulations or the agreement between the two parties, indicating that the agreement was invalid. Therefore, based on this case, this paper will analyze Case No. 132/Pid.B/2023/PN.Spg regarding the protection of creditors in credit takeovers under hand in vehicle credit agreements with reference to various provisions of Indonesian laws and regulations.

Based on the formulation of the problem above that has been formulated, Based on the above problem formulation, the objectives to be achieved in this study are as follows: To analyze the transfer of debt (credit takeover) against fiduciary collateral in credit agreements in Decision Number 132/Pid.B/2023/PN.Spg, To analyze how debt transfer (credit takeover) should be applied to fiduciary collateral in Credit Agreements that provide protection to Creditors as Fiduciary Recipients. The author limits the issues in this study in accordance with the proposed title. This study will focus on discussing the protection of creditors as recipients of fiduciary rights from the existence of a debtor credit takeover agreement in a credit agreement without the creditor's knowledge. In this study, based on Decision Number 132/Pid.B/2023/PN.Spg, a credit takeover without the creditor's knowledge causes the creditor to be in a disadvantaged position, and this becomes a problem that must be addressed. This triggers violations of several laws and regulations in Indonesia, one of which is Law No. 42 of 1999 concerning Fiduciary Guarantees.

## **2. Research Methods**

Referring to the main issues discussed in this study, and in order to achieve optimal results and provide benefits, this study was conducted using a normative juridical approach. The normative juridical research method is a legal research method that focuses solely on the examination of literature or secondary data (Soerjono Soekanto dan Sri Mahmudji, 2003). This type of research uses secondary data obtained from library research.

To collect data, this study used a literature review technique, which is a method of researching legal sources. This process involved collecting primary, secondary, and tertiary materials relevant to the legal issues in this study. The author also studied and cited legal materials from legislation and literature related to the theme of this study.

The data obtained from the research will be analyzed using a qualitative normative analysis approach. This is done by compiling sentences that are organized, logical, non-overlapping, and effective, which are then followed by discussion. From this discussion, conclusions will be drawn inductively to answer the problems that have been researched. In this case, Soerjono Soekanto and Sri Mamudji argue that qualitative normative analysis includes the interpretation of data based on legal norms, theories, doctrines, and rules relevant to the core of the problem (Soerjono Soekanto dan Sri Mamuji, 2010).

In this study, the research model used is a descriptive research model. Descriptive research is a research method that describes the characteristics of the population or phenomenon being studied. So that this research model focuses mainly on explaining the object of research. So that it answers what events or phenomena occur.

### **3. Result and Discussion**

#### **3.1 Status of the Debt Transfer Agreement (Take Over Credit) on Fiduciary Collateral in the Credit Agreement in Decision Number 132/Pid.B/2023/PN.Spg**

Credit is provided by Financing Institutions as credit facility providers, whose presence is regulated in Article 1 paragraph (2) of Presidential Decree of the Republic of Indonesia Number 61 of 1988 concerning Financing Institutions in conjunction with Article 1 letter (b) of the Decree of the Minister of Finance of the Republic of Indonesia Number 1251/KMK.013/1988 concerning the Provisions and Procedures for the Implementation of Financing Institutions in conjunction with Article 1 paragraph (1) of Presidential Regulation Number 9 of 2009, namely, "A financing institution is a business entity that carries out financing activities in the form of providing funds or capital goods without directly attracting funds from the public." In this case, PT Federal International Finance or PT FIF has been officially recognized as a financing institution with the acquisition of a business license as a financing company based on the Decree of the Minister of Justice No. 1551/KMK.013/1989 dated October 17, 1989 and No. 1004/KMK.013/1990 dated August 30, 1990. Furthermore, the Extraordinary General Meeting of Shareholders on October 21, 1991, approved the change of the Company's name to PT Federal International Finance, also known as PT FIF.

