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## TRANSMISSIBILITY OF LEGAL OBLIGATIONS IN SUCCESSION

Banu Laura-Adriana, PhD Attendant

### Abstract

*The present paper refers stricto sensu to legal obligations, specifically to those obligations that arise merely from the effects of laws, while their occurrence is not determined by the existence of any legal act or deed<sup>1</sup>. Therefore, we are referring to debts that do not arise from any will manifestation, and which nevertheless cannot be connected whatsoever to any felony idea<sup>2</sup>. But for legal derogation from the rule of patrimony debts' transmissibility, any debts arising from legal obligations remain subordinated to this rule of transmissibility.*

*A current application of legal obligations' transmissibility can be found in the area of social securities. Furthermore, the duty created by law and the passive transmissibility of which is the most controversial is the one regarding the payment of the alimony debt.*

**Key words:** *transmissibility of legal obligations; alimony; social securities; succession debts; intuitu personae obligations.*

### 1. Transmissibility of Legal Obligations

As acknowledged by the doctrine<sup>3</sup>, laws represent an autonomous source of obligations. But for legal derogation from the rule of patrimony debts' transmissibility, any debts arising from legal obligations

remain subordinated to this rule of transmissibility.

A current application of legal obligations' transmissibility can be found in the area of social securities. Thus, social securities agencies go after the inheritors of individual traders and those of freelancers, in order to recover any due debts as social securities and delay penalties<sup>4</sup> calculated to such, just likes any other creditor of the deceased would do. It is currently acknowledged that legal obligations cover family relations<sup>5</sup>. The truth is that the duty created by law and the passive transmissibility of which is the most controversial is the one regarding the payment of the alimony debt. In the following, we aim at assessing whether the obligation for alimony payment is subordinated to the transmissibility rule or not, as well as the grounds for the solution to be adopted.

### 2. Alimony Payment Obligation

#### a. The Principle Regarding the Non-Transmissibility of the Alimony Obligation

On a rational level, the alimony payment obligation is not transmissible to the successors. This rule is also expressly stipulated by law. Thus, according to Art. 95 of the Family Code, the alimony obligation is

<sup>1</sup> D. Cosma, *Teoria generala a actului juridic civil*, Editura Stiintifica, Bucuresti, 1969, p. 14-16;

<sup>2</sup> G.Marty et P.Raynaud, *Droit civil, les obligations*, tome I, Paris, 1988, p. 15;

<sup>3</sup> C.Hamangiu, I.Rosetti-Balanescu, Al.Baicoianu, *Tratat de drept civil roman*, Editura Nationala, Bucuresti, 1929, p.754; M.Planiol, *Traité élémentaire*, tome II, p.807.

<sup>4</sup> Trib. Dambovita., s. civ. conflicte de munca si asigurari sociale, dec.nr.269/2004 (nepublicata) „sumele reprezentand C.A.S., C.A.S.S., precum si cele datorate de defunct la fondul de somaj, in timpul vietii sale, fac parte din patrimoniul defunctului si se transmit sucesorilor acestuia”.

<sup>5</sup> G. Marty et P.Raynaud, *Les obligations*, tome II, Sirey, Paris, 1962 p.20; C. Larroumet, *Droit civil, Les obligations, Le contrat*, Economica, Paris, 2003, p. 45; J. Flour, J. L. Aubert, *Droit civil. Les obligations*, Sirey, Paris, 1987, p.260.

terminated by the death of the debtor or creditor of the support obligation.

The said rule is rationally justified because the alimony payment obligation is of an *intuitu-personae* nature, whereas it is connected to the debtor, as per its capacity as a relative of the obligation's creditor, as well as the debtor's patrimonial status<sup>6</sup>.

Nonetheless, Art. 96 of the Family Code stipulates a particular case, that might lead us to the idea that the alimony payment obligation is transmissible.

According to the said provision, "the inheritor of the person who was compelled to support a minor or who has paid alimony with no legal obligation to such end shall, to the limit of the inherited assets, continue to support the minor, if the minor's parents are dead, missing or in need, however only for the time when the child is underage. Providing more than one inheritors exist, such obligation is jointly, and each of them shall contribute proportionally to the value of he inherited assets".

Nevertheless, such rule must not be deemed as an exception from the principle regarding the non-transmissibility of the alimony payment obligation.

