

Legal Certainty of Assignment in Postponement of Debt Payment Obligations Applications: Synergy Between Positive Law, Customary Law, and the Theory of Legal Pluralism

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Abstract

Introduction: The assignment of receivables through cession is an essential instrument in Indonesian civil law practice, including within the mechanism of Postponement of Debt Payment Obligations. In practice, however, legal uncertainty often arises concerning the legal standing of substituted creditors who acquire claims through cession when involved in Postponement of Debt Payment Obligations proceedings. The absence of explicit regulation in the Civil Code and Law Number 37 of 2004 creates juridical ambiguities that may disadvantage both creditors and debtors.

Purposes of the Research: The purpose of this research is to examine the legal certainty of cession within Postponement of Debt Payment Obligations by exploring the synergy between positive law, customary law, and legal pluralism theory.

Methods of the Research: This study employs a normative juridical method, utilizing both the statute approach and the conceptual approach, with data collected through literature review of primary and secondary legal sources.

Results of the Research: The findings demonstrate that legal certainty of cession in Postponement of Debt Payment Obligations cannot rely solely on positive law but must also incorporate the legitimacy rooted in living customary law. The novelty of this research lies in the integration of legal pluralism theory to bridge positive law and customary law, thereby providing more comprehensive legal protection for both creditors and debtors. This research advances scholarly discourse by offering a model of synergy that may guide policymakers and judges in interpreting the status of cession in Postponement of Debt Payment Obligations cases, thus ensuring legal certainty in both formal and substantive terms.

Keywords: Cession; Postponement of Debt Payment Obligations; Legal Certainty; Customary Law; Legal Pluralism.

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INTRODUCTION

Law always occupies a fundamental position as an instrument for regulating social, economic, and political relations.¹ The presence of law is not only seen as a set of written norms, but also as a reflection of the values, culture, and aspirations of society.² Indonesia, as a country with a diverse social background, requires a legal system capable of addressing the complexities of relationships between individuals and entities, particularly in the economic sphere. The diversity of developing legal systems—including positive law,

¹ Lalu M. Alwin Ahadi, "Efektivitas Hukum Dalam Perspektif Filsafat Hukum: Relasi Urgensi Sosialisasi Terhadap Eksistensi Produk Hukum," *Jurnal USM Law Review* 5, no. 1 (2022): 110-27, <https://doi.org/10.26623/JULR.V5I1.4965>.

² Lia Trizza Firgita Adhilia et al., "Pembangunan Hukum Pada Aspek Budaya Hukum Masyarakat," *Innovative: Journal Of Social Science Research* 5, no. 1 (2025): 3630-42, <https://doi.org/10.31004/INNOVATIVE.V5I1.18027>.

customary law, and the influence of international law – presents both challenges and opportunities in national legal development. This situation underscores the need for continuous efforts to ensure legal certainty, so that applicable regulations are not merely formal but also substantively accepted by society.

Legal instruments in the fields of finance and business are becoming increasingly important with the development of the global economy, in order to guarantee stability and justice.³ Agreements, contracts and various mechanisms for transferring rights are part of the needs of modern society in regulating economic relations.⁴ Law is required to be able to provide certainty as well as flexibility in order to accommodate rapidly changing dynamics.⁵ The concept of legal certainty is not merely a textual matter in legislation, but is closely related to public trust in the legal system itself. Without legal certainty, economic activity will be disrupted because business actors do not obtain guarantees regarding their rights and obligations.⁶ Therefore, every form of legal regulation must be able to provide a sense of security and certainty for all interested parties.

One important issue in the field of business law concerns the mechanism for transferring receivables, known as *cessie*. *Cessie* as a legal instrument has a vital role in supporting economic activity, especially when receivables are used as the object of an agreement or guarantee.⁷ The transfer of receivables through *cessie* allows for flexibility in financial transactions, while also making it easier for creditors to obtain repayment through a third party.⁸ However, in practice, problems often arise when *cessie* is confronted with the Debt Payment Suspension (Postponement of Debt Payment Obligations) mechanism. A Postponement of Debt Payment Obligations application is a legal instrument provided for debtors experiencing financial difficulties, requiring fair debt restructuring between creditors and debtors.⁹ This is where questions arise regarding the position and legal certainty of *cessie* in the context of Postponement of Debt Payment Obligations.

The problem becomes more complex when faced with the reality that the Indonesian legal system is not only based on positive law or written laws alone. Customary law is an integral part of legal practice in society, especially in regulating private relations and asset management.¹⁰ On the other hand, the theory of legal pluralism shows that the existence of various legal systems in one social space is an inevitable phenomenon.¹¹ Legal pluralism allows for overlap, harmonization, or conflict between different legal rules. When *cessie* is

³ Syahril Sidiq, "Interseksi Hukum Dan Ekonomi: Analisis Komprehensif Terhadap Dinamika Regulasi Dan Dampaknya Terhadap Pertumbuhan Ekonomi," *Muhammadiyah Law Review* 7, no. 2 (2023): 39–59, <https://doi.org/10.24127/MLR.V7I2.2767>.

⁴ Calvita and Ariawan Gunadi, "Hubungan Hukum Antara Perusahaan Properti Dan Konsumen Dalam Jual Beli Rumah Melalui Sistem Pre-Project Selling," *Jurnal Hukum Lex Generalis* 5, no. 9 (2024), <https://ojs.rewangrencang.com/index.php/JHLG/article/view/629>.

⁵ Efendie, Agus Sugiarto, and Marsudi Dedi Putra, "The Convergence Between Textual Law And Progressive Law In Addressing Contemporary Legal Challenges," *Jurnal Hukum Sehasen* 10, no. 2 (2024): 475–80, <https://doi.org/10.37676/JHS.V10I2.6780>.