Credit itself is regulated in Article 1 paragraph (11) of Law No. 10 of 1998 concerning Banking, which defines credit as "the provision of money or bills that

can be equated with it based on an agreement or loan agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with interest.” Every credit that has been approved and agreed upon between the creditor and the borrower must be set forth in the form of an agreement, namely a credit agreement. Article 1313 of the Civil Code states that an agreement is an act by which one or more persons bind themselves to one or more other persons. The agreement creates a legal relationship between the two parties that made it, which is called a contract. A legal relationship is a relationship that gives rise to legal consequences guaranteed by law or legislation. If one party does not voluntarily fulfill their rights and obligations, the other party can file a lawsuit in court.

Decision Number 132/PID.B/2023/PN Spg is one of the decisions related to the credit agreement therein. More specifically, in the Credit Financing Agreement for 1 (one) Unit of a Black HONDA Vario 160 Motorcycle with License Plate Number M 5602 NN, year 2022, Engine Number: KFA1E1065495, Chassis Number: MH1KFA110NK065456, In the name of: HARI YANTO Address: Jl. Mangkubumi Kel. Polagan Kec./Kab. Sampang. The Credit Agreement Contract, when reviewed from Article 1320 of the Civil Code regarding the validity requirements of an agreement, includes, among others,

- a. Agreement between the parties;
- b. Competence to make a commitment;
- c. A specific subject matter; and
- d. A cause that is not prohibited.

Classified as a valid agreement and in accordance with the provisions of laws and regulations. It also refers to the principle of *pacta sunt servanda*, whereby the agreement forms a strong legal basis for the credit agreement between Hari Yanto as the debtor and PT Federal International Finance as the financing institution providing credit facilities. Without the knowledge of PT Federal International Finance as the creditor and fiduciary recipient in this credit agreement, Hari Yanto transferred the debt or took over the credit to Fauzan as the DPO in this case. As stated in Law No. 42 of 1999 concerning Fiduciary Guarantees, “The Fiduciary Recipient is an individual or corporation that has receivables whose payment is guaranteed by a Fiduciary Guarantee.” The same law, in Article 23 paragraph (2), regulates the transfer of fiduciary guarantees that occurred in this case. Article 23 paragraph (2) states that, “The Fiduciary Grantor is prohibited from transferring, pawning, or leasing to other parties the objects that are the subject of the Fiduciary Guarantee that are not inventory items, except with the prior written consent of the Fiduciary Recipient.”



The debt transfer agreement also violates Article 1338 of the Civil Code, namely the Principle of Good Faith. The failure to apply the principle of good faith in this case is reflected in the fact that Hari Yanto intended to apply for credit from PT Federal International Finance after his meeting with Fauzan, and that prior to the credit agreement between Hari Yanto and PT Federal International Finance, Hari Yanto had entered into a private agreement to transfer his fiduciary guarantee to Fauzan without the knowledge of PT Federal International Finance as the creditor and fiduciary recipient.

Therefore, the agreement drawn up by Hari Yanto and Fauzan as the parties transferring the debt is null and void because the objective requirement has not been met, namely that the subject matter of the agreement is a fiduciary guarantee based on a valid credit agreement and that the fiduciary guarantee cannot be transferred except with the agreement and consent of the fiduciary recipient, namely PT Federal International Finance.

### **3.2 Debt Transfer (Take Over Credit) Against Fiduciary Collateral in Credit Agreements that Provide Protection to Creditors as Fiduciary Recipients**

Each financing company has its own provisions regarding the procedure for transferring fiduciary collateral debt (take over credit). At PT Federal International Finance, debt transfers can be carried out in accordance with the provisions that have been established. Referring to the experience of debtors in credit agreements with PT Federal International Finance who wish to transfer debt (take over credit), debt transfer can be carried out by taking various steps. One of the main steps that must be taken by the debtor, apart from establishing a clear agreement with the third party, which in this case is the prospective buyer, is that in transferring debt (take over credit), consultation and communication with PT Federal International Finance is required.

