

Legal Consequences of a Cessie Deed with a Guarantee
Object Whose Term Has Expired

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Article	Abstract
<p>Keywords: Cessie; Guarantee; Right to Cultivate Certificates.</p> <p>Article History Received: Feb 11, 2025; Reviewed: Mar 17, 2025; Accepted: Mar 18, 2025; Published: Mar 18, 2025.</p>	<p>In the Indonesian legal system, cession is a transfer of rights to receivables or obligations made by a creditor to another party without the consent of the debtor. In practice, cession often involves collateral objects in the form of Mortgage Rights, such as Right to Cultivate Certificates (HGB). However, legal issues arise when the collateral object, namely HGB, has expired. In this case, the recipient of the cession needs to understand the legal consequences that arise in connection with the cession deed involving HGB whose validity period has expired. The purpose of this study is to analyze and explain the legal consequences for the recipient of the cession against the cession deed that includes collateral objects in the form of HGB whose validity period has expired. This study uses a normative legal research method. The results of the study on the legal consequences for the recipient of the cession against the cession deed with the collateral object of the building use rights certificate whose term has expired is that the deed is still considered valid and the new creditor still obtains the right to collect it, but the building use rights cannot be used as collateral by the new creditor and the collateral object cannot be registered with the land office because the term of the building use rights has expired and the legal efforts that can be taken by the recipient of the cession against the cession deed with the collateral object of the Right to Cultivate Certificate</p>

Mortgage whose term has expired are to negotiate with the old creditor regarding the cession deed by requesting accountability from the old creditor to renew or extend the term of the building use rights whose term has expired.



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Introduction

In the economic sector, over time, the needs of the community will increase. This can have a positive impact on financial institutions that cover business activities.¹ One of the financial institutions in question is the banking world because economic growth will increase welfare for the community. By Article 1 paragraph (2) of Law Number 10 of 1998 Amendment to Law Number 7 of 1992 concerning Banking currently amended by Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (hereinafter referred to as the Banking Law), a Bank is a business entity that collects funds from the community in the form of savings and distributes them back to the community in the form of credit and/or other forms to improve the standard of living of the people.²

Based on its function, banks are divided into 2 (two), namely general banks and people's credit banks. General banks can provide services in payment transactions where the implementation of their business activities can be conventional or based on Sharia principles. People's credit banks are bank's whose implementation of business activities can be conventional or based on Sharia principles which in their activities do not provide services in payment transactions.³

¹ John Elvin Louis & Beumhoo Jang, "A Comparative Legal Study on Neobank Between South Korea and Indonesia" *Journal of Law and Policy Transformation* 7 No. 1 (2022): 109-123, <https://doi.org/10.37253/jlpt.v7i1.6753>.

² Andika Persada Putera, "Bank's Legal Actions on Lending Issue Against the Annulment of Debtor's Marriage", *Hang Tuah Law Journal* 3 No. 2 (2019): 134-144, <https://doi.org/10.30649/htlj.v3i2.90>.

³ Depid Ismail, Muhammad Noor Sayuti, & Diana Farid, "Conventional Banking, Sharia Banking, and Financial Justice", *Journal of Economic Studies* 4 No. 2 (2020): 63-75, <https://doi.org/10.32506/joes.v4i2.640>.

The word credit comes from the word "credere" which means trust. The element of credit is the trust given by the bank to the customer to use the credit. The definition of credit is a means that can be in the form of money, goods, or services from the creditor to another party that is obtained together for the settlement that has a period and there is interest on the addition of the principal.⁴ According to Article 1 number 11 of the Banking Law, credit is the provision of money that can be equated with that based on an agreement or loan agreement between the bank and another party that requires the borrower to pay off his debt after a certain period with the provision of interest.