⁶ Fitradin Malani and Zuhrah Zuhrah, "Hak Dan Kewajiban Pelaku Usaha Dalam Ekonomi Digital Menurut Hukum," *Jurnal Tana Mana* 6, no. 1 (2025): 23–31, <https://doi.org/10.33648/JTM.V6I1.820>.

⁷ Firman Iswahyudi Mustopo, "Kekuatan Hukum Jaminan Fidusia Atas Asset Replacement Debitur Bagi Perbankan," *Jurnal Hukum Bisnis* 8, no. 3 (2024): 1413–24, <https://doi.org/10.33121/HUKUMBISNIS.V8I3.2849>.

⁸ Yogi Rahmadinata, "Peralihan Piutang Secara Cessie Sebagai Alternatif Penyelesaian Kredit Dan Akibat Hukumnya Terhadap Jaminan Hutang Debitur," *Recital Review* 4, no. 1 (2022): 25–61, <https://doi.org/10.22437/RR.V4I1.15273>.

⁹ Febrian Dirgantara et al., "Peran Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU) Dalam Penyelesaian Sengketa Utang Piutang Di Indonesia," *Lex Stricta: Jurnal Ilmu Hukum* 4, no. 1 (2025): 149–60, <https://doi.org/10.46839/LEXSTRICTA.V4I1.1444>.

¹⁰ Rubi Rubi et al., "Dinamika Hukum Dalam Pengaturan Masyarakat Hukum Adat Ditinjau Dari Sistem Hukum Nasional," *Juris Studia: Jurnal Kajian Hukum* 5, no. 3 (2024): 861–69, <https://doi.org/10.55357/IS.V5I3.768>.

¹¹ Sartika Intaning Pradhani, "Pendekatan Pluralisme Hukum Dalam Studi Hukum Adat: Interaksi Hukum Adat Dengan Hukum Nasional Dan Internasional," *Undang: Jurnal Hukum* 4, no. 1 (2021): 81–124, <https://doi.org/10.22437/UJH.4.1.81-124>.

positioned within the Postponement of Debt Payment Obligations framework, it is natural that there will be a tension between legal certainty according to positive law, customary norms that exist in society, and the broader concept of legal pluralism.

The phenomenon of legal pluralism in Indonesia reflects a social reality that cannot be simplified by referring to only one legal system. In practice, economic actors and the public often use a dual approach, namely they comply with written law while still referring to living customary norms.¹² This can create its own problems, especially in cases involving assets, receivables, or rights acquired through traditional mechanisms but must face formal rules. The legal certainty of cessie in Postponement of Debt Payment Obligations applications is often debated because the law does not explicitly regulate the synergy mechanism between positive law and customary law. This condition has the potential to create uncertainty for both creditors and debtors in debt settlement.

The urgency of discussing the legal certainty of cessie in Postponement of Debt Payment Obligations becomes clearer by considering the development of the number of bankruptcy and Postponement of Debt Payment Obligations cases in Indonesia. The Supreme Court, through the commercial court, handles lawsuits related to the cessie mechanism. The lack of clarity regarding the position of cessie in the Postponement of Debt Payment Obligations process often creates legal uncertainty, both for the original creditor and the replacement creditor. As a result, the debt settlement process becomes protracted and causes losses for all parties. From a macroeconomic perspective, this can have implications for declining investor confidence and disrupting business stability. Therefore, an in-depth analysis of the legal certainty of cessie in Postponement of Debt Payment Obligations is very important to carry out.

The theory of legal pluralism emphasizes that in a pluralistic society, law is not only understood as a product of the state, but also involves social, religious, and customary norms.¹³ Therefore, legal certainty cannot only be measured by the extent to which laws are obeyed, but also by the extent to which other norms are recognized and respected. When cessie as a legal mechanism operates in a Postponement of Debt Payment Obligations environment, the question that arises is how to ensure synergy between positive law, customary law, and legal pluralism. If this synergy can be realized, then the legal certainty created is not only formal, but also substantive and accepted by society.

The urgency of the research can be viewed from the aspect of legal protection for the parties involved. Creditors, as parties who have receivables, certainly need certainty that their rights will be recognized and protected, both when the receivables are transferred through cessie and when the debtor files for Postponement of Debt Payment Obligations. Likewise, debtors need assurance that the Postponement of Debt Payment Obligations mechanism will not unilaterally harm them, especially if there is a transfer of receivables without their knowledge. Without clarity on the position of cessie, Postponement of Debt Payment Obligations can turn into an arena of prolonged conflict between old creditors and new creditors. This not only hinders dispute resolution, but can also damage the principle

¹² Ni Nyoman Tri Partini, "Peran Hukum Adat Dalam Penegakan Hukum Dan Penyelesaian Sengketa," *JURNAL VIRTUE JURISPRUDENCE: Jurnal Ilmu Hukum* 2, no. 2 (2024): 192-201.

¹³ Nasrullah, Jalaluddin, and Ilham Akbar, "Teori Hukum Sejarah (Historical Legal Theory) Di Indonesia: Kajian Sistematis Melalui Metode Systematic Literature Review" *Journal Of Law And Nation* 4, no. 1 (2025): 120-33, <https://jolin.my.id/index.php/jolin/article/view/195>.

of justice that should be the spirit of every court decision. Therefore, a study of the synergy of positive law, customary law, and legal pluralism in this context is very urgent.

The discussion on the legal certainty of cessie in Postponement of Debt Payment Obligations also has a philosophical dimension. Law should not only be seen from a procedural aspect, but also from aspects of value and legitimacy. Legal certainty that is only oriented to the text of the law has the potential to lose social binding power if it is not in line with the values of justice that live in society. Therefore, research on this topic is not only practically relevant, but also important to enrich academic discourse on the relationship between state law, customary law, and the theory of legal pluralism. Thus, this discussion is expected to contribute to building a more responsive, fair, and capable legal system that meets the increasingly complex needs of society.

