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Legal Position of Buy Buck Guarantee Agreement in Guaranteeing Home Ownership Credit Facilities at PT. Bank Tabungan Negara, Sharia Branch, Kendari City

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Abstract.*This study aims to determine and analyze the legal position of the buy back guarantee agreement as collateral in home ownership credit at PT. Bank Tabungan Negara Cabang Syariah Kota Kendari, to determine and analyze the legal protection of users (customers) in the Buy Back Guarantee for down payments that have been paid to developers and credit installments that have been paid to the bank. The approach methods in this study are the statutory approach (Statue Approach), Conceptual Approach (Conceptual Approach), and Case Approach (Case Approach). This type of research is an empirical legal research. The types and sources of data in this study are primary data and secondary data which include primary legal materials, secondary legal materials and tertiary legal materials. The primary data collection method uses observation and interviews, for secondary data using document studies and literature studies. The data analysis method uses qualitative descriptive, using the theory of legal protection, the theory of legal certainty and the theory of justice. The results of the study indicate that the legal position of the buy back guarantee agreement as collateral in home ownership credit at PT. Bank Tabungan Negara Cabang Syariah Kota Kendari is the position of the buy back guarantee agreement as an accessoir agreement, namely pancillary agreements and their existence are intended to support the main agreement, so that if the main agreement is cancelled, the accessory agreement (liability rights) will also be cancelled. And the legal protection of users (customers) in the buy back guarantee for down payments that have been paid to the developer and credit installments that have been paid to the bank is the legal protection of users/customers in the buy back guarantee has not been legally protected because it has not been regulated in the legislation. Therefore, down payment payments to developers and credit installments to banks cannot be returned and become the risk of the user/debtor.*

Keywords: *Agreement; BuyBack; Guarantee; Position.*

1. Introduction

KPR is a banking product for financing the purchase of a ready stock or indent house. A ready stock house means a house that is ready to be built, ready to be occupied and has been installed with electricity and water meters, while an indent house is a house that will be built after there is a buyer who is working on it by a contractor through an order from the housing developer (hereinafter referred to as the developer). The buyer referred to here is an individual or legal entity who has met the requirements and has fulfilled its obligations for the purchase of the house. Houses that can be purchased or financed by the bank.

Bank is a financial institution that is authorized to provide services to the community in the fields of finance, storage and financing (commonly called credit). Supporting the business world, especially in the property sector, credit is the main supporter of some payments made by buyers using credit facilities from banks, Home Ownership Credit (KPR) is based on the principle of bank prudence in providing Home Ownership Credit (KPR) facilities, a cooperation agreement is made between the developer and the Bank, the contents of which are that the developer is willing to buy back the housing units that have been sold to consumers who on the other hand are debtors of the KPR-providing bank, if the consumer or debtor breaks the promise and is unable to pay installments to the bank consecutively within a certain period of time according to the agreement. In practice, a sale and purchase agreement with the right to buy back the seller (original owner) in this case has or is given the right to buy back the goods that have been sold[1].

In general, the right to repurchase is prohibited because it is contrary to the principle of legal certainty in a sale and purchase agreement. Although the Civil Code (KUH Perdata) still regulates the possibility of a sale and purchase with the right to redeem as stated in Article 1519, this practice is strictly limited, both in terms of the time period and the requirements for its implementation. This prohibition aims to prevent abuse of legal relations, especially in cases where the sale and purchase agreement is actually only a cover for a debt agreement. Thus, the limitation on the right to repurchase is intended to protect the interests of the parties and ensure certainty and stability in civil transactions, whereas, in banking practice, the right to repurchase is permitted because this mechanism does not stand as a pure sale and purchase as in civil law in general, but is part of a financing scheme that has its own functions and characteristics. One example is the sale and lease back scheme, where an asset is sold to a bank or financial institution, then leased back to the seller with an option to buy back the asset at the end of the

[1]Suharnoko. (2004). *Hukum Perjanjian : Teori Dan Analisa Kasus,* Jakarta: Kencana Prenada Media Group. p. 29.

lease period. This type of scheme is not intended to transfer ownership permanently, but rather as a means to obtain liquidity while maintaining use of the asset. In addition, in financial transactions such as repurchase agreements (repos), the practice of selling an asset with an agreement to buy it back in the future is widely used in money markets and capital markets as a short-term fund management instrument.

