

EXCESSIVE DEBT COLLECTION BY CESSIONARIES IN ISLAMIC FINANCE DISPUTES: SUBSTANTIVE JUSTICE AND SHARIA ECONOMIC LAW ANALYSIS

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Abstract

The assignment of receivables (Cessie) acts as a strategic mechanism for Islamic Financial Institutions (IFIs) to manage Non-Performing Financing (NPF) and sustain liquidity. However, a significant juridical anomaly has emerged in Indonesia where the third-party assignee (Cessionary), often an unregulated individual investor, collects debts from the debtor (Cessus) at a value significantly exceeding the nominal outstanding value stated in the Cessie deed (over-collecting). This practice frequently involves capitalizing fines and imposing unilateral fees, thereby violating Sharia principles. This research rigorously analyzes the juridical validity of such excessive collection practices from the dual perspectives of Substantive Justice and Sharia Economic Law. Employing a normative legal research method with statute, conceptual, comparative, and case approaches, this study examines the stark disparity in religious court decisions and compares regulations across jurisdictions, including Indonesia, Malaysia, Kuwait, and Egypt. The findings reveal that over-collecting fundamentally violates the civil law principle of *Nemo Plus Juris Ad Alium Transferre Potest Quam Ipse Habet* and the Sharia prohibition of Riba (usury) and *Zhulm* (oppression). Through the lens of John Rawls' theory, it breaches the Difference Principle by exacerbating the plight of the debtor as the least advantaged party. Consequently, such actions are legally void. The study recommends a regulatory formulation through the Financial Services Authority (OJK) by establishing a specific "Capping Rule" on collection rights and urges the issuance of a specific DSN-MUI Fatwa to regulate Sharia-compliant Cessie..

Keywords: *Capping Rule, Cessie, Over-Collecting, Sharia Economic Law, Substantive Justice.*

INTRODUCTION

The trajectory of the Islamic banking industry in Indonesia has demonstrated impressive resilience and growth, contributing significantly to national economic stability. Data from Bank Indonesia's 2024 Report on Islamic Economy and Finance indicates a year-on-year growth of 9.87% in Islamic banking financing. This growth reflects increasing public trust in Sharia-compliant financial systems. However, this expansion brings with it the inherent risk of Non-Performing Financing (NPF), necessitating robust risk management strategies. To mitigate liquidity risks and maintain financial health in accordance with prudential banking principles, Islamic Financial Institutions (IFIs) often resort to transferring their receivables to third parties. In the Indonesian civil law framework, this transfer is legally constructed as *Cessie*, governed by Article 613 of the Indonesian Civil Code (*Burgerlijk Wetboek*).

While *Cessie* provides a legitimate exit strategy for banks to clean their balance sheets, its transplantation into the Islamic finance sector has sparked complex legal and ethical issues, particularly regarding the conduct of the assignee (*Cessionary*) post-transfer. A critical phenomenon identified in practice is "over-collecting." This occurs when the *Cessionary*—often an individual investor or a non-regulated entity not bound by strict banking regulations—collects debt from the customer (*Cessus*) at a value far exceeding the outstanding principal and margin/*ujrah* recorded in the *Cessie* deed. In practice, the *Cessionary* frequently capitalizes unpaid fines (*ta'zir*), adds unilateral collection fees, or recalculates the debt using an interest-based mechanism, thereby stripping the financing of its Sharia character. This practice is exacerbated by a *lacuna legis* (gap in law); specifically, the lack of explicit regulations in Financial Services Authority Regulation (POJK) No. 22 of 2023 regarding the limitation of collection rights for third parties, and the absence of a specific Fatwa from the National Sharia Council (DSN-MUI) regarding the sale of debt to third parties (*Bai' al-Dayn li ghairi al-madin*) for commercial purposes.