Research conducted by Ayu Tresna Waty, et al., in *Cerdika: Indonesian Scientific Journal* comprehensively discusses the aspects of legal protection for debtors in the context of cessie, especially in banking practice. This study highlights the uncertainty often experienced by debtors when collection rights are transferred to new creditors without their consent, raising issues of justice and legal certainty. The main focus is on protecting debtors from being harmed by the cessie mechanism which tends to prioritize the interests of creditors. Thus, this study emphasizes the tripartite legal relationship between old creditors, new creditors, and debtors in the banking context.¹⁴

Meanwhile, research by George Jan Christian Zherman Saragih, et al., in *Acta Law Journal* focuses more on the aspect of the position of replacement creditors who obtain collection rights through cessie in Postponement of Debt Payment Obligations cases. This study analyzes the legal implications of commercial court decisions regarding the validity of the position of new creditors in Postponement of Debt Payment Obligations applications. From its analysis, this study confirms that the transfer of receivables through cessie in Postponement of Debt Payment Obligations cases still raises uncertainty, especially in determining who has the right to be recognized as a legitimate party in the legal process.¹⁵

The novelty of this research lies in the effort to integrate the analysis of cessie in Postponement of Debt Payment Obligations applications using a legal pluralism perspective, namely the synergy between positive law, customary law, and the theory of legal pluralism. If previous research has focused more on the aspect of debtor protection in banking and the position of replacement creditors in Postponement of Debt Payment Obligations, this research offers a multidimensional approach that not only relies on the normative framework of laws, but also considers the values of customary law that live in society and the reality of legal pluralism in Indonesia. With this approach, the research is expected to provide a more holistic and contextual view in answering the problems of legal certainty of cessie in Postponement of Debt Payment Obligations.

The aim of this research is to analyze and explain the legal certainty of cessie in Postponement of Debt Payment Obligations applications by considering the synergy

¹⁴ Ayu Tresna Waty, Dewi Iryani, and Hartana, "Perlindungan Dan Kepastian Hukum Debitur Terhadap Pengalihan Piutang (Cessie) Dalam Praktek Perbankan Di Indonesia," *Cerdika: Jurnal Ilmiah Indonesia* 4, no. 12 (2024): 1234-41, <https://doi.org/10.59141/CERDIKA.V4I12.2336>.

¹⁵ George Jan Christian Zherman Saragih, Sunarmi, and Robert, "Pemegang Pengalihan Atas Hak Tagih Tertulis (Cessie) Dalam Permohonan Penundaan Kewajiban Pembayaran Utang Berdasarkan Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan PKPU (Analisa Putusan: No.16/Pdt.Sus-PKPU/2017/PN.NIAGA/Jkt.Pst)," *Acta Law Journal* 2, no. 1 (2023): 9-28, <https://doi.org/10.32734/ALJ.V2I1.15366>.

between positive law, customary law, and the theory of legal pluralism. This research is directed at finding a more comprehensive understanding of the position of cessie in Postponement of Debt Payment Obligations, so that it can contribute to the development of legal doctrines that are responsive to the needs of business practice while being in line with the values of social justice that live in society. In addition, this research aims to provide a basis for the formation or renewal of regulations so that they are better able to guarantee legal protection and certainty for all interested parties.

METHODS OF THE RESEARCH

The research method used in this study is normative juridical research using a statute approach and a conceptual approach. This research focuses on the analysis of written legal norms related to the legal certainty of cessie in Postponement of Debt Payment Obligations applications, as well as examining relevant legal concepts to find a more comprehensive understanding. The data processing technique is carried out through a literature study of primary legal materials in the form of laws and regulations, secondary legal materials in the form of literature, journal articles, and related research results, as well as tertiary legal materials such as legal dictionaries. All data is then analyzed qualitatively by examining, interpreting, and systematizing legal rules, then linking them to the theory of legal pluralism and the customary legal values that live in society. Thus, this research seeks to present a legal construction that can guarantee legal certainty while accommodating substantive justice in the practice of cessie in Postponement of Debt Payment Obligations.

RESULTS AND DISCUSSION

A. Legal Certainty of Assignment in Postponement of Debt Payment Obligations Applications Reviewed from the Perspective of Indonesian Positive Law, Customary Law, and Legal Pluralism Theory

Cessie in the context of civil law is defined as the transfer of rights over intangible movable property (*intangible goods*), which usually takes the form of named receivables, to a third party.¹⁶ This transfer mechanism is explicitly regulated in Book II of the Civil Code Article 613. Article 613 of the Civil Code states, "The transfer of named receivables and other intangible property is carried out by drawing up an authentic deed or a private deed, whereby the rights to such receivables or intangible property are assigned to another person."¹⁷ For the transfer to be valid and enforceable against third parties, it must be notified to the debtor concerned. The main elements of cessie include the legal subjects (i.e., the cedent or old creditor and the cessionary or new creditor), the legal object (i.e., the assignable receivable), and the mandatory written form.¹⁸ The debtor is not required to agree to this transfer, but notification to them is a necessity.

The basic requirement for filing a Postponement of Debt Payment Obligations application by a creditor is regulated in Article 222 paragraph (1) of the Bankruptcy Law,

¹⁶ Farah Aura Jannah, "Praktik Pelaksanaan Lelang Online Tertutup Berdasarkan Peraturan Menteri Keuangan No. 213/PMK.06/2020 Perspektif Hukum Islam Di KPKNL Malang," *Journal of Islamic Business Law* 6, no. 4 (2022): 1-25, <https://urj.uin-malang.ac.id/index.php/jibl/article/view/1715>.

¹⁷ Diana Hawaty Simanjuntak, Wira Franciska, and Nur Hakim, "Keabsahan Pengalihan Piutang (Cessie) Dalam Proses Kepailitan," *Journal of Innovation Research and Knowledge* 5, no. 1 (2025): 89-100, <https://www.bajangjournal.com/index.php/JIRK/article/view/10386>.