The fundamental difference between the right to repurchase in civil transactions and in banking practices lies in its purpose and regulation. In banking, the entire transaction structure is made transparently and stated in a valid agreement, and is subject to strict regulations from supervisory authorities such as the Financial Services Authority (OJK), Bank Indonesia, and other banking legal provisions. These transactions not only pay attention to legal interests, but also risk management, the principle of prudence, and customer protection. In other words, this practice is carried out within a clear legal framework and in an orderly financial system, so that it does not cause legal uncertainty as is feared in conventional transactions with the right to redeem.

Therefore, although in general the right to repurchase is considered prohibited or limited in the context of ordinary buying and selling because it has the potential to create uncertainty of ownership and disguise the form of the agreement, in banking practice this is permitted and even required as part of innovation in financing and asset management, as long as it is carried out in accordance with applicable laws and regulations.

The concept of buying back regulated in the BW with the concept of buy back guarantee are two different concepts. The obligation that arises in the buy back guarantee is the obligation for the developer as the seller to buy back the goods that have been purchased from the debtor as the buyer to pay off the debtor's debt to the creditor. While in Article 1519 of the BW the purpose of the obligation is only to protect the seller's right to buy back the goods that have been sold.

The implementation of buy back guarantee often causes problems between developers and banks and between developers or banks and consumers/debtors due to the lack of clarity in the buy back guarantee provisions in the agreement, so that each party interprets it themselves based on their respective interests. Developers often position consumers as parties who should receive protection and the best possible service. However, on the other hand, marketing carried out by developers is often done subjectively so that the information obtained by consumers is often misleading, even though consumers have signed a Sales and Purchase Agreement (PPJB) or have even made a credit agreement with the KPR-

providing Bank.[2].

In addition, in practice, the developer and bank in carrying out the buy back of the house do not return the money for the house that has been paid by the consumer/user, both the money that has been spent as a down payment to the developer and the installment of the home ownership credit to the bank. In fact, the buy back price carried out by the developer from the bank is according to the remaining debt (outstanding) of the last home ownership credit at the bank. This means that the buy back carried out by the developer is the price of the house at the time of purchase minus the cost of the down payment on the house that has been received by the developer and the installment of the home ownership credit that has been received by the bank[3].

2. Research Methods

The approach methods in this study include the statutory approach (Statue Approach), the Conceptual Approach (Conceptual Approach), and the Case Approach (Case Approach). Statutory regulations are used on the basis of analyzing all statutory regulations that are relevant to the legal issues being studied.[4]. This approach aims to understand the existing legal basis. In addition, a conceptual approach is applied to analyze legal materials in order to understand the meaning contained in legal terms. This approach aims to identify new meanings or test legal terms in theory and practice. And the case approach, an in-depth qualitative research approach to groups, individuals, institutions, and so on within a certain period of time. With this approach, it is expected that research can investigate and examine in depth the Buy Back Guarantee agreement in guaranteeing home ownership credit facilities. In this study, analysis was carried out. The types and sources of data in this study are primary data and secondary data which include primary legal materials, secondary legal materials and tertiary legal materials. In this study, the analysis was carried out prescriptively, namely to provide arguments for the research results that have been achieved.

[2]Yusuf Shofie. *Perlindungan Konsumen dan Instrumen Hukumnya*, Bandung: Citra Aditya Bakti. p. 86.
[3]Maryanto Supriyono. (201). *Buku Pintar Perbankan*, Yogyakarta: CV. Andi Offset. p. 124.
[4]Mukti Fajar & Yulianto Achmad. (2015). *Dualisme Penelitian Hukum Normatif dan Empiris*, Cetakan Ke-3, Yogyakarta: Pustaka Pelajar. p. 34.