In fact, as also asserted by some authors<sup>7</sup>, the text of Art. 96 should be construed as creating an autonomous obligation for the alimony payment in charge of the inheritors stipulated by such.

### **b. The Grounds for Alimony Obligation Non-Transmissibility**

The doctrine has come with a double justification for this exception from the general principle regarding the obligations transmissibility.

The strictly personal nature of the alimony payment obligation explains both its non-

transmissible nature among the living, and its non-transmissibility following decease<sup>8</sup>.

As a general rule, such non-transmissibility can be grounded on the principle of family solidarity. This principle by which the alimony payment obligation is justified during the life of the debtor is transformed in succession legal vocation of the creditor of the support obligation, following the debtor's decease.

The legal (testamentary) succession vocation is a correspondent for the alimony payment obligation of the successor<sup>9</sup>, to the benefit of such obligation's creditor, following the debtor's decease. Thus, in this way the said obligation would subsist *post mortem*, in the form of inheritance right over the deceased's patrimony.

Such arguments are easily verifiable in the rules provided under the Civil Code.

Thus, in order for such an analysis to be persuasive, all legal debts regarding the alimony payment should have a correspondent in the succession vocation, and no discrepancy should exist between the two mechanisms. However, such rule is confirmed because the creditors of the alimony, as stipulated under Art. 86 of the Civil Code, have a legal succession vocation to the debtor's patrimony, following the debtor's decease. Another, less juridical and more abstract argument can also be given, which is also worth mentioning.

By creating a parallel between the *intuitu personae* agreement and the personal nature of the alimony payment obligation, one can notice that the said are subordinated to the same rule, in respect with their non-transmissibility.

Thus, *intuitu personae* agreements are not transferred upon the death of one of the parties and hence considering that the alimony is of personal nature, it results that

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<sup>6</sup> E.Alfandari, *Droits alimentaires et droits successoraux*, Mélanges R. Savatier, 1965, p.1.

<sup>7</sup> I. Filipescu, *Tratat de dreptul familiei*, Editura ALL BECK, București, 1996, p. 494; G.Cornu, *Droit civil. La famille*, Montchrestien, Paris, 1993, p.246.

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<sup>8</sup> I. Dogaru, *Întreținerea. Drept și obligație legală*, Editura Scrisul Românesc, Craiova, 1978, p.98;

<sup>9</sup> A. Lesviodax, *Obligația legală de întreținere*, Editura Științifică, București, 1971, p. 172.

such ceases along with the death of the obligation debtor<sup>10</sup>.

### c. Applicability of the Non-Transmissibility Principle

In order to clarify this thesis regarding non-transmissibility, we shall attempt to assess whether such is verifiable on a practical level<sup>11</sup>.

These arguments of the thesis regarding the non-transmissibility of the alimony payment obligation can be called in question, because such rely on the personal nature of the said obligation, although such is not clearly defined<sup>12</sup>. On the other hand, the thesis can be considered questionable, even following a logical analysis.

### d. Logical Analysis of the Thesis regarding the Non-Transmissibility of the Alimony Payment Obligation

The opinions are unanimous in the doctrine regarding this aspect of alimony obligation non-transmissibility. Successors can be only held liable for such obligation only for the payment of the debts due in the course of the life of the deceased<sup>13</sup>. Thus, this is not about an exception from the alimony obligation non-transmissibility, but only about a strict application of the said principle. Whereas the debt is enforceable in the course of the debtor's life, such is passed on to his successors even though it is not transmissible<sup>14</sup>. This solution, unanimously admitted by the doctrine, is nonetheless

subject to criticism, because it leads to a compromise situation<sup>15</sup>. On an abstract level, the following observation can be made: either the obligation is transmissible, and then the debts in charge of the debtor (irrespective of their being enforceable or not) are owed by the successor, or we admit that the deceased's debts are not transmissible and then nothing would justify the distinction between due debts and other debts.

As it can be noticed, this distinction between due debts and the other debts cannot be taken into account only if the principle of debts transmissibility is admitted. Thus, in this case a distinction is made between the deceased's debts, which are part of the succession liabilities and in this capacity are subject to a particular regime, and the personal debts of the successors.

