Legal Arrangements for the Transfer of Receivables Collection Rights Through Collection Trust Deeds in the International Trade System

Achmad Fahdi, Bambang Fitrianto

Abstract

Collection Trust Deed (CTD) is a contractual instrument that is widely used in international trade as a means of transferring receivables collection rights, especially by foreign export credit insurance institutions such as Sinosure, NEXI, and EXIM Bank of the United States. CTD originates from the common law tradition as a form of equitable assignment that combines the concept of trust and the transfer of billing rights. However, Indonesia's civil law-based legal system only recognizes cessie (Article 613 of the Civil Code) and lastgeving (Article 1792), both of which do not fully accommodate the hybrid character of CTD. This study aims to analyze the legal arrangements for the transfer of receivables collection rights through CTD in the international trade system. The research was conducted using normative legal methods using legislative, conceptual, and comparative approaches, by examining primary, secondary, and tertiary legal materials including the UNCITRAL Convention on the Assignment of Receivables in International Trade 2001 and the UNIDROIT Principles 2016. The results show that the CTD is internationally recognized as a sui generis agreement rooted in the principle of freedom of contract, with a regulatory architecture composed of three layers: international instruments (UNCITRAL and UNIDROIT), the lex causae chosen by the parties, and the lex fori jurisdiction in which the execution is carried out. In Indonesia, CTD can be qualified as a sui generis agreement that combines elements of cessie and lastgeving, valid under Article 1338 of the Civil Code as long as it does not conflict with public order. The implication of this research is the need to reform national laws to accommodate modern contractual instruments in cross-border trade.

Keywords: Assignment; Collection Trust Deed; Receivables Transfer; Legal Regulation; Sui Generis Agreement.

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Introduction

International trade today is the main driver of global economic growth. World Trade Organization data shows that the volume of global trade in goods in 2023 reached more than USD 24 trillion [1], while Indonesia's non-oil and gas exports in the same year were recorded at USD 241 billion [2]. This increase in transaction volume was followed by an increase in the risk of default Berne Union reported global export credit insurance claims reaching USD 6.8 billion in 2022 [3], which requires the existence of effective legal instruments to manage cross-border receivables risk.

One of the instruments that has developed in practice is the Collection Trust Deed (CTD), which is a deed of transfer of receivables collection rights given by the original creditor to a third party who acts as a collecting agent or trustee. This instrument developed in the common law tradition as a form of equitable assignment that combines the principle of trust and the transfer of billing rights [4]. In Indonesia, CTD is widely used by foreign export credit insurance institutions such as Sinosure (China), NEXI (Japan), and EXIM Bank (United States) when there is a default by Indonesian importers [5].

The problem arises because the Indonesian legal system based on civil law does not recognize the concept of trust in its entirety [6]. The transfer of receivables in Indonesia is only known through cessie (Article 613 of the Civil Code), while the granting of authority to third parties is regulated through lastgeving (Article 1792 of the Civil Code). There is no explicit provision that accommodates a mechanism that combines the two elements as in the CTD. As a result, there is legal uncertainty regarding the juridical qualifications of CTD, its validity under Indonesian law, and its position among relevant international instruments.

The novelty of this research lies in the mapping of the CTD regulatory architecture from the perspective of international law and Indonesian national law, which is still rarely comprehensively studied in the Indonesian legal literature. This research focuses on one formulation of the problem: how is the legal arrangement for the transfer of receivables collection rights through collection trust deeds in the international trade system?

Literature Review

Transfer of Receivables in the Civil Law Tradition (Cessie)

Cessie is a legal institution that originated from the classical Roman tradition which was later absorbed into the civil law tradition through the French Civil Code and the Dutch Burgerlijk Wetboek. Article 613 of the Civil Code defines cessie as the submission of receivables in the name and other intangible assets carried out by making an authentic deed or deed under hand [7]. The three essential elements of cessie are the existence of receivables in the name of the transferee, the existence of a deed of transfer, and the existence of a notification to the debtor (betekening). Without notice, the assignment does not apply to the debtor, although it remains valid between the assignor and the assignee.

Authority (Lastgeving) and Its Limitations

The granting of power of attorney or lastgeving is regulated in Article 1792 of the Civil Code as an agreement with which a person gives power to another person, who receives it, to conduct an affair on his behalf. Lastgeving differs from cessie in that there is no definitive transfer of rights of the power of attorney acting on behalf of the power of attorney, not on his own behalf [8]. This lastgeving character is important to compare with CTD which gives broader authority to the collecting agent, including acting on its own behalf while withholding the collection proceeds for the benefit of the original creditors.