3. Results and Discussion

3.1. Legal Position of Buy Back Guarantee Agreement in Guaranteeing Home Ownership Credit Facilities.

In making an agreement, especially in the context of a sale and purchase agreement, there is a concept of a buy back guarantee which is a form of agreement that is born from the principle of freedom of contract. Literally, the term buy back guarantee comes from English which means "buy back guarantee". In practice, a buy back guarantee is a form of guarantee given by the seller to the buyer, stating that if the goods sold are damaged or cannot be used properly within the agreed warranty period, the seller is willing to buy back the goods from the buyer. Thus, this agreement provides additional protection for the buyer, while also showing the seller's responsibility for the quality of the goods being traded.

Buy back guarantee is a form of agreement that is not explicitly regulated by law, so its implementation is highly dependent on the good faith of the parties involved. Therefore, the implementation of the contents or clauses in this agreement deed is very important in achieving the objectives of the existence of the guarantee institution as an alternative guarantee. The buy back guarantee deed should still be able to provide legal protection and preferences to the parties involved, as is the case with guarantee institutions that are known in the guarantee law system in Indonesia. When viewed from its form and substance, this deed has similarities with a guarantee agreement (personal guarantee or corporate guarantee), which in Article 1820 of the Civil Code is known as borgtocht. However, there is a fundamental difference in terms of the legal subject. In borgtocht, the guarantor is a third party who initially had no legal relationship with the debtor, while in a buy back guarantee, the guarantor is a person or legal entity that previously had a legal relationship with the debtor—for example as a seller of goods. Therefore, the rights and obligations arising in this agreement are similar to the subrogation mechanism as regulated in Article 1400 BW, where there is a replacement of rights by a third party or guarantor who has paid the creditor. The difference lies in the source of the emergence of these rights; buy back guarantee arises solely because of the existence of an agreement, while subrogation can arise either based on an agreement or due to statutory provisions.

*Buy back guarantee*is part of the Home Ownership Credit (KPR) financing cooperation agreement, hereinafter referred to as PKS, between the bank and the developer. In practice, this buy back guarantee is often applied in the KPR financing scheme as a form of additional guarantee for the bank. However, there is a tendency for developments in the application of the buy back guarantee which according to the author is not quite right. This can be seen from the treatment of the buy back guarantee as a form of debt guarantee, where the provisions of debt guarantee are used to explain the mechanism and its implementation. In fact, conceptually, the buy back guarantee is not debt guarantee. This inaccuracy may

be difficult to avoid considering that the legal relationship between the bank and the debtor is basically a debt-receivable or borrowing relationship, as regulated in the credit agreement and/or debt recognition agreement. The debtor's main obligation in this relationship is to repay his debt to the bank as a creditor. Therefore, in the interests of the bank, the buy back guarantee is positioned as a guarantee for the debtor's debt payment obligations in the event of default. Although there is a shift in meaning from the original concept, the existence of a buy back guarantee in this practice cannot be separated from the need for certainty and legal protection in the guarantee system in the banking world.

As the party responsible for housing development, the Home Development Company (developer) has an important role in establishing cooperation with banks, especially in order to provide convenience for the community to own a home. This cooperation is carried out with the aim that the bank can provide financing facilities in the form of credit loans to prospective home buyers (debtor customers). Through this mechanism, developers can apply to the bank to provide Home Ownership Credit (KPR) facilities to users, so that the home buying process becomes more affordable. With the KPR facility from banking institutions, users do not need to pay in full in cash at the beginning, but can pay in installments for the price of the house over a certain period of time according to the agreed provisions. This scheme helps expand public access to home ownership, while accelerating the absorption of housing units that have been built by developers.