¹⁸ Galih Putri Sudarsono, "Problematika Pengalihan Hak Tagih Piutang (Cessie) Terhadap Kredit Macet Perbankan," *YUDHISTIRA: Jurnal Yurisprudensi, Hukum Dan Peradilan* 2, no. 2 (2024): 14-21, <https://doi.org/10.59966/YUDHISTIRA.V2I2.1115>.

which requires that the debtor must have "more than 1 (one) creditor."¹⁹ Parallel provisions to Article 2 paragraph (1) of the Bankruptcy Law - Postponement of Debt Payment Obligations which regulates the requirement of "two or more creditors" for a bankruptcy application.²⁰ In addition, the Postponement of Debt Payment Obligations application must be based on "simply proven facts or circumstances."²¹ This means that the existence of debt and the requirement of two creditors must be easily proven in court. This principle of simple proof is a crucial foundation in the considerations of commercial court judges, which often becomes a point of contention when cessie is used to meet the creditor count requirement.

The application of cessie as a tool to meet the "two or more creditors" requirement in Postponement of Debt Payment Obligations applications has created significant inconsistencies among the decisions of commercial court judges, which directly erodes legal certainty. There are two main conflicting approaches in jurisprudence. The first approach is to grant the Postponement of Debt Payment Obligations application with cessie as another creditor. Judges in these decisions tend to adopt a very formalistic or positivistic view, namely that cessie is a valid deed according to Article 613 of the Civil Code and therefore the transfer of receivables is legally justified. This is evident in Decision Number 30/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst and Decision Number 1/Pdt.Sus-PKPU/2020/PN.Niaga.Smg.

The second approach is to reject the Postponement of Debt Payment Obligations application on the grounds that the existence of cessie does not meet the requirement as "another creditor." Judges who adhere to this view argue that in substance, the debt arising from cessie comes from a single source and there is only a transfer of the creditor's position, not the addition of an independent new creditor. The rejection is also based on the argument that the existence of cessie makes the debt not "simply proven," because its validity requires further proof, including whether the original receivable is still disputed. This view is reflected in decisions such as Decision Number 42/Pdt.Sus-PKPU/2021/PN.Niaga.Smg and Decision Number 52/Pdt.Sus-PKPU/PN.Niaga.Jkt.Pst which explicitly reject the argument of cessie as another creditor.

The purpose of law according to Gustav Radbruch emphasizes that law must fulfill three basic values: justice, expediency, and certainty.²² In the case of cessie in Postponement of Debt Payment Obligations, legal certainty is achieved when the rights of the replacement creditor are explicitly recognized in positive law. However, if the regulations are unclear, the value of certainty becomes weak and opens the door to different interpretations. This causes uncertainty for debtors and other creditors in the debt restructuring process. Therefore, legal certainty of cessie in Postponement of Debt Payment Obligations demands clarity on the legal position of the replacement creditor so as not to harm other parties. The concept of debt in Indonesian customary law is fundamentally different from the positive

¹⁹ Salsabila Chaezarani and Heru Pringgodani Sanusi, "Pertimbangan Penolakan Hakim Dalam Putusan Permohonan Penundaan Kewajiban Pembayaran Utang Oleh PT. Adhikara Putra Mandiri Terhadap PT. Banyu Telaga MaS," *Amicus Curiae* 2, no. 1 (2025): 337-44, <https://doi.org/10.25105/F63EYK81>.

²⁰ Erpan Ardiansyah, Elisatris Gultom, and Sudaryat, "Juridical Analysis and Practice of Simple Proof in Bankruptcy & Suspension of Debt Payment Obligation Cases Under Law Number 37 of 2004," *COSMOS: Jurnal Ilmu Pendidikan, Ekonomi Dan Teknologi* 2, no. 4 (June 16, 2025), <https://cosmos.iainsambas.ac.id/index.php/cms/article/view/305>.

²¹ Ronald Christian, Fauzie Yusuf Hasibuan, and Nur Hakim, "Implementasi Putusan PKPU Oleh Pengadilan Niaga Terhadap Pihak Yang Masih Dalam Sengketa Keperdataan," *CENDEKIA: Jurnal Penelitian Dan Pengkajian Ilmiah* 2, no. 8 (August 18, 2025): 1477-90, <https://doi.org/10.62335/CENDEKIA.V2I8.1661>.

²² Dino Rizka Afdhali and Taufiqurrohman Syahuri, "Idealitas Penegakkan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum," *Collegium Studiosum Journal* 6, no. 2 (2023): 555-61, <https://doi.org/10.56301/CSJ.V6I2.1078>.

law paradigm that underlies cessie. In customary law, debt is often seen as a responsibility tied to kinship structures, be it patrilineal, matrilineal, or parental.²³ The consequence of this view is that the debt obligations of the testator become the responsibility of the heirs which must be settled before the inheritance can be distributed.²⁴ This responsibility can be individual or collective, depending on the inheritance and kinship system prevailing in the indigenous community. Therefore, the debtor-creditor relationship is not merely an individual civil bond that can be transferred at will, but a moral and social bond involving the entire kinship community.

In contrast to positive law which legitimizes the commercialization of receivables, customary law is not bound by the formal transfer of collection rights to third parties who have no kinship ties. The concept of buying and selling in customary law, as in the case of land, is "terang" (done in front of traditional leaders) and "tunai" (payment and delivery occur simultaneously).²⁵ This focuses on physical delivery and communal legitimacy, in stark contrast to the transfer of intangible collection rights carried out through written deeds in cessie. The mechanism for resolving debt disputes in customary law is carried out through deliberation to reach a consensus or through customary courts whose main aim is to restore social harmony and moral responsibility,²⁶ not a litigative debt restructuring as in Postponement of Debt Payment Obligations.

The applicability of customary law cannot be ignored because legal pluralism in Indonesia recognizes the coexistence of various legal systems. The theory of legal pluralism put forward by John Griffiths asserts that state law is not the only legal system that exists in society.²⁷ Customary norms, religion, and social practices also have regulatory power. Therefore, in the case of cessie in Postponement of Debt Payment Obligations, it is not enough to only refer to written laws, but it is also necessary to consider the living customary values and norms. Ignoring customary norms can actually create substantive uncertainty in society.