Consequently, a disparity in judicial decisions has emerged within the Religious Courts. Some judges validate excessive collection based on formal legality (Article 613 Civil Code and *pacta sunt servanda*), while others annul it based on Sharia principles (e.g., Decision of Tangerang Religious Court No. 2063/Pdt.G/2024 vs Decision of PA Jakarta Pusat No. 1087/Pdt.G/2024). This legal uncertainty undermines the objective of Sharia economic law, which is to realize justice and prohibit exploitation (*Zhulm*). This article aims to analyze the validity of excessive collection by *Cessionaries* through the lens of John Rawls' Substantive Justice theory and Sharia Economic Law theory. Furthermore, it seeks to formulate a regulatory reconstruction to ensure legal certainty and fairness in the assignment of Sharia-compliant receivables, addressing the critical question: Does the formal validity of a *Cessie* deed legitimize predatory collection practices that violate the underlying Sharia principles of the original contract?

LITERATURE REVIEW

The Concept of *Cessie* and the Principle of *Nemo Plus Juris*

Cessie is defined as the transfer of intangible rights, specifically receivables (*vordering op naam*), from a creditor (*Cedent*) to a third party (*Cessionary*) by means of deed, followed by notification to the debtor (Satrio, 2012). Subekti (2005) emphasizes that *Cessie* functions essentially as a juridical act of delivery (*levering*) of claims based on an underlying obligatory title (*titel*), such as a sale and purchase agreement. While Article 613 of the Civil Code regulates the formality of transfer, the substance of the right transferred is governed by the universal civil law maxim: *Nemo plus iuris ad alium transferre potest quam ipse habet*. This principle asserts that no one can transfer a greater right than they possess (Suharnoko, 2015). In the context of Sharia financing, the *Cedent* (Islamic Bank) possesses a right to collect a fixed amount (principal plus margin/ujrah) without compound interest. Therefore, according to the *Nemo Plus Juris* doctrine, the *Cessionary*, as a derivative right holder (*successor in title*), must inherently be subject to the same limitations. They cannot acquire a "right to collect interest" or "right to markup the debt" that the Bank never possessed. Any attempt to do so constitutes an *ultra vires* act and a violation of the fundamental nature of the transferred right. Furthermore, the doctrine of *Misbruik van Recht* (Abuse of Right), grounded in Article 1365 of the Civil Code, prohibits the exercise of rights in a manner contrary to their social purpose or to cause disproportionate harm. Mertokusumo (2019) argues that using the formal validity of a *Cessie* deed to extract excessive amounts from a distressed debtor constitutes an abuse of right, rendering the act unlawful (*onrechtmatige daad*).

Regulatory Gap in Consumer Protection

The Financial Services Authority Regulation (POJK) No. 22 of 2023 mandates transparency and fairness in financial services. However, a critical gap exists. While the regulation protects consumers during the contract with the original bank, it lacks explicit provisions capping the collection rights of third-party acquirers (*Cessionaries*), especially those who are non-bank individuals (Otoritas Jasa Keuangan, 2023). This *lacuna legis* allows unregulated entities to bypass prudential banking norms.

Sharia Economic Law Framework: *Hawalah* vs. *Bai' al-Dayn*

Islamic jurisprudence offers two primary frameworks for debt transfer: *Hawalah* and *Bai' al-Dayn*. *Hawalah* is traditionally a benevolent contract (*tabarru'*) aimed at assisting debtors by transferring liability, not for profit (Al-Zuhaili, 2010). Conversely, *Bai' al-Dayn* (sale of debt) to a third party is controversial. The majority of scholars (*Jumhur*) prohibit it due to *Gharar* (uncertainty) and the potential for *Riba* (usury) (Ibn Qudama, 1997). However, a minority opinion within Maliki schools permits it under strict conditions, spot payment (*ta'jil al-thaman*) and par value (*tamatsul*) and (Ibn Rushd, 2004), while the certain jurist within the Shafi'i schools allow it primarily for liquidity purposes (*lil hajah*), confirmed debt (*mustaqir*), provided it does not lead to usury and *gharar* (Al-Nawawi, 1972). Current DSN-MUI Fatwas (No. 103 & 104 on Novation and Subrogation) and other fatwas concerning *Hawalah* do not specifically address the commercial sale of debt with a discount to non-financial institutions, creating a normative gap. This ambiguity allows practitioners to justify *Cessie* using general commercial principles while ignoring the specific Sharia prohibitions against trading debt for a profit derived from the debtor's distress.