The cooperation step between the developer and the bank in providing the Home Ownership Credit (KPR) facility aims to help the developer achieve the sales target of the housing units offered to consumers. This KPR scheme is based on a credit agreement between the bank and the user (customer), which is made with the involvement of the developer as an intermediary. In its mechanism, when the bank distributes credit to the user, the funds from the credit are directly received by the developer as a form of payment for the house price. However, at this stage the bank cannot yet bind the guarantee in the form of a mortgage on the financed housing unit, because the house certification process is usually not complete. To overcome this risk, the bank requires a buy back guarantee from the developer. This guarantee states that if the debtor fails to fulfill his obligations in paying off the debt to the bank, the developer is obliged to pay off all of the debtor's remaining debt. Thus, the buy back guarantee becomes a form of temporary protection for the bank until the mortgage guarantee on the housing unit can be officially charged.

Therefore, banks have an obligation to strictly apply the principle of prudence as the main basis in carrying out their business activities, including in the distribution of Home Ownership Credit (KPR) to developers. This principle is clearly regulated in Article 8 paragraph (1) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking

Law), which emphasizes the importance of collateral as an instrument to minimize risks that may arise in the provision of credit. In the context of KPR financing, collateral plays a central role in ensuring the security of funds distributed by banks to debtors. In addition, Article 11 of the Banking Law also regulates the provision of credit guarantees by Bank Indonesia, which in its explanation emphasizes that collateral in the credit distribution process, including KPR to developers, is an important step in maintaining the health of the banking system and strengthening the bank's resilience to potential losses. Thus, the application of the principle of prudence through the regulation of credit guarantees is not only a form of protection against potential default, but also as part of a sustainable risk management strategy in the banking industry.

Buy Back Guarantee Acts are currently widely used in providing Home Ownership Credit (KPR) facilities, especially in housing projects that are still under construction. The existence of Buy Back Guarantee as a guarantor institution arises because in many cases, houses financed by banks have not been fully built by the developer, and the land certificates have not been processed, namely still in the stage of splitting the master certificate and registering rights in the name of the developer at the land office. This condition causes the deed of sale and purchase (AJB) in the name of the debtor to not be able to be made and signed, even though the land and buildings must be pledged to the bank as credit collateral. On the other hand, Buy Back Guarantee is also used in the Prosperous House project which targets Low-Income Communities (MBR), which generally have a fairly high credit risk profile. In addition, the location of housing that is less strategic or less marketable is also a consideration for banks in strengthening credit risk mitigation through the Buy Back Guarantee scheme. In other words, Buy Back Guarantee is an important tool for banks to obtain legal certainty and additional guarantees, especially in subsidized housing financing aimed at the lower middle class. Some of the main reasons banks ask developers to provide a buy back guarantee for KPR Sejahtera financing are:

1) The purchase of a housing unit by a consumer from a developer has not or has not been paid in full, the settlement of the housing unit comes from the disbursement of KPR funds.

2) The certificate for the housing unit has not been issued or has not been transferred to the debtor's name and/or the building has not been 100% (one hundred percent) completed.

3) The legal relationship between the developer and the consumer is still in the form of a sale and purchase agreement (sale and purchase agreement/PPJB) and the signing of the APHT has not been carried out.

4) In PJB, it means that the land rights have not been transferred from the developer to the debtor. PJB can be canceled by the developer, if the debtor defaults/negligently based on the provisions in the PPJB.

5) The Building Permit (IMB) for the house or housing has not been issued.

6) The down payment for a house and the costs to obtain a KPR Sejahtera paid by the debtor are relatively low, making it very vulnerable for debtors who have difficulty paying their credit installments to the bank to simply leave their house (run away).