However, it has been mentioned that successive enforceable agreements should be included among the deceased's debts that existed on the moment of his death, irrespective if such were enforceable or not at that moment. On an extra-contractual level alimony payment obligations represent successive enforceability debts. Hence, the following rule should be deduced thereto: if the alimony payment obligation is not transmissible, then the successor owes nothing to the deceased's creditor; however, if such obligation is deemed as transmissible, then the amounts enforceable upon the moment of the death shall be considered debts of the deceased and subjected to the liability related rules.

In conclusion, as it can be noticed, it is logical to say that overdue monthly debts are always transmissible, although the alimony payment obligation is not transmissible. The alimony payment obligation can be subject to an agreement. According to an opinion<sup>16</sup>, if an agreement is concluded regarding the alimony, such agreement changes the nature of the debt and its transmissibility by means of natural obligation novation, into civil obligation and therefore such contractual obligation is transmissible.

<sup>10</sup> J. Ghestin, *Traité de droit civil. Les obligations. Le contrat*, L.G.D.J, Paris, 1980, p. 228

<sup>11</sup> Prahova Tribunal, Decision no. 460/1959, in *Legalitatea Populara* no. 6/1960, p. 112 „The third party having supported the mother of a successor cannot be forced to continue supporting the latter, whereas the alimony legal obligation was not in the patrimony of the deceased on the date of her death”.

<sup>12</sup> Supreme Court of Justice, Civile Section, Civile Decision no. 769 of April 20, 1977 in *Culegere de decizii*, p. 116; Supreme Court of Justice, Civile Section, Civil Decision no. 525 of March 11, 1980 in R.R.D. no. 6/1981, p. 82; also see V. Patulea, *Unele consideratii in legatura cu obligatia de intretinere*, in R.R.D. no. 11/1982, p. 39-40

<sup>13</sup> G. Cornu, *La famille*, Montchrestien, Paris, 1984, p. 126.

<sup>14</sup> A. Bernabe, *Droit civil, les obligations*, Montchrestien, Paris, 2005, p. 192; E.Gaudement, *Theorie general des obligations*, Sirey, Paris, 1937, p. 189.

<sup>15</sup> M. Grimaldi, *Droit civil, Successions*, Paris, 6<sup>e</sup> Éditions Litec p 221

<sup>16</sup> J. Ghestin, M. Billiau, G. Loiseau, *Le regim des créances et des dettes*, L.G.D.J., Paris, 2005, p. 905

This refers to the hypothesis when the owner of a legal right to alimony agrees with the debtor in charge of whom such alimony payment obligation is created, upon the limits and way in which such is carried out.

The consequence of such an agreement is important in establishing the applicability of the rule (the principle regarding the alimony non-transmissibility). This consequence represents a means for attenuating the alimony payment obligation rule, because in order to make it transmissible it is enough for such to be subject to a convention. By explaining this technique for attenuating the principle, one should raise the question if the law allows for the alimony to make object to such agreements, whereas its transmissibility represents a rule for protecting the inheritors, for whom it would be shocking to stop benefiting from this protection without being consulted.

It is our opinion that nothing can restrain such an agreement, except for the alimony due to an underage person, because according to Art. 43 of the Family Code, final paragraph, such an agreement exceeds the private individuals' decision rights<sup>17</sup>.

In conclusion, the principle regarding the non-transmissibility of the alimony payment obligation is applicable as follows: the alimony payment obligation is non-transmissible, except for debts (under such title) that are due and unpaid during the course of the deceased's life, as well as the case when the alimony is subject to an agreement<sup>18</sup>.

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<sup>17</sup> T. Popescu, *Tratat de dreptul familiei*, ediție revizuită, vol I. Editura Didactică și pedagogică, București, 1965, p. 134; Al. Bacaci, V.Dumitrache, C. Hogeau, *Dreptul familiei*, Editura All Beck, București, 2001, p.131;

<sup>18</sup> B. Stark, *Droit civil. Obligation. Contrats*. 3<sup>e</sup> édition, Librairie de la Cour de Cassation, Paris, 1989, p. 320

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## IMPACT OF FINANCIAL PERFORMANCE ON FIRM VALUE: THE MEDIATION ROLE OF CSR DISCLOSURE

Renny Nur'Ainy;  
Gunadarma University;  
[renny@staff.gunadarma.ac.id](mailto:renny@staff.gunadarma.ac.id)