Trust in Common Law and CTD Characteristics

Trust is a special common law institution that separates legal ownership for the trustee and beneficial ownership for the beneficiary [4]. In the context of CTD, the collecting agent acts as a trustee who holds the right to collect formally for the benefit of the beneficiary (original creditor or credit insurance company). Indonesia as a civil law country does not recognize trust in its entirety, but several similar instruments have been known such as fiduciary (Law No. 42 of 1999) and trustees (Law No. 8 of 1995). The main characteristics of CTD include the transfer of collection rights from the original creditor to the collecting agent, the authority of the collecting agent to collect on its own behalf, the collection proceeds beneficially owned by the original creditors, and the fiduciary obligations that bind the collecting agent [5].

Sui Generis Agreements and the Principle of Freedom of Contract

The principle of freedom of contract in Article 1338 of the Civil Code opens up space for the birth of new agreements that are not named (onbenoemde overeenkomst) or sui generis [9]. Sui generis agreements remain valid as long as they meet the requirements of Article 1320 of the Civil Code and do not conflict with public order and decency [10]. The open legal system of Indonesian alliances recognizes the validity of agreements, both named and unnamed in the law, as long as they are not prohibited by law and do not conflict with public order and decency [11]. This argument is the basis for qualifying CTD as a sui generis agreement with the characteristics of a fiduciary assignment.

Research Methodology

This research is normative legal research, which is research conducted by examining legal materials, both primary, secondary, and tertiary [12]. This type of research was chosen because the focus of the study is on the legal norms that govern the transfer of receivables and their application to CTD instruments that do not yet have special arrangements in the Indonesian legal system.

The approach method used includes three main approaches: first, the statute approach by examining the Civil Code (especially Articles 613 and 1792), Law Number 30 of 1999 concerning Arbitration, Law Number 42 of 1999 concerning Fiduciary Guarantees, Law Number 2 of 2009 concerning LPEI, UNCITRAL Convention on the Assignment of Receivables in International Trade 2001, and UNIDROIT Principles 2016; Second, a conceptual approach by examining legal doctrines related to cessie, lastgeving, trust, and sui generis agreements; and third, a comparative approach by comparing the arrangements for the transfer of receivables in the United Kingdom (common law), the Netherlands (civil law), and China.

The research specifications are descriptive-analytical. The data sources used are secondary data in the form of primary legal materials (laws and regulations and international conventions), secondary (textbooks, Sinta-accredited journals, international journals with DOIs, arbitration awards), and tertiary (legal dictionaries, encyclopedias). The data collection technique uses library research both through physical libraries and digital databases. Data analysis is carried out qualitatively by descriptive-analytical method through the stages of inventory, classification, substantive analysis, synthesis, and conclusion formulation, by combining inductive and deductive reasoning.

Results and Discussion

A. CTD Regulation Architecture: Three Layers of Regulation

The results of the study show that the legal arrangement of CTD in the international trade system is composed of three interrelated layers. The first layer is an international legal instrument. At this level, the UNCITRAL Convention on the Assignment of Receivables in International Trade 2001 is the main instrument that regulates the transfer of receivables across jurisdictions, emphasizing the freedom of the parties to determine the applicable law, the protection of assignees, and the guarantee of legal certainty for debtors [14]. The UNIDROIT Principles of International Commercial Contracts 2016 complements the instrument with the general principles of international commercial contracts, including the assignment of rights in Chapter 9. Although Indonesia has not ratified the 2001 UNCITRAL Convention, its principles are widely used as soft law in the practice of drafting CTD and can be used as an academic and contractual reference.

The second layer, the lex causae chosen by the parties. At this level, the principle of freedom of contract is the main foothold. The parties to the CTD usually establish the choice of law, generally the laws of the United Kingdom or Singapore because both jurisdictions have a mature legal framework to recognize the CTD as an equitable assignment. The third layer is the lex fori jurisdiction of the place of execution. At this level, the national law where the debtor is domiciled or the assets are located determines the execution. For Indonesian debtors, lex fori is Indonesian law, so the juridical qualification of CTD according to Indonesian law is crucial for the successful implementation of the right to collect.