Regarding the take over credit of motor vehicles, the Financing Company must be informed, in accordance with the provisions of Article 23 paragraph (2) of the Fiduciary Law, which states that, "The Fiduciary Grantor is prohibited from transferring, pledging, or leasing to another party any object that is the subject of Fiduciary Security that is not a supply item, except with the prior written consent of the Fiduciary Receiver." Based on this article, the debtor is prohibited from transferring the object of fiduciary guarantee without the knowledge and consent of the Financing Company, namely PT Federal International Finance.

The drafting of a debt transfer agreement (take over credit) under the table can also be reported based on several articles, namely Article 372 of the Criminal Code (KUHP), which concerns embezzlement, which reads "Any person who intentionally and unlawfully possesses an item that is wholly or partly the property of another person, but which is in his possession not as a result of a crime, shall be punished for embezzlement with a maximum imprisonment of four years or a

maximum fine of nine hundred rupiah." This article is used because the vehicle is in the possession of the debtor in a lawful manner/not due to a crime (credit), but the debtor controls the item by selling it to a third party. In addition, the report can also be based on Article 36 of the Fiduciary Law, namely "A fiduciary who transfers, pawns, or leases the object of the fiduciary guarantee as referred to in Article 23 paragraph (2) without the prior written consent of the fiduciary recipient shall be punished with imprisonment of up to 2 (two) years and a maximum fine of Rp. 50,000,000 (fifty million rupiah)." In civil law, financing companies, in this case PT Federal International Finance, can also sue debtors on the basis of unlawful acts under Article 1365 of the Civil Code (KUHPerdata), namely "every unlawful act that causes loss to another person obliges the person who caused the loss to compensate for the loss."

Therefore, in the case of debt transfer (take over credit) that provides protection to creditors, in this case PT Federal International Finance, it is necessary to consult with the creditors and make a new agreement that is known and agreed upon by both parties concerned.

#### **4. Conclusion**

As stated in Article 1 of Law No. 10 of 1998, which is an amendment to Law No. 7 of 1992 concerning Banking, banks have two main functions in their business activities. The first is to collect funds from the public, and the second is to allocate funds. One form of fund allocation is through credit agreements. In credit agreements, various problems often arise. One such problem is the private transfer of debt (take over credit). The transfer of debt (take over credit) is not uncommon in credit agreements. However, this action has the potential to be illegal if it is not carried out in accordance with the applicable procedures. For example, in Case Number 132/PID.B/2023/Pn.Spg, there was an under-the-table debt transfer (take over credit) by the defendant Hari Yanto on fiduciary collateral, namely 1 (one) HONDA Vario 160 motorcycle, to Fauzan (DPO), which was credited from PT Federal International Finance. This problem arose when the third party, Fauzan, failed to pay the loan installments to PT Federal International Finance. Unbeknownst to PT Federal International Finance, Hari Yanto and Fauzan had made an agreement with unlawful intent, and from this legal fact, it is clear that the principle of good faith was not realized by the debtor from the outset. This problem arose when a third party, Fauzan, failed to pay his loan installments to PT Federal International Finance. Unbeknownst to PT Federal International Finance, Hari Yanto and Fauzan had made an agreement with unlawful intent, and from this legal fact it is clear that the principle of good faith was not upheld by the debtor from the outset. This clearly violates various regulations, including Article 23 paragraph (2) of the Fiduciary Law, as well as Article 372 of the Criminal Code (KUHP) and, in civil law, Article 1365 of the Civil Code Therefore, in this case, the debt transfer agreement (take over credit) between the debtor and the third party

is invalid and void because it violates the objective principles of the agreement. The transfer of debt (take over credit) at PT Federal International Finance can be legal and in accordance with the law if it complies with the procedures determined by PT Federal International Finance as the creditor, one of which is by consulting and contacting the creditor and having the agreement acknowledged and approved by the creditor.

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