Substantive Justice Theory

John Rawls, in *A Theory of Justice* (1999), introduces the concept of "Justice as Fairness." His *Difference Principle* argues that social and economic inequalities are only justified if they benefit the least advantaged members of society. In the context of debt assignment, the debtor (*Cessus*) is the vulnerable party, often facing financial distress. Legal formalism that validates *Cessie* solely based on the existence of a deed—ignoring the predatory

collection practices—fails to achieve substantive justice. Rawlsian analysis requires that the legal interpretation of *Cessie* must be tested against whether it protects or exploits this vulnerable position.

RESEARCH METHODS

This study employs a normative legal research method (*doctrinal legal research*), focusing on the analysis of legal norms and court decisions. **Approaches:**

1. Statute Approach: Examining the Indonesian Civil Code, Law No. 4 of 2023 (PPSK Law), Law No. 21 of 2008 (Sharia Banking Law), and POJK No. 22 of 2023 regarding Consumer Protection.
2. Conceptual Approach: Analyzing doctrines of *Nemo Plus Juris*, *Misbruik van Recht* (Abuse of Right), and Sharia concepts of *Riba*, *Zhulm*, *Hawalah* and *Bai' al-Dayn*.
3. Comparative Approach: Comparing the legal framework of debt transfer in Indonesia with Malaysia, Kuwait, and Egypt to identify best practices.
4. Case Approach: Analyzing disparity in court rulings, specifically comparing decisions from Religious Courts (PA) High Religious Courts (PTA), and the Supreme Court (MA) to understand the judicial reasoning (*ratio decidendi*).

Data Collection and Analysis: Legal materials (primary, secondary, and tertiary) were collected through library research. The analysis employs prescriptive logic and deductive reasoning. The study interprets vague norms (*vage normen*) and identifies gaps (*leemten in het recht*) to conclude the validity of the *Cessionary's* actions and propose regulatory reforms.

RESULTS AND DISCUSSION

The Invalidity of Excessive Collection: A Civil and Sharia Analysis

The primary finding of this research indicates that the practice of *Cessionaries* collecting debts exceeding the nominal value of the *Cessie* deed constitutes a violation of both civil law and Sharia principles.

1. Violation of *Nemo Plus Juris* and Abuse of Rights

From a Civil Law perspective, the *Cessionary* acquires rights derivatively from the Islamic Bank. The legal relationship between the Bank and the Customer is governed by Sharia contracts (e.g., *Murabahah*), which fix the debt amount. Since the Islamic Bank is legally restricted from charging interest or capitalizing fines as profit, the *Cessionary* cannot acquire a "right to collect interest" or "right to markup debt" that the Bank never possessed. The *Cessionary* steps into the shoes of the *Cedent*; if the shoes are size 8, the *Cessionary* cannot claim they are size 12. Any collection beyond the outstanding principal and margin is an *ultra vires* act. Furthermore, utilizing the formal validity of the *Cessie* deed to extract excessive amounts from a distressed debtor constitutes *Misbruik van Recht* (Abuse of Rights), as the right is being exercised in a manner contrary to its social purpose and good faith.

2. Sharia Economic Law Violation: *Riba* and *Zhulm*

From a Sharia Economic Law perspective, the excess collection is problematic. If a *Cessionary* buys a debt of IDR 100 million for IDR 70 million (discounted), Sharia may tolerate this transaction for liquidity purposes under strict *Bai' al-Dayn* rules. However, if the *Cessionary* then demands IDR 150 million from the debtor by adding "collection fees" or "penalty interest," this surplus is classified as *Riba Nasi'ah* (unjustified increase due to delay) and *Riba Fadhl* (unequal exchange of the same goods in a cash transaction) and *Zhulm* (oppression). Even if the sale of debt is permitted for liquidity, it does not legitimize the multiplication of debt. The *Cessionary* demanding excessive amounts engages in *Akl al-Mal bi al-Batil* (consuming wealth unjustly)

3. Substantive Justice Analysis

Analyzing through John Rawls' *Difference Principle*, the practice of purchasing debt at a discount and then collecting significantly more harms the debtor, who is the *least advantaged* party. A fair system would allow the investor to profit from the purchase discount (the margin between the purchase price and the book value) but would strictly prohibit increasing the burden on the debtor. Validating over-collection favors the strong (investors) over the weak (debtors), violating the core tenets of justice.