The legal uncertainty that occurs in the decisions of the Commercial Court regarding cessie in Postponement of Debt Payment Obligations is not an anomaly, but a manifestation of the real tension of legal pluralism. Judges, as enforcers of positive law, are forced to implement a very modern legal instrument (cessie) in the context of Postponement of Debt Payment Obligations law. However, in the decision-making process, judges are often influenced by substantive considerations or non-positivist values that are reminiscent of customary law or "living law" approaches. Considerations such as "the substance of the receivable" and "simple proof" underlying the rejection, indicate that judges are not only looking at the formality of the deed alone, but also at the rational purpose and good faith of the Postponement of Debt Payment Obligations application, namely a real debt restructuring for legitimate and independent creditors, not the fulfillment of artificial formal

²³ Zaidan Alfarizi and Zaenul Mahmudi, "Harmoni Adat Dan Syariat: Analisis Pembagian Warisan Adat Pepadun Lampung Dalam Perspektif Khi," *BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam* 6, no. 2 (2025): 307-23, <https://doi.org/10.36701/BUSTANUL.V6I2.2141>.

²⁴ Nur Adli Zal Farizi, Misbahuzzulam Misbahuzzulam, and Muadz ` Abdulaziz, "Kewajiban Ahli Waris Terhadap Utang Pewaris: Analisis Pasal 175 KHI Dalam Perspektif Fikih Syafi'i," *Al-Usariyah: Jurnal Hukum Keluarga Islam* 3, no. 2 (2025): 155-70, <https://doi.org/10.37397/AL-USARIYAH.V3I2.893>.

²⁵ Dicky Alrasyat, "Pelaksanaan Perjanjian Jual Beli Tanah Berdasarkan Hukum Adat Di Desa Sungai Sayang Kecamatan Sadu Kabupaten Tanjung Jabung Timur" (Universitas Batanghari, 2024).

²⁶ Nirda Fitria, "Penerapan Sanksi Adat Dalam Penyelesaian Sengketa Antara Masyarakat Oleh Tuha Peut Gampong (Studi Kasus Di Gampong Mutiara Kecamatan Sawang Kabupaten Aceh Selatan)" (UIN Ar-Raniry, 2022), <http://repository.ar-raniry.ac.id>.

²⁷ Gandhung Fajar Panjalu, "Kedudukan Hukum Islam Dalam Konsep Pluralisme Hukum Di Indonesia," *Jurnal Mas Mansyur* 2, no. 1 (2024): 15-27, <https://doi.org/10.30651/MMS.V2I1.21499>.

requirements. This unevenness of decisions shows that "state law" in Indonesia is not an isolated monolith, but a complex negotiating space where various legal systems and values interact.

Indonesian positive law needs to harmonize with customary law through the theory of legal pluralism in order to create comprehensive certainty. Regulations regarding Postponement of Debt Payment Obligations should provide clarity regarding the position of the replacement creditor as a result of cessie, while also opening space for recognition of customary agreements. Thus, Postponement of Debt Payment Obligations can truly become a fair, effective, and responsive mechanism to the needs of society. Without this synergy, legal certainty of cessie in Postponement of Debt Payment Obligations will continue to be a problem that hinders the settlement of debts. Therefore, a legal pluralism perspective is important to apply in future regulation development.

B. Synergy Between Positive Law, Customary Law, and Legal Pluralism Theory to Ensure Legal Protection for Parties in Assignments in Postponement of Debt Payment Obligations Cases

Legal protection in cessie cases within the framework of Postponement of Debt Payment Obligations (Penundaan Kewajiban Pembayaran Utang, Suspension of Debt Payment Obligations) requires synergy between positive law, customary law, and the theory of legal pluralism. Positive law provides a clear formal framework through the Civil Code and Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. Meanwhile, customary law provides social legitimacy that is alive in community practices. The theory of legal pluralism serves as a bridge that explains how these three sources of law can interact. By integrating these three, legal protection for both creditors and debtors can be more comprehensive, not only formal but also substantive.

Positive law, through Article 613 of the Civil Code, affirms the mechanism for transferring receivables through deeds and official notification to the debtor. This provision provides legal certainty for new creditors so that their collection rights are formally recognized. However, in practice, not all transfers of receivables are carried out in a manner that fully complies with these rules. This is where customary law can play a role, because the community often recognizes the transfer of receivables based on the principles of trust and agreement without written formalities. The synergy between the two can provide more flexible legal protection.

Article 222 paragraph (1) of Law Number 37 of 2004 Postponement of Debt Payment Obligations states that a debtor who has more than one creditor and is unable to pay their debts may file for Postponement of Debt Payment Obligations.²⁸ When a receivable has been transferred through cessie, the question that arises is whether the new creditor has the same legal standing as the old creditor. Positive law provides the basis that the right to claim is fully transferred, but customary law emphasizes the social legitimacy of the transfer. The theory of legal pluralism can help explain that the position of the new creditor must be recognized as long as it meets both formal requirements and customary legitimacy. Thus, creditor legal protection is more guaranteed. According to Gustav Radbruch, legal certainty, justice, and expediency are fundamental values of law. In the case of cessie, formal

²⁸ Vita Kusuma Dewi, Yuhelson, and Bernanrd Nainggolan, "Akibat Hukum Putusan Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU) Terhadap Status Sita Dan Eksekusi Jaminan Ditinjau Dari Undang-Undang Nomor 37 Tahun 2004," *Jurnal Studi Interdisipliner Perspektif* 22, no. 2 (2023): 128-33, <https://ejournal-jayabaya.id/Perspektif/article/view/101>.

certainty may be achieved through legislation, but substantive justice is only realized if customary law is also recognized. By providing that new creditors who acquire collection rights through customary mechanisms are entitled to the same protection as formal creditors. The theory of legal pluralism affirms that this recognition is valid because state law cannot eliminate living social norms. That way, legal protection can cover both formal and social dimensions.