If the debtor fails to fulfill its obligations or defaults on the credit agreement, the bank as the creditor will ask the developer to fulfill the obligations as stipulated in the Buy Back Guarantee agreement. This request begins when the bank sends an official notification or warning letter to the developer. Based on the agreement, the developer is obliged to pay off all of the debtor's payment obligations to the bank, including the principal, interest, and other costs arising from the default. After the developer has made the payment, the bank is required to submit all of the debtor's credit documents to the developer, including but not limited to the Credit Agreement, Deed of Debt Acknowledgement, and collateral agreements such as the Deed of Granting of Mortgage Rights (APHT). Along with the payment, in order to ensure legal certainty and protection, both the bank and the developer should make and sign a notarial Subrogation Agreement Deed. The making of this deed is important to follow up on the implementation of the Buy Back Guarantee and ensure that the developer has the legal power to replace the bank's position as a creditor. With subrogation, all of the bank's rights and obligations over receivables and collateral objects are transferred to the developer, who now has full authority to collect debtors and execute collateral in the event of further default. The main purpose of the developer making payments to the bank in implementing the Buy Back Guarantee is not to free the debtor from the obligation to pay installments or debts on the house financed through KPR, but to replace the bank's position as a creditor. Thus, after the developer has paid off the debtor's obligations to the bank, the legal position of the creditor is transferred from the bank to the developer through a subrogation mechanism. In its new position, the developer has full rights to collect the remaining debt from the debtor. If the debtor again defaults against the developer, the developer has the right to execute the objects or assets that were pledged in the previous credit agreement, such as the mortgage on the house. From the bank's point of view, debt repayment by the developer automatically eliminates the legal relationship between the bank and the debtor concerned, so that the bank no longer has a claim against the debtor. On the other hand, the repayment also means reducing the developer's responsibility to the bank within the scope of the Buy Back Guarantee agreement. Therefore, in the case of a debtor who has defaulted and is paid off by the developer, the legal relationship between the three parties which was originally

triangular (bank-debtor-developer) changes into a bilateral legal relationship, namely only between the developer and the debtor. According to Subekti's opinion and the provisions of Article 1238 of the Civil Code, default can be in the form of the debtor not paying off the loan at all, paying off the loan but not on time,paying off a loan but not in accordance with what was agreed upon, or doing something that according to the agreement should not be done.[5]In a buy back guarantee, the guarantee is carried out by the developer on the basis of the right to "buy back" which means the repayment of the debtor's credit debt to the bank accompanied by the withdrawal of the debtor's housing unit that was previously sold by the developer to him. Thus, the developer is considered to have bought back the debtor's housing unit through the payment of an amount of money used by the developer to pay off the debtor's debt to the bank.

The regulation regarding the right to repurchase an item is stated in Article 1519 of the Civil Code, which states that the seller has the right to take back the item that has been sold to the buyer on condition that the original selling price is reimbursed. In the context of a mortgage financing cooperation agreement, this provision is relevant to the position of the developer who acts as a guarantor (borg) for the repayment of the debtor's debt to the bank. The developer, in this case, has the right to repossess the house that has previously been sold to the debtor if the debtor fails to pay off his obligations to the bank. This right applies as long as the developer has not completed the construction of the housing unit or has not submitted the original documents relating to home ownership, such as the Land Rights Certificate and other important documents, to the bank. Thus, the developer is not only responsible for the repayment of the debtor's debt to the bank, but also retains legal control over the collateral object during the administrative and construction processes that have not been completed. This provision strengthens the position of the developer in order to protect the legal interests of all parties involved, including the bank as a creditor.

The obligation arising in a buy back guarantee agreement is basically a conditional obligation, which will only be carried out by a third party if certain conditions occur, namely default by the debtor. In this case, the third party, which is generally the developer, has an obligation to fulfill the obligation stated in the buy back guarantee agreement only if the debtor is declared in default by the creditor (bank). In other words, the agreement does not automatically bind the third party from the start, but will be effective and binding when the debtor fails to fulfill his obligations, such as paying off mortgage installments. Once the debtor is declared in default, the third party is directly burdened with the responsibility to take over the obligation, including paying off the debtor's debt to the bank. This mechanism

[5]Djaja S & Meliala. (2015). *Perkembangan Hukum Perdata Tentang Benda dan Hukum Perikatan*, Bandung: Nuansa Aulia. p. 75.

provides additional protection for creditors, while ensuring a guarantee of payment even if the debtor fails to carry out his obligations.[6]

3.2. User (Customer) Protection in Buy Back Guarantee for Down Payments That Have Been Paid to Developers and Credit Installments That Have Been Paid to Banks.