B. Comparative Arrangements in Multiple Jurisdictions

To understand the position of the CTD in the international legal landscape, a comparison of the four jurisdictions is presented in Table 1. This comparison reveals a gradation of recognition of trusts and similar instruments, from full recognition in the UK to the absence of the concept of trust in Indonesia.

Table 1. Comparison of Receivables Collection Assignment Arrangements in Multiple Jurisdictions

Jurisdiction	Legal Tradition	Receivables Transfer Instrument	Recognition of CTD/Trust
English	Common Law	Legal & equitable assignment, trust	Fully recognized as an equitable assignment
The Netherlands	Civil Law	Cessie (Article 3:94 New Civil Code), volmacht	Not knowing trust; Adapted via fiduciaire eigendomsoverdracht
China	Civil Law (hybrid)	Transfer of billing rights (Civil Code 2020), separate trust law	Recognizing trust through the Trust Law 2001 on a limited basis
Indonesia	Civil Law	Cessie (Article 613 of the Civil Code), lastgeving (Article 1792)	Not knowing trust; CTD qualifies as sui generis

Source: processed by the author from [4], [6], [7], [13].

Table 1 shows that Indonesia is in the narrowest position in accommodating CTD instruments. Unlike the Netherlands, which has developed fiduciaire eigendomsoverdracht as a middle ground, or China, which has promulgated the Trust Law 2001, Indonesia does not yet have an equivalent legal framework. As a result, CTD in Indonesia must be qualified analogously through a combination of cessie and lastgeving, or qualified as a sui generis agreement under Article 1338 of the Civil Code.

C. CTD Juridical Qualification in Indonesia: Sui Generis Agreement

Based on the analysis of the characteristics of the CTD and the legal framework of the Indonesian alliance, the CTD is most appropriately qualified as a sui generis agreement that combines the elements of cessie and lastgeving with the character of fiduciary assignment. This qualification is supported by three juridical arguments. First, CTD meets the requirements for the validity of the agreement in Article 1320 of the Civil Code, namely agreement, competence, certain things, and halal causes. Second, CTD is protected by the principle of freedom of contract in Article 1338 of the Civil Code which opens up space for anonymous agreements [9, 11]. Third, the principle of good faith (Article 1338 paragraph (3) of the Civil Code) is the foundation that binds collecting agents to carry out their fiduciary obligations consistently, as good faith is defined as a commitment to fulfill promises to other parties according to their rights without looking for ways to avoid the obligations that have been agreed [15].

Practically, this sui generis qualification requires several technical steps in the preparation of the CTD in order to be effective according to Indonesian law. CTD must be stated in a written deed that can be treated as a cessie deed based on Article 613 of the Civil Code. Notification (betekening) to the Indonesian debtor must be made so that the transfer takes effect on the debtor. The collecting agent authority clause must be carefully formulated to reflect the elements of lastgeving while affirming fiduciary obligations. Financial institutions involved in cross-border receivables transfer transactions are required to implement the prudential principle and know your customer to prevent involvement in transactions that have the potential to violate anti-money laundering provisions [16]. In the scope of business law, the principle of legal certainty requires that the rule of law be clear, understandable, and reliable for all parties involved [17].

Conclusion

The legal arrangement for the transfer of receivables collection rights through the Collection Trust Deed in the international trading system consists of three complementary layers: the international legal instruments governed by the UNCITRAL Convention 2001 and the UNIDROIT Principles 2016, the lex causae chosen by the parties (generally British or Singaporean law), and the lex fori of the jurisdiction in which the execution is carried out. Comparisons between jurisdictions show that the UK fully recognizes the CTD as an equitable assignment, the Netherlands and China have developed more accommodating analog instruments, while Indonesia does not yet have an equivalent legal framework. In the Indonesian context, CTD is most appropriately qualified as a sui generis agreement that combines elements of cessie and lastgeving with the character of fiduciary assignment, which is valid under Article 1320 and Article 1338 of the Civil Code as long as it does not conflict with public order. The practical implication of these findings is the need to reform national law to accommodate modern contractual instruments in cross-border trade, both through the revision of the Civil Code and through special legislation on cross-jurisdictional receivables transfers that refer to the UNCITRAL Convention 2001. The development of further studies is suggested on a more in-depth comparative analysis with other civil law jurisdictions that have successfully accommodated trust instruments, such as Japan and South Korea.

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