Satjipto Rahardjo, with his progressive law theory, states that law must be responsive to the needs of society.²⁹ In cessie cases within Postponement of Debt Payment Obligations, responsiveness means not only being fixated on the literal wording of articles, but also considering the social realities where customary law is still alive. With a progressive approach, positive law can open up space to accommodate customary norms. This allows legal protection for the parties to be oriented not only towards legality, but also towards social legitimacy. Thus, legal protection is fairer and more contextual.

In practice, customary law often emphasizes the principles of kinship, deliberation, and balance.³⁰ These values are highly relevant in Postponement of Debt Payment Obligations, which aims to restructure debt peacefully between debtors and creditors. If the transfer of receivables through cessie is recognized based on customary norms, then dispute resolution can be carried out in a more peaceful and participatory manner. The integration of customary values in the Postponement of Debt Payment Obligations process can strengthen the sense of substantive justice for debtors and creditors. That way, law not only becomes a formal instrument but also a means of social reconciliation.

Within the framework of the theory of legal pluralism, the existence of more than one legal system should be seen as an opportunity, not a threat. Positive law provides procedural certainty, customary law provides social legitimacy, and legal pluralism offers integration of both. This synergy creates space for the court to not only assess the validity of the cessie formally but also to pay attention to the social context in which the cessie was born. That way, legal protection for the parties is more comprehensive. This is in line with the needs of a diverse Indonesian society.

Legal protection in cessie within Postponement of Debt Payment Obligations must also consider the principle of justice.³¹ If only positive law is used as a reference, then creditors who obtain receivables through customary channels may not be protected. Conversely, if only custom is used as a basis, then the debtor could be harmed because there is no procedural certainty. The synergy of the two, facilitated by the theory of legal pluralism, ensures that all parties receive balanced protection. This is important so that Postponement of Debt Payment Obligations truly becomes a fair debt settlement instrument.

The implementation of this synergy can be realized through an interpretive approach by judges in Postponement of Debt Payment Obligations cases. Judges can interpret Article 613 of the Civil Code and Article 222 of Law Number 37 of 2004 contextually, by opening space for recognition of the transfer of receivables that is valid according to custom. In this way,

²⁹ Muhammad Idris Sarumpaet1, Hilal Haitami Harahap, and Fauziah Lubis, "Peran Politik Hukum Dalam Pembangunan Hukum Progresif Di Indonesia," *Innovative: Journal Of Social Science Research* 4, no. 4 (2024): 3991-4003, <https://doi.org/10.31004/INNOVATIVE.V4I4.12848>.

³⁰ Muhamad Indanus and Sugianto Sugianto, "Nilai-Nilai Keadilan Dalam Hukum Adat Dan Hukum Keluarga Islam Pada Masyarakat Adat Kampung Naga Tasikmalaya," *Jurnal Interpretasi Hukum* 5, no. 3 (2024): 1276-83, <https://doi.org/10.22225/JUINHUM.5.3.10891.1276-1283>.

³¹ Verra Yanti Ngantung, "Kedudukan Kreditor Asing Pemegang Cessie Dalam Proses Pkpu Dan Kepailitan Di Indoensia: Perspektif Keadilan Dan Negara Berdaulat," *Jurnal Globalisasi Hukum* 2, no. 2 (2025): 298-319, <https://doi.org/10.25105/JGH.V2I2.23320>.

judges can provide legal protection not only based on the text but also based on the values of justice that live in society. The role of the judge as a progressive legal interpreter is crucial in realizing this synergy. That way, the resulting decisions are more adaptive and just.

Thus, the synergy between positive law, customary law, and the theory of legal pluralism is a middle ground to guarantee legal protection in cessie in Postponement of Debt Payment Obligations cases. Positive law provides formal certainty, customary law ensures social legitimacy, and legal pluralism connects the two in one analytical framework. The resulting legal protection is not only procedural but also substantive, so it is better able to meet the needs of the parties. This legal protection model is in accordance with the character of Indonesian society, which is plural and complex. Therefore, this synergy is very important for building a fair and responsive legal system.

CONCLUSION

Article 613 of the Civil Code provides procedural certainty regarding the transfer of receivables but does not specifically regulate the position of the substitute creditor in the Postponement of Debt Payment Obligations mechanism as regulated in Law Number 37 of 2004. From a customary law perspective, the transfer of receivables is often recognized even if it does not meet formal requirements, resulting in a difference in orientation with positive law. By using the theory of legal pluralism, it can be understood that the legal certainty of cessie should not only be based on written rules but must also consider the social legitimacy that exists in society, so that legal protection for creditors and debtors can be achieved formally and substantively. The synergy between positive law, customary law, and the theory of legal pluralism is a middle ground to guarantee legal protection in cessie in Postponement of Debt Payment Obligations cases. Positive law provides formal certainty, customary law ensures social legitimacy, and legal pluralism connects the two in one analytical framework. The resulting legal protection is not only procedural but also substantive, so it is better able to meet the needs of the parties. There needs to be harmonization between positive law, customary law, and the theory of legal pluralism to guarantee legal protection in cessie cases within Postponement of Debt Payment Obligations. Legislators need to consider revising Law Number 37 of 2004 to more clearly regulate the position of substitute creditors resulting from cessie, while also providing space for recognition of agreement practices that are valid according to customary law. Judges are also encouraged to carry out progressive interpretations by combining aspects of formal certainty and substantive justice, so that Postponement of Debt Payment Obligations decisions are not only based on legality but also in accordance with the values of justice in society. Thus, the synergy between positive law, customary law, and legal pluralism can be realized to build a legal system that is responsive, fair, and contextual for the protection of parties in Postponement of Debt Payment Obligations.