The credit-granting process uses the principle of prudence. This principle has been regulated in Article 2, 8, and Article 29 paragraphs (2) and (3) of the Banking Law, where in essence the principle of prudence is related to the determination of credit quality using analysis of assessment factors including business prospects, debtor performance, and ability to pay. The instrument used for analysis is known as the fives of credit or 5C, namely Character, Capital, Capacity, Collateral, and Condition of the economy. This is applied to provide certainty regarding the return of credit to the creditor. It is possible that there are obstacles that occur in credit that can cause risks for banking, for example, the risk of debtors defaulting in carrying out their performance, the risk because the bank is unable to carry out its obligations, or the risk due to weaknesses in the legal aspect caused by lawsuits, the absence of supporting laws and regulations.⁵

Banks have requirements that must be met by prospective debtors to obtain credit. Such as the need for collateral for the credit which has the function of providing rights and authority to the bank as a creditor to obtain fulfillment of the credit if the debtor defaults or does not carry out the performance as it should have been stated in

⁴ Rizky Auliandi & Mangatur Hadiputera Simanjuntak. "Defaults in Credit Agreements: How Are They Settled?", *Unnes Law Journal* 6 No. 1 (2020): 143-162, <https://doi.org/10.15294/ulj.v5i2.23514>.

⁵ Niniek Wahyuni, "Penerapan Prinsip 5C dalam Pemberian Kredit Sebagai Perlindungan Bank", *Lex journal kajian hukum dan keadilan* 1 No. 1 (2017): 65-84, <http://dx.doi.org/10.25139/lex.v1i1.236>.

the agreement. This provides legal certainty for creditors to provide credit facilities to debtors to be stated in the agreement between the creditor and the debtor.⁶

In practice, the implementation of this credit can have obstacles. For example, the debtor commits a default which results in bad credit. However, the bank or creditor has a way to resolve the problem of bad credit. There are 2 (two) ways to resolve problematic credit, namely saving credit and credit settlement. Credit rescue is a step taken to resolve problematic credit by discussing again between the creditor and the debtor, while credit settlement is a step to resolve problematic credit through a legal institution.⁷

One of the ways that banks overcome bad debt is through the transfer of debt collection commonly called cession. Vollmar explained the definition of cession is the transfer of receivables in the name of a creditor who is still alive to another person where with the transfer the latter person becomes a creditor of a debtor who is burdened with the receivable.⁸

The transfer of receivables by cession is one form of agreement as referred to in Article 1313 of the Civil Code that "an agreement is an act by which one or more persons bind themselves to one or more other persons." However, specifically, cession or transfer of debt collection has been listed in Article 613 of the Civil Code, namely the transfer of receivables in the name and other intangible objects, carried out by making an authentic or private deed by which the rights to the object are transferred to another person. There are 3 (three) subjects in the cession, namely Cedent (Initial Creditor), Cessionaries (New Creditors), and Cessus (debtor for receivables transferred). Based on Article 613 of the Civil Code, it can be said that cession must be made a deed, either an authentic deed or a private deed. So, the transfer of

⁶ Karuna Dewi & I Gede Agus Kurniawan, "Civil Law Liability of Debtors in Credit Agreements with Individual Guarantees" *Journal of Law, Politic and Humanities* 4 (6) (2024): 2596–2610, 2596–2610. <https://doi.org/10.38035/jlph.v4i6.658>.

⁷ Hermansyah, *Hukum Perbankan Nasional Indonesia*, (Jakarta: Kencana, 2010) p. 76.

⁸ Rifky Dwi Dharmawan, "Implikasi Kedudukan Akta Cessie Terhadap Objek Jaminan yang Telah Melewati Masa Berlaku", *Jurnal Hukum Bisnis* 8 No. 4 (2024): 1291-1307, <https://doi.org/10.33121/hukumbisnis.v8i2.2819>.

bills in the name is bound to a written form that must be stated in a deed.⁹

Notaries in carrying out their profession are not free from mistakes, sometimes notaries make mistakes in their deeds. There is a legal problem with the cession deed made by the notary, namely the guarantee used in the cession deed has expired. This causes a problem for the parties involved in the cession. This article will initially discuss the legal consequences for the recipient of the cession against the cession deed with the collateral object of the Building Use Rights Certificate Mortgage which has expired. After that, it ends with the legal remedies that can be taken. This article is expected to provide scientific contributions, especially in the regulation of mortgage rights on land.

Method

The type of legal research used in this study is a type of normative legal research with a statutory and conceptual regulatory approach. The research approach used is normative legal research using a statutory approach. This type of research is conducted by examining all laws and regulations related to the legal issue being faced and using a case approach that uses an existing case. The sources of legal materials used in this study that use normative legal or library research consist of primary legal materials, secondary legal materials and tertiary legal materials. Some of the regulations reviewed include the Banking Law, the Notary Law, Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, and Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration.