Judicial Disparity and the Need for Legal Certainty

The research uncovered significant disparities in how Indonesian Religious Courts handle these disputes, as illustrated in the analysis of recent decisions.

Table 1. Matrix of Judicial Disparity in Cessie Disputes

Case Decision	Core Issue	Judicial Reasoning (<i>Ratio Decidendi</i>)	Verdict
PA Batam No. 1922/Pdt.G/ 2020	Validity of Subject: Can a Sharia Bank sell debt to an individual (Non-LKS)?	Sharia Compliance Approach: Selling sharia-based debt to conventional individuals violates Sharia principles (referencing DSN Fatwa No. 31/2002). It degrades the Murabahah contract nature and creates <i>Zhulm</i> (oppression).	Cessie Void. The bank must accept direct payment from the debtor.
PA Malang No. 800/Pdt.G/2019	Formal Validity: Validity of Cessie and execution of collateral by the new creditor.	Formalistic Approach: The Cessie is valid as it meets the requirements of Article 613 of the Civil Code (Deed + Notification). The disparity between debt value and collateral value was not considered a violation.	Cessie Valid. The debtor's lawsuit was rejected.
PTA Surabaya No. 128/Pdt.G/2020 (Appeal of PA Malang)	Execution of Collateral: Can collateral be transferred/sold without owner consent?	Legal Protection Approach: The transfer of collateral rights under Cessie without the debtor's consent violates Article 20 (2) of the Mortgage Law (UUHT). A unilateral underhand sale of collateral is invalid. The Cessie is deemed legally flawed due to this violation.	Cessie Void. Decision of PA Malang cancelled. Assets returned to the Bank.
PA Jakarta Timur No. 2616/Pdt.G/ 2019	Sharia Compliance: Validity of transferring Sharia debt to a conventional individual.	Sharia Principles Approach: The transfer of receivables from a Sharia Bank to a conventional individual is Haram and constitutes an Unlawful Act (PMH). It contradicts DSN Fatwa No. 31/2002 which implies transfers should be between financial institutions to maintain Sharia compliance.	Cessie Void. The Cessie deed is declared to have no binding legal force.
PTA Jakarta No. 88/Pdt.G/2020 (Appeal of PA Jaktim)	Business Efficacy: Bank's right to resolve NPF (Non-Performing Financing).	Positivistic/Business Approach: The bank has the right to sell receivables to anyone (including individuals) to maintain health (prudential banking). Valid under Art 613 Civil Code. Sharia compliance is interpreted loosely using Fatwa on Novation/Subrogation (Fatwa 103 & 104).	Cessie Valid. Decision of PA Jaktim cancelled. Lawsuit rejected.
Supreme Court No. 881 K/Ag/2020 (Cassation of PTA Jakarta)	Corrective Justice: Balancing legal formality with debtor protection.	Corrective Justice (<i>Ta'awun</i>): The Supreme Court upheld the formal validity of the Cessie (agreeing with PTA Jakarta on Art 613). However, applying the principle of <i>Ta'awun</i> (mutual assistance), the court restricted the Cessionary from immediate execution, ordering a 6-month grace period for the debtor.	Cessie Valid (Conditional). Execution stayed for 6 months to allow settlement.
PA Jakarta Pusat No. 1087/Pdt.G/ 2024	Over-Collecting: Cessionary collecting significantly above the principal (Markup > IDR 500 million).	Formalistic Approach: The court strictly applied Article 613 Civil Code and Pacta Sunt Servanda. The court ignored the issue of over-collecting and the discrepancy between the Cessie deed value and the actual collection amount.	Cessie Valid. Debtor declared in default (Wanprestasi).

