

THE ROLE OF THE DEVELOPER IN IMPLEMENTING THE BUYBACK GUARANTEE DUE TO THE DEBTOR'S DEFAULT ON APARTMENT OWNERSHIP CREDIT

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ABSTRACT

The need for housing in urban areas with limited land encourages the development of integrated housing with business centres, supported by banks that offer Apartment Ownership Loans. Banks play an important role in channeling public funds and facilitating financing that benefits banks, developers, and buyers. However, consumers often experience defaults. The Repurchase Guarantee Agreement allows the developer to buy back the sold unit as per Article 1519 of the Civil Code. Although consumer rights are often discussed, the rights of developers who comply with regulations receive less attention. This research aims to identify and analyze the implementation of the repurchase guarantee, the underlying factors of the repurchase guarantee, the legal framework for the implementation of the repurchase guarantee, as well as efforts to resolve disputes between developers and debtors related to the implementation of subrogation deeds. This research uses a normative juridical method. Data sources include primary legal materials (such as the Civil Code and several related laws), secondary legal materials (textbooks and law journals), and non-legal materials (dictionaries and encyclopedias). Data analysis techniques include identifying legal facts, collecting relevant materials, reviewing legal issues, drawing conclusions, and providing prescriptions using the deductive method.

Keywords: *Buyback Guarantee, Default, Title Loans*

INTRODUCTION

The need for housing is a fundamental aspect of humans as social beings. Limited land in urban areas requires us to find alternatives to meet these needs, with effectiveness and efficiency as the primary considerations for dynamic urban communities. Developing integrated housing and other basic needs is increasing, as the wheels of the economy and human life move quickly. Residence developments integrated with malls and office centres are commonplace in some business activity centres or Central Business Districts (CBDs). Owning this residence is also becoming more accessible with many financing institutions, both private and government banks, offering Apartment Ownership Loans with competitive interest rates.¹ Banks are significant and strategic in the growth of property transactions because the availability of housing, especially apartments, is only sometimes accompanied by the community's purchasing power.

Banks function as financial institutions that collect and distribute public funds as stipulated in Article 1 Point 2 of the Banking Law, which states that banks mainly collect and distribute public funds through deposits and financing or credit. Credit from banks aims to provide loan facilities to debtors, which are repaid in installments, offering many benefits for all parties

involved in this transaction. For banks, the distribution of credit facilities supports their growth and stability in business activities. For developers, credit facilities support the movement of their business by facilitating the marketing of their apartment products. For buyers, these facilities enable apartment ownership without requiring full upfront payment. Apartment ownership is under Article 1 Point 10 of the Regulation of the Minister of Public Works and Public Housing Number 21/PRT/M/2016 concerning Ease and Assistance in Acquiring Houses for Low-Income Communities. Credit in this regulation includes home ownership credit and other residential facilities such as apartments and shophouses, helping Indonesians purchase homes with the assistance of bank financing.²

However, the mechanism of home ownership through credit through credit has obstacles. Often, consumers experience defaults in its implementation. Problems arise when resolving these defaults, particularly regarding how the rights and obligations of all parties bound by the credit agreement can be carried out. Moreover, with a Repurchase Guarantee Agreement, the developer, as the seller, has the right to repurchase the property under Article 1519 of the Civil Code. It is important to remember that law is seen as a prescriptive norm and a social reality that maintains rules, order, balance, and justice in economic activities.³

There have been many discussions on consumer rights in various forums and media. Often, these discussions focus on consumer rights, while the rights of developers, also bound by the apartment ownership credit agreement, receive different attention. Apartment ownership is especially true when the developer has complied with all rules and regulations in running its business. In contrast, the consumer, also bound by the agreement, is in default. Therefore, the author is interested in discussing the developer's position in implementing the buyback guarantee due to the debtor's default on the apartment ownership credit.

This study aims to identify and analyze the implementation of the buyback guarantee, the underlying factors of the buyback guarantee, and the legal framework for its implementation, and to describe and analyze efforts to resolve disputes between developers and debtors related to the implementation of subrogation deeds.

METHOD

The research method used in this study is normative juridical (legal research), which aims to examine the application of applicable favourable legal rules or norms. The research method involves analyzing formal legal rules such as laws, regulations, theoretical literature, and decisions and opinions of legal experts. The aim is to determine the legal force of the subrogation deed in the implementation of the buyback guarantee by the developer and to resolve disputes between the developer and the debtor regarding the buyback guarantee. Data sources consist of primary legal materials, such as the Civil Code, Law No. 20 of 2011 on Flats, Law No. 1 of 2011 on Housing and Settlement Areas, Law No. 10 of 1998 on Banking, Law of the Republic of Indonesia No. 6 of 2023 on the Stipulation of Government Regulations into Law, and Regulation of the Minister of Public Works and Housing No. 16 of 2021 on PPJB. Secondary legal materials include textbooks and legal journals, while non-legal materials include dictionaries and encyclopedias. Data analysis involves identifying legal facts, collecting relevant materials, reviewing legal issues, concluding, and providing prescriptions.