Legal protection for users or debtors, who in this case also act as consumers, is a very important aspect, considering that in practice there is often an imbalance in the position between the parties involved. This imbalance is clearly visible in the implementation of the buy back guarantee agreement, which often causes problems, both between developers and banks and between developers or banks and consumers or debtors. These problems generally arise because the provisions in the buy back guarantee agreement are not formulated clearly or in detail, so that each party tends to interpret the contents of the agreement based on their respective interests in order to avoid losses. In practice, not all credit that has been given to debtors can run smoothly; some experience obstacles, even potentially leading to congestion. Therefore, it is important for every agreement involving a buy back guarantee to be prepared carefully and transparently in order to provide legal certainty, as well as protect the rights and interests of all parties, especially consumers who are in a weaker position.

In the event of a bad credit, the developer will execute the Buy Back Guarantee agreement that has been previously made and signed as a form of guarantee that the developer will buy back the property if the debtor defaults. This buy back guarantee agreement comes into effect from the time of the indent home purchase transaction. For example, when someone, let's call them A, wants to buy a house indent in a housing complex or apartment through a Home Ownership Credit (KPR) facility, but because the house is still under construction, the bank will ask the developer to make a Buy Back Guarantee deed. This deed serves as a guarantee that if there is a default in credit payments by the debtor, the developer is obliged to take over and pay off the credit to the bank. Thus, this mechanism not only protects the bank from the risk of bad credit, but also becomes a form of developer responsibility in ensuring the sustainability of the project and maintaining trust between all parties involved.

In UUPK, the provisions governing the return of down payments or installments are only when there are problems from the developer such as offering, producing, and advertising goods and/or services incorrectly and/or unreally. This is based on Article 9 paragraph 1 of UUPK, which contains the rule that:

[6]Dona Budi Kharisma, Buy Back Guarantee Dan Perkembangan Hukum Jaminan Kontemporer Di Indonesia. *Privat Law,* Fakultas Hukum Universitas Sebelas Maret Surakarta, 2015, Vol, Iii No. 2.

1) Business actors are prohibited from offering, producing, advertising goods and/or services incorrectly, and/or as if:

a. The item has met and/or has a discount, special price, certain quality standard, certain style or fashion, certain characteristics, certain history or use;

b. the goods are in good condition and/or new;

c. the goods and/or services have obtained and/or have sponsorship, approval, certain equipment, certain benefits, certain work characteristics or accessories;

d. the goods and/or services are made by a company that has sponsorship, approval or affiliation;

e. the goods and/or services are available;

f. the item does not contain any hidden defects;

g. the item is an accessory to a particular item;

h. the goods come from a certain area;

i. directly or indirectly degrade other goods and/or services;

j. using exaggerated words, such as safe, harmless, contains no risks or side effects, does not appear to be a complete description;

k. offering something that contains an uncertain promise.

Thus, in the Consumer Protection Law (UUPK), the regulation is more focused on protecting consumer rights against actions or negligence of business actors, in this case developers. UUPK regulates that if a developer builds a property that does not comply with the agreed specifications, the quality of the building does not meet standards, or housing facilities are not realized as promised, then these actions are considered violations of consumer rights. However, it is different if the consumer or user is the one who commits a breach of contract, such as failing to fulfill payment obligations or canceling unilaterally, then this is not specifically regulated in UUPK. In such conditions, disputes are more often resolved based on civil agreements and not within the framework of consumer protection according to UUPK.