EXCESSIVE DEBT COLLECTION BY CESSIONARIES IN ISLAMIC FINANCE DISPUTES: SUBSTANTIVE JUSTICE AND SHARIA ECONOMIC LAW ANALYSIS

Muhammad Rakhmat Alam et al

Supreme Court No. 554 K/Ag/2025 (Cassation of PA JakPus)	Formal Validity: Validity of Cessie and execution of collateral by the new creditor.	Formalistic Approach: The supreme court strictly applied Article 613 Civil Code and Pacta Sunt Servanda. The supreme court ignored the issue of over-collecting and the discrepancy between the Cessie deed value and the actual collection amount.	Cessie Valid. Debtor declared in default (Wanprestasi).
PA Tangerang No. 2063/Pdt.G/2024	Predatory Pricing: Excessive markup (>1000%) by Cessionary.	Substantive Justice Sharia Approach: Excessive collection constitutes an Unlawful Act (PMH) and Riba. The court cited Fatwas on Interest and prohibited exploitation. The Cessionary cannot collect more than the real principal debt.	Cessie Void. Debt fixed at fair value (IDR 70 million).

Source: Analysis of Court Decisions uploaded to the Supreme Court Decisions Directory (2019-2025).

As shown in Table 1, the judicial landscape regarding the assignment of receivables (*Cessie*) within Indonesian Religious Courts is characterized by a profound lack of uniformity, oscillating between strict legal positivism and Sharia-based substantivism. A comprehensive analysis of decisions from 2019 to 2025 reveals that courts often adopt a formalistic approach, as seen in the rulings of PA Malang (No. 800/Pdt.G/2019), PTA Jakarta (No. 88/Pdt.G/2020), and PA Jakarta Pusat (No. 1087/Pdt.G/2024). These judiciaries prioritize the civil requirements of Article 613 of the Civil Code and the principle of *pacta sunt servanda*, thereby validating the sale of debt to third parties—including individual investors—to support banking liquidity. Crucially, these decisions tend to overlook the "over-collecting" phenomenon, ruling that the disparity between the purchase price of the debt and the amount collected from the debtor is legally irrelevant.

In sharp contrast, a competing substantive justice approach has emerged in other jurisdictions, where judges annul *Cessie* contracts by invoking Sharia prohibitions against usury (*Riba*) and oppression (*Zhulm*). For instance, PA Batam (No. 1922/Pdt.G/2020) and PA Jakarta Timur (No. 2616/Pdt.G/2019) invalidated transfers to non-financial individuals, citing DSN Fatwa No. 31/2002 to argue that such transactions degrade the sacred nature of the *Murabahah* contract. This stance was further elevated by PA Tangerang (No. 2063/Pdt.G/2024), which ruled that "predatory pricing"—where a Cessionary attempts to collect amounts significantly exceeding the principal debt—constitutes an Unlawful Act (*Perbuatan Melawan Hukum*) that voids the assignment. Amidst this polarization, the Supreme Court has demonstrated inconsistent reasoning. While Decision No. 881 K/Ag/2020 attempted to bridge this gap by applying the principle of *Ta'awun* (mutual assistance)—upholding the *Cessie's* validity but staying execution to aid the debtor—subsequent rulings such as Decision No. 554 K/Ag/2025 reverted to a rigid formalistic stance. This jurisprudential inconsistency highlights a critical legal vacuum, where the validity of a transaction depends heavily on the presiding judge's philosophical inclination rather than a standardized regulatory framework.

Comparative Analysis of Debt Transfer Regulations

To highlight the need for reform, this study compares Indonesia's framework with other jurisdictions (Table 1).

Table 2. Comparison of Cessie/Debt Transfer Regulations

Comparison Variable	Malaysia	Kuwait	Egypt	Indonesia
Legal Basis	Civil Law Act 1956, SAC BMN & Islamic Financial Services Act (IFSA) 2013	Kuwait Civil Code	Egyptian Civil Code (<i>Al-Qanun al-Madani al-Misri</i>)	Indonesian Civil Code (KUH Perdata Art. 613) & POJK
Sharia Perspective (The Contract)	Liberal: Allows <i>Bai' al-Dayn</i> (debt trading) at market/discounted prices.	Conservative: Prohibited. Adheres strictly to AAOIFI standards (requires tamatsul/par value).	Moderate: Restricted by the "Abuse of Rights" doctrine (<i>Ta'assuf</i>) within the Civil Code. (Al-Sanhuri, 2000)	Ambiguous: DSN-MUI prohibits <i>Bay' al-Dayn</i> (discounting), but conventional practice remains liberal.