REFERENCES

Adhilia, Lia Trizza Firgita, Wiwin Wiwin, Ardiyanti Aris, Supriadi Jufri, Muh. Akbar Fhad Syahril, and Muhammad Yasmin. "Pembangunan Hukum Pada Aspek Budaya Hukum Masyarakat." *Innovative: Journal Of Social Science Research* 5, no. 1 (2025): 3630-42. <https://doi.org/10.31004/INNOVATIVE.V5I1.18027>.

Afdhali, Dino Rizka, and Taufiqurrohman Syahuri. "Idealitas Penegakkan Hukum Ditinjau

Dari Perspektif Teori Tujuan Hukum.” *Collegium Studiosum Journal* 6, no. 2 (2023): 555–61. <https://doi.org/10.56301/CSJ.V6I2.1078>.

Ahadi, Lalu M. Alwin. “Efektivitas Hukum Dalam Perspektif Filsafat Hukum: Relasi Urgensi Sosialisasi Terhadap Eksistensi Produk Hukum.” *Jurnal USM Law Review* 5, no. 1 (2022): 110–27. <https://doi.org/10.26623/JULR.V5I1.4965>.

Alfarizi, Zaidan, and Zaenul Mahmudi. “Harmoni Adat Dan Syariat: Analisis Pembagian Warisan Adat Pepadun Lampung Dalam Perspektif Khi.” *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 6, no. 2 (2025): 307–23. <https://doi.org/10.36701/BUSTANUL.V6I2.2141>.

Alrasyat, Dicky. “Pelaksanaan Perjanjian Jual Beli Tanah Berdasarkan Hukum Adat Di Desa Sungai Sayang Kecamatan Sadu Kabupaten Tanjung Jabung Timur.” Universitas Batanghari, 2024.

Ardiansyah, Erpan, Elisatris Gultom, and Sudaryat. “Juridical Analysis and Practice of Simple Proof in Bankruptcy & Suspension of Debt Payment Obligation Cases Under Law Number 37 of 2004.” *COSMOS: Jurnal Ilmu Pendidikan, Ekonomi Dan Teknologi* 2, no. 4 (2025). <https://cosmos.iaisambas.ac.id/index.php/cms/article/view/305>.

Calvita, and Ariawan Gunadi. “Hubungan Hukum Antara Perusahaan Properti Dan Konsumen Dalam Jual Beli Rumah Melalui Sistem Pre-Project Selling.” *Jurnal Hukum Lex Generalis* 5, no. 9 (2024). <https://ojs.rewangrencang.com/index.php/JHLG/article/view/629>.

Chaezarani, Salsabila, and Heru Pringgodani Sanusi. “Pertimbangan Penolakan Hakim Dalam Putusan Permohonan Penundaan Kewajiban Pembayaran Utang Oleh Pt. Adhikara Putra Mandiri Terhadap Pt. Banyu Telaga Mas.” *AMICUS CURIAE* 2, no. 1 (2025): 337–44. <https://doi.org/10.25105/F63EYK81>.

Christian, Ronald, Fauzie Yusuf Hasibuan, and Nur Hakim. “Implementasi Putusan PKPU Oleh Pengadilan Niaga Terhadap Pihak Yang Masih Dalam Sengketa Keperdataan.” *CENDEKIA: Jurnal Penelitian Dan Pengkajian Ilmiah* 2, no. 8 (2025): 1477–90. <https://doi.org/10.62335/CENDEKIA.V2I8.1661>.

Dewi, Vita Kusuma, Yuhelson, and Bernanrd Nainggolan. “Akibat Hukum Putusan Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU) Terhadap Status Sita Dan Eksekusi Jaminan Ditinjau Dari Undang-Undang Nomor 37 Tahun 2004.” *Jurnal Studi Interdisipliner Perspektif* 22, no. 2 (2023): 128–33. <https://ejournal-jayabaya.id/Perspektif/article/view/101>.

Dirgantara, Febrian, Arif Rachman Putra, Didit Darmawan, Rafadi Khan Khayru, and Agung Satryo Wibowo. “Peran Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU) Dalam Penyelesaian Sengketa Utang Piutang Di Indonesia.” *Lex Stricta: Jurnal Ilmu Hukum* 4, no. 1 (2025): 149–60. <https://doi.org/10.46839/LEXSTRICTA.V4I1.1444>.

Efendie, Agus Sugiarto, and Marsudi Dedi Putra. “The Convergence Between Textual Law And Progressive Law In Addressing Contemporary Legal Challenges.” *Jurnal Hukum Sehasen* 10, no. 2 (2024): 475–80. <https://doi.org/10.37676/JHS.V10I2.6780>.

Farizi, Nur Adli Zal, Misbahuzzulam Misbahuzzulam, and Muadz ` Abdulaziz. “Kewajiban