Similarly, in the provisions of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law), there are no specific provisions that provide protection to users or debtors regarding the return of down payments or installments that have been paid. The Banking Law focuses more on the aspect of customer protection in terms of the risk of loss that may arise in banking activities, maintaining bank confidentiality, and guaranteeing the security of customer deposits. However, there is not a single

provision in this Law that explicitly regulates or requires banks to return funds in the form of down payments or installments to debtors in the event of a cancellation of the purchase or default in the Home Ownership Credit (KPR) facility. Thus, protection against these matters depends more on the contents of the agreement that has been agreed upon between the parties.

Furthermore, if we refer to the provisions in Article 1464 of the Civil Code, that if a purchase is made by providing a deposit or down payment, then if the buyer (in this case the user or debtor) does not pay the remaining balance, the down payment is considered "forfeited". This means that the buyer cannot demand the return of the down payment and the seller is not obliged to return it. The article also emphasizes that one party cannot simply cancel the sale and purchase agreement by only relying on the return or receipt of the down payment. This provision makes it clear that if the user or debtor fails to continue his payment obligations after providing the down payment, then the money becomes the property of the seller as a form of compensation for the unilateral cancellation by the buyer.

Cancellation of a house purchase may also not be done by the customer (user) with the intention of partially returning the down payment. This cannot be done, because it is contrary to Article 1464 of the Civil Code. The down payment cannot be returned because of the consequences of not paying off the payment promised by the customer (user). It is important to remember that the agreement is based on Article 1338 of the Civil Code, which contains the following rules:

“All agreements made in accordance with the law apply as law for those who make them. The agreement cannot be withdrawn except by agreement of both parties, or for reasons determined by law. Agreements must be carried out in good faith.”

Based on existing jurisprudence, when associated with the practice of buy back guarantee agreements in financing Home Ownership Credit (KPR), it can be concluded that the return of the deposit or down payment can only be done if the seller, in this case the developer, is proven to be in default. This means that if the developer fails to fulfill obligations such as handing over the unit according to the agreement or building a house that does not meet specifications, then the user is entitled to a refund of the deposit. However, on the other hand, if the default occurs due to the fault of the consumer or user, such as failing to fulfill payment obligations to the bank, then the deposit that has been given cannot be returned. This emphasizes the principle that the party in default cannot demand a refund of the money that has been given in the framework of the agreement, and the buy back guarantee mechanism does not change this responsibility.

This occurs because of the legal relationship arising from the buy back guarantee agreement which functions as a form of guarantee from the developer to the creditor (bank). In this context, the buy back guarantee clause is used by the

creditor as a basis for asking the developer to buy back the property unit if the debtor (user) defaults. In other words, through this clause, a mechanism for transferring and handing over debt payment obligations from the debtor to the developer occurs. This process can also be understood as a form of subrogation, namely when a third party in this case the developer takes over the debtor's debt and pays it off to the creditor. Thus, the buy back guarantee becomes a legal means that allows the developer to replace the debtor's position in debt repayment obligations, in order to protect the interests and minimize the risk of loss of the bank as the creditor.

4. Conclusion

The position of Buy Back Guarantee in housing financing is an accessory agreement that depends on the main agreement between the debtor and the creditor, namely the bank. This agreement does not stand alone, but is an integral part of the debt agreement and has a strong legal basis and executorial power, so that it can be used by the bank to demand fulfillment of obligations if the debtor defaults. This provides protection and legal certainty for the bank, because the developer as a third party is responsible for paying off the debtor's debt if there is a default. However, legal protection for users (customers) in the Buy Back Guarantee scheme is still weak, especially regarding the down payment paid to the developer and the installments that have been deposited with the bank. In practice, if the user fails to fulfill the credit obligations, the down payment and installments are often considered forfeited and not returned, unless the default occurs due to the developer's fault. Although the Consumer Protection Law provides the principle of justice, it has not explicitly regulated protection in the context of the Buy Back Guarantee. Therefore, protection for users is still very dependent on the contents of the agreement and the good faith of the parties. For this reason, stricter and more detailed regulations are needed to guarantee consumer rights, prevent unilateral losses, and create balance in the legal relationship between users, developers, and banks.

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