EXCESSIVE DEBT COLLECTION BY CESSIONARIES IN ISLAMIC FINANCE DISPUTES: SUBSTANTIVE JUSTICE AND SHARIA ECONOMIC LAW ANALYSIS

Muhammad Rakhmat Alam et al

Debtor Protection Model	Administrative: Strictly regulated by Bank Negara Malaysia (Fair Debt Collection Practices).	Preventive: Ban on speculative debt trading prevents exploitation from the start.	Judicial: Strong judicial intervention powers via Art. 5 (Abuse of Rights).	Weak/Formalistic: Limited to administrative notice (<i>betekening</i>), lacking substantial protection.
Regulatory Character	"Regulated Market" (Liberal trade, strict conduct).	"Sharia Protective" (Speculation is blocked).	"Judicial Balance" (Judges curb excesses).	"Regulatory Gap" (Liberal trade, weak supervision).

Source: Author's Analysis based on the Indonesian Civil Code and each country's regulations, 2025

As shown in Table 2, unlike Kuwait which strictly prohibits debt trading to prevent Riba, or Malaysia which allows it but imposes strict conduct regulations, Indonesia allows debt trading (via Civil Code) but lacks specific Sharia guidelines or conduct regulations for third parties. This exposes Indonesian debtors to higher risks of exploitation.

Regulatory Formulation: The Need for a Capping Rule

To address the *lacuna legis* and ensure legal certainty, this study proposes a formulation of the regulatory framework governing *Cessie* in Islamic finance.

1. Revision of OJK Regulations (POJK)

The Financial Services Authority (OJK) should revise POJK No. 22 of 2023 to include a specific "Capping Rule" for debt assignment. The proposed norm is: *"In the event of a transfer of receivables to a third party, the collection right exercisable by the transferee shall be capped at the maximum of the Outstanding Principal plus Outstanding Margin/Ujrah recorded in the books of the original creditor at the time of transfer. Any additional collection constitutes a violation of law."* This rule ensures that the "Sharia character" of the debt remains attached to the asset regardless of who holds it (*Successor in Title*).

2. Issuance of Specific DSN-MUI Fatwa

The DSN-MUI needs to issue a specific Fatwa on "Sharia-Compliant *Cessie*" (*Bai' al-Dayn li ghairi al-madin*). This Fatwa should:

- Allow the sale of debt to third parties with a discount strictly for liquidity management (*tashfiyah*), based on the opinion of selected Shafi'i scholars.
- Explicitly prohibit the *Cessionary* from collecting more than the nominal value of the debt.
- Clarify that any profit for the *Cessionary* must come from the purchase discount, not from marking up the debt to the customer.

CONCLUSION

The practice of over-collecting by *Cessionaries* in the assignment of Sharia receivables is legally invalid and morally indefensible. It contravenes the fundamental civil law doctrine of *Nemo Plus Juris*, as rights transferred cannot exceed rights held. It violates John Rawls' principles of Substantive Justice by exploiting the vulnerable position of the debtor for excessive gain. Furthermore, it constitutes *Riba* and *Zhulm* under Sharia law, stripping the financing of its Islamic identity. The validity of the *Cessie* deed as a transfer mechanism does not legitimize excessive collection actions. To resolve the current legal uncertainty and judicial disparity, Indonesia requires a concrete regulatory reform. This includes the implementation of a "Capping Rule" by the OJK to limit collection rights to the original outstanding value and the issuance of a comprehensive Fatwa by DSN-MUI. These measures will balance the liquidity needs of Islamic banks with the fundamental duty to protect consumers from predatory financial practices, ensuring that the Islamic finance industry remains true to its values of justice and equity.

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