²Dayan Panaya, "Perlindungan Hukum bagi Pihak Perbankan Melalui Perjanjian Buy Back Guarantee Sebagai Pendukung Jaminan Pembelian Rumah Dengan Sistem Kredit Pemilikan Rumah," PhD diss., Universitas Islam Sultan Agung (Indonesia), 2022.

³Hermansyah, *Pokok-Pokok Hukum Persaingan Usaha*, cet.1, (Jakarta: Pranada Media Grup, 2008), 6.

This analysis uses the deductive method to find solutions to the main problems related to the position of developers in implementing buyback guarantees.

ANALYSIS AND DISCUSSIONS

Basis for the Fund Repurchase Guarantee and the Legal Framework for the Implementation of the Repurchase Guarantee

Implementing buyback guarantees in a legal context, especially in apartment ownership loans, requires an in-depth analysis based on applicable laws and regulations. This analysis mainly focuses on understanding how the buyback guarantee mechanism is implemented, the obligations and rights of developers and consumers, and how consumer legal protection is regulated. According to the Civil Code (KUHPer), implementing the buyback guarantee must fulfill the legal requirements of an agreement based on Article 1320, which includes agreement, capability, specific object, and lawful cause. Legally made agreements shall apply as law to those who make them under Article 1338 of the Civil Code. Additionally, Law No. 20/2011 on Flats regulates the rights and obligations of developers and residents of flats in Articles 45-51. It gives consumers the right to request cancellation of the agreement if the developer does not fulfill its obligations, as stipulated in Article 54. Law No. 1/2011 on Housing and Settlement Areas is also relevant, particularly in Articles 46-48, which stipulate the obligations of developers to meet decent housing standards and provide protection to consumers. Article 64 mentions sanctions for developers who do not fulfill their obligations. Law No. 10 of 1998 on Banking states that banks must conduct credit analysis to ensure the debtor's ability to pay before granting credit (Article 8) and regulates banks' risk management and credit management (Article 29). Furthermore, the Regulation of the Minister of Public Works and Public Housing Number 16 of 2021 on PPJB regulates the obligations of developers in making PPJB (Article 4) and the terms and conditions that must be met before the handover of the property, including provisions regarding buyback guarantees (Article 6).

The mechanism for implementing a buyback guarantee is usually regulated in a particular clause in the sale and purchase agreement (PPJB). This clause includes the conditions that trigger the buyback guarantee, the implementation procedure, and the rights and obligations of both parties. Conditions that typically trigger the execution of a buyback guarantee include default by the debtor or the developer's inability to fulfill other obligations stated in the agreement. The agreement should outline the procedure for implementing the buyback guarantee, including written notice, time of implementation, repurchase price, and mode of payment. The developer must buy back the apartment unit at a price agreed upon in the buyback guarantee clause and complete the payment within a predetermined time. Consumers are entitled to receive repurchase payments as stated in the agreement. Based on Law No. 20/2011 and Law No. 1/2011, consumers have legal protection against harmful practices. If the developer fails to fulfill the buyback guarantee, consumers can sue the developer based on the agreement and applicable laws and regulations. Developers who fail to fulfill their buyback guarantee obligations may be subject to sanctions under Law No. 1/2011 and other relevant regulations, including fines, cancellation of the agreement, or other legal actions. Thus, the applicable laws and regulations must implement the buyback guarantee to guarantee consumers' legal protection.

Efforts in Dispute Resolution between Developers and Debtors Related to the Implementation of Subrogation Deeds

The position of developers in the implementation of buyback guarantees due to debtor default on apartment ownership loans requires an in-depth study of various relevant laws and regulations, including the Civil Code, Law Number 20 of 2011 concerning Flats, Law Number 1 of 2011 concerning Housing and Settlement Areas, Law Number 10 of 1998 concerning Banking, Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulations into Law, and Regulation of the Minister of Public Works and Public Housing Number 16 of 2021 concerning PPJB.

First, the Civil Code (KUHPer) is the foundation for understanding the subrogation mechanism. Articles 1381-1400 of the Civil Code explain that subrogation allows a third party, in this case, a developer, to take over the rights and obligations of the creditor after paying off the debtor's debt. In other words, after the developer pays off the debtor's debt to the bank, the developer obtains the rights previously held by the creditor. This includes the right to collect the debt from the debtor or take over the pledged assets.