Bagus Nurccahyo;  
Gunadarma University;  
[bagus@staff.gunadarma.ac.id](mailto:bagus@staff.gunadarma.ac.id)  
[bnur\\_c@yahoo.com](mailto:bnur_c@yahoo.com)

Misdiyono;  
Gunadarma University  
[misdie@staff.gunadarma.ac.id](mailto:misdie@staff.gunadarma.ac.id)

### Abstract

*Early research on firm value was conducted, while the result still discussed. Research on ROA as a one of financial measurement has positive effect on firm value, while others were shown negative. This condition drive us to use corporate social responsibility (CSR) disclosure as mediating variable. This research examine the role of them on mediating relationship between financial performance and firm value.*

*This research use 27 manufacture firm that listed on JSX during 2006 - 2007 as sample with 54 observation, we use regression to see the role of CSR. Tobin's Q uses for measure firm value, while CSR measured by CSR index, and ROA use to measure financial performance.*

*Result shown that ROA has positive impact on firm value, and disclosure of CSR has mediation role on relationship between ROA and firm value.*

**Keywords :** *Corporate Social Responsibility, Financial Performance, Return on Asset, Firm Value.*

### 1. Introduction

Early research on the factors that have some impact on firm value has done. Their result found that financial risk structure and income smoothing have the same impact too (Suranta dan Pratana,

2004; Maryatini, 2006). Invesment opportunity set and leverage affected on firm value (Andri dan Hanung, 2007). Research on financial performance-return on asset/ROA- shown inconsistence. Modigliani and Miller in Ulupui (2007) said that firm value is determine from earning power in firm assets. Positive result shown that higher earnings power will make assets turnover more efficient and/or higher profit margin. It will affect on increasing firm value.

Ulupui (2007) found that ROA has significant effect on stock return in the next periode. According to that research, ROA is the one factors that have impact on firm value. Makaryawati (2002), Carlson and Bathala (1997), Suranta and Pratana (2004) said the same thing, that ROA has positive effect on firm value. But the other found that ROA have negative effect on firm value (Suranta and Pratana, 2004). These result shown us that there is another factors are mediating the relationship between ROA and firm value. According to that result, we interested to know the role of CSR as mediating variable, will make the impact stronger or not.

In the last view years, more company knows that aplicated CSR programme as a part of their business strategy is very important. Basamalah and Jermias (2005) shown that disclosed of CSR is more strategic reason. Although it was not mandatory, almost company who listed in

JSX are disclosed their CSR in their financial statement. From economics sight, company disclosed some information, if the information would be increasing the firm value. (Basamalah and Jermias, 2005). Company will reach social legitimation and maximize their financial power in long term through the CSR application (Kiroyan, 2006).

According to the research background, the research problem is CSR disclosure has mediation role on the relationship between financial performance and firm value. So the question on this research are :

- (1) Is financial performance has positive effect on firm value in manufacture firm that listed on JSX?
- (2) Is CSR disclosure has mediating role on the relationship between financial performance and firm value?

This research would have contribution to extend knowledge on relationship between financial performance and firm value with mediation role of CSR. And this research will informed about CSR disclosure relevance on relationship between firm value and financial performance in annual report.

## 2. Literature review

CSR is an alternative concept to handle complicated social problem in the last decade. Social problem not only government to take care, but everyone have social responsibility. Industry must drive positive economic growth wich friendly to the environment. CSR was proposed in early 1970s, wich known Theory of Stakeholders. In Indonesia, CSR is ruled by UU No. 40 Tahun 2007 Pasal 74.

In the regulation Pasal 15 Undang-Undang No. 25 Tahun 2007 about Capital Investment point b, investors have to implement CSR. CSR will be one of strategic business to increase compettitiveness through corporate image and/or reputation and brand loyalty. It will be a competitive advantage for the corporate. The growth on consumer need to buy product based on ethics and values would change consumer behavior to determine purchase in the future. CSR is a sustain processing so that will be create benefit to everyone, consumer and producer.

To succeed CSR implementation need commitment, active participation and honesty. CSR became important because it

was the human responsibility to social condition.

Theory was proposed by Mondigliani and Miller said that firm value was determine by earnings power on corporate asset. The positive result shown that higher earnings power will increase asset turnover efficiently and/or made profit margin higher. Its brings impact to the firm value. Ulupui (2007) and Makaryawati (2007), Carlson dan Bathala (1997) in Suranta and Pratana (2004) found the positive effect of ROA on firm value. On the other side, result from Suranta and Pratana (2004) and Kaaro (2002) found negative effect of ROA on firm value.