⁹ I G Ngurah Vinanta Diputra Kelakan & Dewa Ayu Dian Sawitri, "Pengaturan Terkait Cessie Yang Dilakukan Tanpa Sepengetahuan Debitur", *Kertha Semaya: Journal Ilmu Hukum* 12 No. 9 (2024): 2048-2057, <https://doi.org/10.24843/KS.2024.v12.i09.p04>.

Result and Discussion

A. Legal Consequences for the Recipient of the Cession Regarding the Cession Deed with the Collateral Object of the Right to Cultivate Certificate Mortgage which has Expired

Credit facilities provided by banks are always followed by the provision of collateral. The provision of collateral is stated in a collateral binding agreement or usually a Deed of Granting Mortgage Rights which is an assessor of the main agreement, namely a credit agreement or debt recognition. In providing credit The instrument used to analyze is known as the fives of credit or 5C, namely Character, Capital, Capacity, Collateral, and Condition of the economy. This is applied to provide certainty regarding the return of credit to the creditor. It is possible that there are obstacles that occur in credit that can pose a banking risk.¹⁰

In such conditions, the bank will seek a way out to overcome the obstacles of debtors who are in default in completing their credit. Cessie is one of the last options in banking to resolve receivables problems. It should be noted that the existence of this cession is due to a default. Where the debtor cannot carry out his obligations to make credit payments so the old creditor takes steps to execute the collateral object, one of which is with a cession.

The assignment itself has been regulated in Book II Article 613 paragraph (1) of the Civil Code which states that the transfer of receivables in the name of and other intangible objects is carried out by making an authentic deed or a private deed, by which the rights of the existence are transferred to another party. Article 613 paragraph (2) regulates that the transfer of receivables has legal consequences for the debtor where the transfer of receivables must be notified to the debtor either in writing or verbally. The assignment here is *assessoir* so that the obligatory agreement that occurred before the assignment is

¹⁰ Widya Padmasari, "Perlindungan Hukum Bagi Para Pihak Dalam Pengalihan Piutang (Cessie) Melalui Akta Notaris" *Jurnal Hukum dan Kenotariatan* 2 No. 2 (2018): 264-275, <https://doi.org/10.33474/hukeno.v2i2.1509>.

still binding and is not canceled because of the assignment. It's just that the old agreements are transferred to the new creditor.

In a cession there are 3 (three) parties, namely the old creditor (cedent), the old creditor (cessionaris), and the debtor (cessus). The parties in this cession are related to each other in a legal relationship.¹¹ The legal relationship that occurs between the parties to the cession is: *First*, Legal relationship between the old creditor (cedent) and the debtor. The legal relationship that exists between the old creditor and the debtor is a relationship that has been established because these two parties are bound by a loan agreement or other financial transactions. The debtor is the party who borrows money and must pay the debt to the creditor according to the specified period. At the same time, the creditor is the party that provides the loan to the debtor. Where both parties are bound by an agreement that can be called a credit agreement where in credit agreement or debt recognition. To ensure that the debtor carries out his obligations, a debt recognition agreement is also made and provides credit collateral in the form of a plot of land and buildings. The guarantee is based on the Debtor's power of attorney by the Creditor burdened with a Mortgage Right as stated in the Deed of Granting of Mortgage Rights (APHT) which is then used as the basis for registering with the National Land Agency (BPN) so that a Mortgage Right Certificate is issued.¹²

Second, Legal relationship between the old creditor (cedent) and the new creditor (cessionary). The legal relationship between the old creditor and the new creditor occurs as a result of a cession. Cession is the transfer of receivables from the old creditor to the new creditor, in this case some conditions must be met by the parties. The first condition is a valid *Rechtitel*, which means that the cession can only be carried out if the cession comes from an agreement based on law that is not an unlawful act. The second condition is the authority to

¹¹ Akhmad Budi Cahyon, "Cessie Sebagai Bentuk Pengalihan Piutang Atas Nama", *Lex Jurnaliva* 2 No. 1 (2024):16-18, <https://doi.org/10.47007/lj.v2i1.225>.