Furthermore, Law No. 20/2011 on Flats regulates the rights and obligations of flat unit owners, including the responsibility to make installment payments to the bank as stipulated in Article 42. In cases where the debtor fails to make these payments, the developer offering the repurchase guarantee has the right to demand the transfer of title to the unit as part of the provided guarantee. Article 50 of the same law also allows for the pledge of ownership rights over apartment units developed by developers, where repurchase guarantees can be considered one form of such promises.

Additionally, Law No. 1 of 2011 on Housing and Settlement Areas, particularly Article 22, mandates developers to provide guarantees to consumers, ensuring the construction and completion of projects as agreed upon. In cases of debtor default, developers are obligated to address this situation according to the previously agreed terms, often utilizing a repurchase guarantee mechanism. Law No. 10 of 1998 on Banking is also pertinent, especially Article 1 Paragraph 11, which regulates property loan financing and banks' rights to collect loans. Should a debtor default, banks retain the right to transfer their claims to the developer providing the repurchase guarantee.

Furthermore, Law of the Republic of Indonesia Number 6 of 2023 on the Stipulation of Government Regulations into Law regulates dispute resolution and consumer protection in property transactions. It encompasses mechanisms for resolving disputes through mediation or court proceedings, providing developers and debtors with a clear legal framework for conflict resolution. Minister of Public Works and Public Housing Regulation No. 16 of 2021 on PPJB is also crucial, particularly Articles 16-17, which govern the preliminary sale and purchase agreement (PPJB) between developers and buyers. In cases of default, these PPJB provisions may outline the rights and obligations of developers to provide repurchase guarantees.

Regarding efforts to resolve disputes between developers and debtors regarding the implementation of subrogation deeds, several steps can be taken. First, mediation and arbitration are often preferred options for resolving property disputes due to their efficiency compared to litigation. Second, if mediation fails, the dispute can proceed to court. The court will examine the evidence, including the subrogation deed and the PPJB contract, to determine each party's rights and obligations. Third, the developer can execute the repurchase guarantee claim as agreed, which involves assuming ownership of the property unit and settling payments with the bank. Finally, renegotiating the credit agreement could offer a solution, potentially extending the debtor's timeline or adjusting payment terms to meet obligations. Through this analysis, it is anticipated that a clear understanding of how applicable laws and regulations can be utilized to resolve disputes between developers and debtors concerning the execution of subrogation deeds will be achieved.

CONCLUSION

The discourse on bank liability in cases of fictitious credit, as examined under the purview of the Civil Code, underscores several salient points. Fictitious credit represents a form of fraudulent activity within the banking domain, wherein internal actors, including bank personnel and credit applicants, engage in a collusive endeavour to secure bank facilities for personal gain. This nefarious practice frequently involves the deployment of counterfeit identities and spurious collateral. Regrettably, fictitious credit fails to meet the requisites stipulated within Article 1320 of the Civil Code for the validation of agreements, thus warranting classification as an unlawful act due to identity falsification, fraudulent collateral, and a conspicuous absence of good faith.

Normative juridical analysis regarding implementing buyback guarantees in the context of apartment ownership loans shows that various laws and regulations provide a clear legal basis. The Civil Code (KUHPer), Law Number 20 of 2011 on Flats, Law Number 1 of 2011 on Housing and Settlement Areas, Law Number 10 of 1998 on Banking, Law of the Republic of Indonesia Number 6 of 2023 on the Stipulation of Government Regulations into Law, and Regulation of the Minister of Public Works and Public Housing Number 16 of 2021 on PPJB collectively regulate the mechanisms, rights, obligations, and protections in the implementation of buyback guarantees. These implementations must fulfill the legal requirements of the agreement and apply as law to the parties who enter into it.

The buyback guarantee mechanism is governed by the sale and purchase agreement or PPJB, which includes trigger conditions, implementation procedures, and the rights and obligations of both parties. Regarding dispute resolution, mediation, and arbitration are often the initial solutions before resorting to court proceedings. Developers executing buyback guarantee claims as per the agreement have the right to assume ownership of the property units and settle payments to the bank while defaulting debtors can reset their obligations by renegotiating the credit agreement. These various regulations guarantee legal protection for consumers, and developers failing to fulfill buyback guarantees may face penalties by applicable provisions. Overall, existing laws and regulations ensure that the implementation of buyback guarantees complies with legal standards and offers maximum protection to consumers.

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