Accordding to the theory and the empirical result, first hypotheses developed to this research is:

H1: Financial performance has positive effect on firm value.

That founding drive us to involve CSR disclosure as mediation variable. Signaling theory said that corporate give signs to outsider for increase firm value. The insight of stakeholder theory said that corporate should have social disclosure as one of responsibility to the stakeholders. This research use CSR disclosure as mediation variable laid on insight thought that positive appreciation from the market shown on increasing market price. Price increasing would be driven higher firm value.

Based on that description, second hypthoseses is :

H2: CSR disclosure has mediation role on relationship between financial performance and firm value.

## 3. Research Methods

The firms in manufacture industry that listed on JSX in 2006-2007 were chosen as populations for this research. We use purposive sampling methods which parts of nonprobability sampling. The criteria which used on our research is:

- (1) Sample are corporate which listed on JSX during 2006-2007, in manufacture industry whose published their annual report on this periode periodictly.
- (2) Corporates have financial report which ending periods on December 31<sup>th</sup> and use IDR on their reporting.
- (3) Corporates reporting their CSR disclosure on annual report periodictly within 2006-2007.

(4) Sample has information completely. Based on these criteria, we found 27 firm with 54 observation.

#### Variable Measurement

1. Dependent Variable, we used Tobin's Q to measure firm value.

Tobin's Q formula is:

$$\frac{\{(CP \times \text{Number of Stock}) + TL + I\} - CA}{TA}$$

Keterangan:

CP = *Closing Price*

TL = *Total Liabilities*

I = *Inventory*

CA = *Current Assets*

TA = *Total Assets*

2. Independent Variable, we use return on assets (ROA) to measured financial performance. ROA found by dividing Net Earning After Tax to Total Asset.
3. Mediation Variable, CSR disclosure is an information disclosure which has interconnected to corporate responsibility in annual report. The instrument to use these measure relay on instrument conducted by Sembiring (2005) which consisting of 78 item.

#### 4. Result and Analysis

Based on Kolmogorov-Smirnov test we found the significance is  $0,493 > 0,05$ , it means that residual of the data has normal distribution. Glejser test shown that no variable has significance effect to residual value, thereby the regression model is free from heteroscedasticity. Durbin-Watson value is 1,945, laid on acceptable area so that we could said no autocorrelation. Result of multicollinearity shown that no tolerance value  $< 1$  and no VIF value  $> 10$  thereby we could said no multicollinearity.

#### Result of Test Hypotheses 1

Linear regression shown that value of  $R^2$  is 0,140, its mean that 14% variance of firm value can described by ROA, while 86% described by other variables that not involved in this model. ROA has t value 2,906 with 0,005 significance level, t value 2,906 larger than t table 2,010, so we could accept hypohthese 1, while the significance level is  $0,005 < 0,05$  so that ROA has positive effet on firm value. This result shown if we could increase financial performance more

higher, we could increase firm value higher. This is in line with Mondigliani and Miller Theory, and other research (Ulupui, 2007).

#### Result of Test Hypotheses 2

Interaction within ROA and CSRI has t value 4,774 with significance level is 0,000. Positive t value and significance level smallest than significance level of ROA before mediated by CSRI, so we could said that CSRI has mediation role in the relationship between ROA and Tobin's Q. According to this result we could accept second hypohthes. The implication of this result is market responding corporate CSR disclosure beside considering financial performance.

#### 5. Conclusions and implications

Base on that result, we could draw a conclusion, below:

1. Return On Asset had positive effect on manufacture firm value which listed in JSX on 2006-2007 statistically.
2. CSR disclosure as mediation variable had positive effect on the relationship between ROA and firm value statistically. So we can said that CSRI has mediation role on the relationship between ROA and firm value. It means that the impact of financial performance on firm value would be stronger when it has mediated by CSR disclosure.

These result have implication on investment decision, while investors have to make decision on their investment, they did not only considering the financial performance, e.g. ROA, ROE, DER, etc, but they would considering corporate CSR program too.

We suggest to use another mediating variable like GCG to know its role in the relationship between financial performance and firm value and also use another financial performance indicator, to know which dominant it is to influencing firm value

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