¹² Wahyu Bening & Ilham Dwi Rafiqi, "Permasalahan Hukum Pengaturan Bank Tanah Pasca Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja", *Jurnal Suara Hukum* 4 No. 2 (2022), <https://doi.org/10.26740/jsh.v4n2.p265-298>

take action, meaning that the old creditor must have the authority to transfer the receivables so that the principle of *nemo plus iurist* applies that the transfer of receivables is valid if the transferor has authority over the receivables.

Third, Legal relationship between the new creditor (cessionary) and the debtor. The legal relationship between the new creditor and the debtor occurs because of the cession. The transfer of receivables made by the old creditor to the new creditor does not have the legal effect of the credit agreement being paid off as the principal agreement. Therefore, the rights and obligations to the principal agreement that are transferred also have the effect of transferring all rights and obligations from the collateral-binding agreement. If the existing debt from the credit agreement is then given a mortgage guarantee, then with the cession all rights and obligations from the mortgage are transferred to the new creditor. This is by Article 16 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (Mortgage Right Law) which reads:

- “(1) If the receivables secured by the Mortgage Right are transferred due to cession, subrogation, inheritance, or other reasons, the Mortgage Right is also transferred by law to the new creditor.
- (2) The transfer of the Mortgage Right as referred to in paragraph (1) must be registered by the new creditor with the Land Office.
- (3) Registration of the transfer of the Mortgage Right as referred to in paragraph (2) is carried out by the Land Office by recording it in the Mortgage Right land book and the land rights book for the land that is the object of the Mortgage Right and copying the record on the Mortgage Right certificate and the land rights certificate in question.
- (4) The date of recording in the land book as referred to in paragraph (3) is the seventh day after receipt in full of the documents required for registration of the transfer of the Mortgage Right and if the seventh day falls on a holiday, the record is dated the following working day.

- (5) The transfer of the Mortgage Right shall take effect for third parties on the date of recording as referred to in paragraph (4)."

Based on the provisions above, the transfer of Mortgage Rights occurs by law. Recording the transfer of mortgage rights is carried out at the National Land Agency/BPN and is followed by a deed of transfer of receivables (cessie) as the basis for the transfer of a receivable to a new creditor. Registration of the transfer of debt must be carried out to provide separatist rights for new creditors. The types of creditors are divided into three, namely concurrent creditors, preferred creditors, and separatist creditors. Separatist rights by Article 6 and Article 20 of Mortgage Right Law are the rights held by this type of creditor, namely the right to have the authority to execute the collateral object themselves, without the need for a court decision (parate execution).¹³

Therefore, it is necessary to research the main agreements of the cession agreement itself, whether in the main agreement, there is a clause regarding the granting of power to extend or renew the rights to the land of the Building Use Rights Certificate which is used as the object of collateral in the cession. So, from the explanation above, the legal consequences for new creditors or recipients of the cession are that the collateral object cannot be registered with the land office because the term of the building use rights has expired.

However, even the new creditor does not have collateral because Article 18 paragraph (1) and paragraph (2) of the Mortgage Right Law states that the mortgage certificate is canceled together with the land title certificate so there is no need to apply for cancellation or deletion of the mortgage because it will be automatically canceled. However, it should be noted that even though the mortgage is canceled, the debt that guarantees the land rights still exists, only it has legal consequences for the creditor because it does not have collateral that can be used if the debtor defaults. New creditors can still obtain collection rights against the debtor. But it should be remembered again that cession is the last thing to do because of the debtor's default so the old creditor looks for a way to execute the collateral object.