- Ahli Waris Terhadap Utang Pewaris: Analisis Pasal 175 KHI Dalam Perspektif Fikih Syafi'i." *Al-Usariyah: Jurnal Hukum Keluarga Islam* 3, no. 2 (2025): 155–70. <https://doi.org/10.37397/AL-USARIYAH.V3I2.893>.
- Fitria, Nirda. "Penerapan Sanksi Adat Dalam Penyelesaian Sengketa Antara Masyarakat Oleh Tuha Peut Gampong (Studi Kasus Di Gampong Mutiara Kecamatan Sawang Kabupaten Aceh Selatan)." UIN Ar-Raniry, 2022. <http://repository.ar-raniry.ac.id>.
- Indanus, Muhamad, and Sugianto Sugianto. "Nilai-Nilai Keadilan Dalam Hukum Adat Dan Hukum Keluarga Islam Pada Masyarakat Adat Kampung Naga Tasikmalaya." *Jurnal Interpretasi Hukum* 5, no. 3 (2024): 1276–83. <https://doi.org/10.22225/JUINHUM.5.3.10891.1276-1283>.
- Jannah, Farah Aura. "Praktik Pelaksanaan Lelang Online Tertutup Berdasarkan Peraturan Menteri Keuangan No. 213/PMK.06/2020 Perspektif Hukum Islam Di KPKNL Malang." *Journal of Islamic Business Law* 6, no. 4 (2022): 1–25. <https://urj.uin-malang.ac.id/index.php/jibl/article/view/1715>.
- Malani, Fitradin, and Zuhrah Zuhrah. "Hak Dan Kewajiban Pelaku Usaha Dalam Ekonomi Digital Menurut Hukum." *Jurnal Tana Mana* 6, no. 1 (2025): 23–31. <https://doi.org/10.33648/JTM.V6I1.820>.
- Mustopo, Firman Iswahyudi. "Kekuatan Hukum Jaminan Fidusia Atas Asset Replacement Debitur Bagi Perbankan." *Jurnal Hukum Bisnis* 8, no. 3 (2024): 1413–24. <https://doi.org/10.33121/HUKUMBISNIS.V8I3.2849>.
- Nasrullah, Jalaluddin, and Ilham Akbar. "Teori Hukum Sejarah (Historical Legal Theory) Di Indonesia: Kajian Sistematis Melalui Metode Systematic Literature Review." *Journal Of Law And Nation* 4, no. 1 (2025): 120–33. <https://jolin.my.id/index.php/jolin/article/view/195>.
- Ngantung, Verra Yanti. "Kedudukan Kreditor Asing Pemegang Cessie Dalam Proses PKPU Dan Kepailitan Di Indoensia: Perspektif Keadilan Dan Negara Berdaulat." *Jurnal Globalisasi Hukum* 2, no. 2 (2025): 298–319. <https://doi.org/10.25105/JGH.V2I2.23320>.
- Panjalu, Gandhung Fajar. "Kedudukan Hukum Islam Dalam Konsep Pluralisme Hukum Di Indonesia." *Jurnal Mas Mansyur* 2, no. 1 (2024): 15–27. <https://doi.org/10.30651/MMS.V2I1.21499>.
- Partini, Ni Nyoman Tri. "Peran Hukum Adat Dalam Penegakan Hukum Dan Penyelesaian Sengketa." *JURNAL VIRTUE JURISPRUDENCE: Jurnal Ilmu Hukum* 2, no. 2 (2024): 192–201.
- Pradhani, Sartika Intaning. "Pendekatan Pluralisme Hukum Dalam Studi Hukum Adat: Interaksi Hukum Adat Dengan Hukum Nasional Dan Internasional." *Undang: Jurnal Hukum* 4, no. 1 (2021): 81–124. <https://doi.org/10.22437/UJH.4.1.81-124>.
- Rahmadinata, Yogi. "Pengalihan Piutang Secara Cessie Sebagai Alternatif Penyelesaian Kredit Dan Akibat Hukumnya Terhadap Jaminan Hutang Debitur." *Recital Review* 4, no. 1 (2022): 25–61. <https://doi.org/10.22437/RR.V4I1.15273>.
- Rubi, Rubi, M Chandra Restu Maulana, Muhammad Ferdy Yulrisnanda, Akhmad Saripudin, and Syamsudin Syamsudin. "Dinamika Hukum Dalam Pengaturan Masyarakat Hukum Adat Ditinjau Dari Sistem Hukum Nasional." *Iuris Studia: Jurnal*

Kajian Hukum 5, no. 3 (2024): 861–69. <https://doi.org/10.55357/IS.V5I3.768>.

Saragih, George Jan Christian Zherman, Sunarmi, and Robert. “Pemegang Pengalihan Atas Hak Tagih Tertulis (Cessie) Dalam Permohonan Penundaan Kewajiban Pembayaran Utang Berdasarkan Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan PKPU (Analisa Putusan: No.16/Pdt.Sus-PKPU/2017/PN.NIAGA/Jkt.Pst).” *Acta Law Journal* 2, no. 1 (2023): 9–28. <https://doi.org/10.32734/ALJ.V2I1.15366>.

Sarumpaet¹, Muhammad Idris, Hilal Haitami Harahap, and Fauziah Lubis. “Peran Politik Hukum Dalam Pembangunan Hukum Progresif Di Indonesia.” *Innovative: Journal Of Social Science Research* 4, no. 4 (2024): 3991–4003. <https://doi.org/10.31004/INNOVATIVE.V4I4.12848>.

Sidiq, Syahril. “Interseksi Hukum Dan Ekonomi: Analisis Komprehensif Terhadap Dinamika Regulasi Dan Dampaknya Terhadap Pertumbuhan Ekonomi.” *Muhammadiyah Law Review* 7, no. 2 (2023): 39–59. <https://doi.org/10.24127/MLR.V7I2.2767>.

Simanjuntak, Diana Hawaty, Wira Franciska, and Nur Hakim. “Keabsahan Pengalihan Piutang (Cessie) Dalam Proses Kepailitan.” *Journal of Innovation Research and Knowledge* 5, no. 1 (2025): 89–100. <https://www.bajangjournal.com/index.php/JIRK/article/view/10386>.

Sudarsono, Galih Putri. “Problematika Pengalihan Hak Tagih Piutang (Cessie) Terhadap Kredit Macet Perbankan.” *YUDHISTIRA : Jurnal Yurisprudensi, Hukum Dan Peradilan* 2, no. 2 (2024): 14–21. <https://doi.org/10.59966/YUDHISTIRA.V2I2.1115>.

Waty, Ayu Tresna, Dewi Iryani, and Hartana. “Perlindungan Dan Kepastian Hukum Debitur Terhadap Pengalihan Piutang (Cessie) Dalam Praktek Perbankan Di Indonesia.” *Cerdika: Jurnal Ilmiah Indonesia* 4, no. 12 (2024): 1234–41. <https://doi.org/10.59141/CERDIKA.V4I12.2336>.

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