Where the cession deed will apply to the debtor if notification is made to the debtor either in writing or verbally that the cession has

¹³ Fitria Dewi Navisa, "Penerapan Actio Paulina Sebagai Perlindungan Hukum Kreditur dalam Kepailitan", *ADIL Indonesia Journal* 2 No. 1 (2020): 1-10 <https://jurnal.unw.ac.id/index.php/AIJ/article/view/549>.

occurred. What is meant by notification to the debtor is the transfer of collection rights obtained by the new creditor, not the cession deed. As for the legal consequences, for the parties due to the cession whose collateral object has expired, it is related to the type of party consisting of old creditors, new creditors, and debtors:

1. Old creditors: the legal consequence is loss of Collateral: If the collateral object has passed its validity period, the lender can lose the collateral it holds to guarantee the payment of the loan. This can increase the credit risk for lenders because they no longer have collateral to protect their loans. In addition, Increased Credit Risk: Without effective collateral, lenders may face higher credit risk due to the increased possibility of default by the debtor. This can affect the lender's ability to recover the funds lent.
2. New creditors: there is legal uncertainty: If the cession agreement is unclear regarding the validity period of the collateral object, the recipient of the right to collect may face legal uncertainty about whether they still have the right to pursue the bill, and have collateral for the object. This can cause legal conflicts and require interpretation by the court or dispute resolution institution.
3. Debtor: there is a release from responsibility: if the collateral object has expired and the cession agreement does not allow for collection after the validity period, the debtor can be freed from the responsibility to pay the receivables to the debtor. However, if the debtor still has payment obligations even though the collateral object has expired, this can affect the debtor's financial ability and financial stability. In addition, increased legal risk: The debtor may also face increased legal risk if the debtor decides to pursue the bill even though the collateral object has expired. This can cause the debtor to be involved in a time-consuming and costly legal process. Thus, the impact of the implications of the status of the cession deed on the collateral object that has expired can be very significant for the lender, the debtor, and the debtor. Therefore, it is important for all parties involved to understand the legal implications of this situation and take appropriate steps to manage the risks and protect their interests.

B. Legal efforts that can be Taken by the Recipient of the Cession Against the Cession Deed with the Collateral Object of the Right to Cultivate Certificate Mortgage Which Has Expired

Credit agreements between creditors and debtors often experience problems. Where the debtor has difficulty in paying off the loan given by the creditor in accordance with the contents of the debt agreement that has been agreed upon previously.¹⁴

As collateral, cession gives the new creditor the authority to take payment from the goods (receivables in the name) in priority over other creditors. The rights arising from cession are property rights by Article 613 of the Civil Code in conjunction with Article 584 of the Civil Code.¹⁵ In cession, there is a pattern of "inbezitstelling" which means that the receivables in the name must be withdrawn from the real power of the creditor or an agreed third party, which is a condition for the validity of cession where the cession agreement is a real agreement. Fulfilling the principle of openbaarheid or publicity which is a condition of property rights, with the provision of notification (*betekening*). The cession agreement is an accessor agreement where the main agreement is a credit agreement or debt recognition. If the creditor defaults, the creditor may not own the collateral by Article 1154 of the Civil Code, whereas if the debtor defaults, the creditor has the authority to sell the receivables in that name by Article 584 of the Civil Code. 8) If the debtor defaults, the creditor may not own the collateral (Article 1154 of the Civil Code).¹⁶

In this case, the injured party is the new creditor because the new creditor does not obtain the rights that he should have obtained.

¹⁴ Julia Susilawati, "Legal Protection for Creditors in Credit Agreements for Collateral Objects If the Debtor Defaults", *Jurnal Konstatring* 3 No. 1 (2024): 303-209, <https://jurnal.unissula.ac.id/index.php/jk/article/viewFile/36407/pdf>.

¹⁵ Ilham Dwi Rafiqi & Nikmah Mentari, "Comparison of Carbon Trading in Asean Countries: An Explanation From a Policy Perspective", *Journal of Law and Policy Transformation* 9 No. 1 (2024): 1-18, <https://doi.org/10.37253/jlpt.v9i1.9044>.

¹⁶ Lilies Anisah, Rosmawati & Atika Ismail, "Cessie, Subrogation and Novation in Commercial Court Practices", *ENDLESS : International Journal of Future Studies*, 5 No. 3 (2022): 317-324, <https://endless-journal.com/index.php/endless/article/view/118>.

That session is one of the last resorts taken by the bank or creditor to overcome the problem of congestion or because of the debtor's default. Cases like this can occur possibly due to negligence of the parties. The bank or old creditor in this case can also be negligent because the object that is guaranteed has expired, where they may have received the power to be able to extend or renew the term of the building use rights but it is not implemented until a default occurs from the debtor. However, it does not rule out the possibility that the new creditor as the recipient of the cession is also negligent in this cession agreement due to a lack of attention to the object listed in the agreement.

Civil cases can use 2 (two) methods in their resolution, namely litigation and non-litigation. Civil lawsuits have several advantages, including a fast litigation process so as to reduce the accumulation of cases that must be processed in court, do not require too much cost because the faster the litigation, the fewer costs incurred, can be resolved through peace or non-litigation. In Civil Procedure Law, there are two jurisdictions, namely (stated in Article 118 HIR / 142 RBg) lawsuits (contentious jurisdiction) and applications (voluntary jurisdiction). In a request for a determination (voluntary jurisdiction), the civil case submitted is an application signed by the applicant or his attorney addressed to the chairman of the District Court. A lawsuit is a dispute/disagreement between two or more parties.

The parties involved in the guarantee cession agreement can take steps to find out what legal remedies can be taken due to the guarantee object whose term has expired. Several steps may be used in the following circumstances:

1. Examination of the Cession Agreement: The parties can re-examine the cession agreement to ensure that the provisions regarding the validity period of the guarantee object have been clearly and adequately determined.
2. Clear Provisions: If the cession agreement does not yet include clear provisions regarding the validity period of the guarantee object, the parties can consider adding specific provisions to the agreement. This can help avoid varying interpretations and ensure clarity regarding the rights and obligations of each party. This is based on the principle of good faith where Article 1338 Paragraph

(3) of the Civil Code states that the agreement must be implemented in good faith. This can protect the parties and the position of the parties becomes balanced. This is a realization of the principle of balance.

3. Negotiation and Settlement: If there is a dispute or disagreement regarding the legal implications of the expired collateral object, the parties can try to resolve the issue through negotiation or mediation. This approach can help avoid time-consuming and costly legal processes and achieve a solution that is satisfactory to all parties.

Because the old creditor was negligent in providing the rights that can be obtained by the new creditor. An agreement must be reached between the new creditor and the old creditor. The deed of cession remains valid because the requirements for the validity of the agreement are fulfilled, but it remains legally flawed because the object has expired. The new creditor can ask for accountability for the collateral object that has expired. Ask for accountability to extend or renew the building use rights to the debtor and then make a new deed of cession.

The efforts that can be made by old creditors are to extend or renew the term of the building use rights guarantee by entering into a power of attorney to encumber the mortgage known as the Power of Attorney to Encumber the Mortgage Right (SKMHT) with the debtor, after the extension or renewal of the rights to the land and building use rights, the mortgage rights will be reinstalled based on the SKMHT itself.

Only then can the cession be re-conducted between the old creditor and the new creditor. So that the new creditor can obtain his rights to the guarantee that has been renewed or extended by a building use right. If it is difficult to contact the debtor, then an effort can be made to file a lawsuit through the District Court so that the case can be resolved and obtain legal certainty for the new creditor or the recipient of the cession and request compensation.

Conclusion

The legal consequences for the recipient of the cession against the deed of cession with the object of the collateral of the building use rights certificate whose term has expired is that the deed is still considered valid and the new creditor still obtains its collection rights,

but the new creditor does not have collateral because the status of the building use rights has changed to state land so that the object cannot be registered for the transfer of mortgage rights to the land office. Thus eliminating the rights that should be obtained by the new creditor or recipient of the cession. Because of this, the new creditor also does not have the authority over the collateral object to be used as a basis for filing a lawsuit to the District Court for the process of changing the name of the certificate at the land office. Legal efforts that can be taken by the recipient of the cession against the deed of cession with the object of the collateral of the Building Use Rights Certificate whose term has expired are through litigation or non-litigation. However, using litigation will require more costs where in this case the new creditor has suffered a loss so it is better to use a non-litigation method, namely by negotiating with the old creditor regarding the deed of cession by asking the old creditor to be accountable for renewing or extending the term of the building use rights which have expired and/or asking for losses for the costs incurred by the new creditor.

The advice that can be given is that the Bank or credit provider should be more careful in providing credit with Building Use Rights guarantee because it has a time period that can increase the risk. In addition, before the transfer of receivables is carried out, it is better to carefully examine the agreements that exist before the transfer of receivables, especially for the object used as collateral for the debt.

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