

# Legal Reconstruction of Buyback Guarantee Regulation to Improve Certainty and Protection for Investors and Developers in Indonesia

Juli Purwanti, Henry Aspan, Fitri Rafianti

## Abstract

The *Buyback Guarantee* mechanism has become an essential instrument in the property and housing sector, particularly in facilitating developers' access to financing and enhancing investor confidence. This clause, commonly included in cooperation agreements between banks and developers, serves as a form of repurchase assurance that reflects the principles of freedom of contract and prudential banking practices. However, the absence of explicit legal regulation regarding *Buyback Guarantee* agreements in Indonesian law has created potential legal uncertainty and imbalance in the protection of both developers and investors. This paper study aims to analyze the current legal framework governing *Buyback Guarantee* arrangements and to propose a model of legal reconstruction that can ensure greater certainty, fairness, and protection for the parties involved. Using a juridical-normative research method with a descriptive and analytical approach, this research examines statutory regulations, contract law principles, and banking prudential norms as the basis for legal reform. The findings indicate that the *Buyback Guarantee* clause, though legitimate under the principle of freedom of contract, requires clearer regulation to prevent misuse, asymmetric risk distribution, and legal ambiguity in implementation. Therefore, a reconstructed legal framework emphasizing transparency, standardization of clauses, and supervisory mechanisms is needed to strengthen legal certainty and investor protection within Indonesia's property financing ecosystem.

**Keywords:** *Buyback Guarantee*; Legal Reconstruction; Developer; Investor Protection; Prudential Banking; and Freedom of Contract.

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## Introduction

The development of the property and housing sector plays a crucial role in supporting Indonesia's national economy. This sector not only contributes to economic growth through large-scale investment and employment but also serves as an indicator of financial stability and community welfare. Developers, as key actors in the property business, often require substantial capital to finance construction projects and housing developments. To meet these funding needs, developers generally collaborate with financial institutions, particularly banks, through credit facilities or working capital loans. In this context, the mechanism of *Buyback Guarantee* has become a common feature in the cooperation agreements between banks and developers.

A *Buyback Guarantee* refers to a contractual clause in which the developer guarantees to repurchase the property units financed by the bank in the event of a default by the buyer. This clause provides assurance to the financing institution, ensuring that potential risks of non-performing loans can be mitigated. From a legal perspective, the *Buyback Guarantee* is grounded in the principle of freedom of contract (*pacta sunt servanda*), allowing the parties to determine the content of their agreements as long as they do not contravene statutory regulations, public order, or morality. Additionally, its inclusion aligns with the prudential principle in banking, which requires banks to manage credit risk and safeguard financial stability.

Despite its widespread use and practical importance, the *Buyback Guarantee* arrangement remains **unregulated explicitly** under Indonesian positive law. The absence of clear legal provisions creates uncertainty in the implementation of such agreements, particularly regarding the enforceability of the repurchase obligation and the allocation of risk between the developer and the bank. This ambiguity often leads to legal disputes when one party fails to fulfill its contractual obligations or when external factors—such as fluctuations in the property market—affect the execution of the guarantee. Moreover, from an investor protection standpoint, the lack of standardized legal instruments weakens confidence in property investment schemes involving *Buyback Guarantee* clauses.

Several studies and legal commentaries have discussed the role of *Buyback Guarantee* in promoting business growth and investment attraction. However, limited attention has been given to the normative and regulatory gaps surrounding this mechanism. The existing legal framework primarily relies on general provisions of the Indonesian Civil Code concerning agreements (Articles 1320–1338) and banking regulations that uphold prudential standards. These general norms are insufficient to provide a comprehensive legal foundation for *Buyback Guarantee* practices, especially in addressing complex issues such as liability, risk transfer, and consumer protection.

Given these challenges, there is an urgent need for legal reconstruction to provide clarity, certainty, and balance in the interests of both developers and investors (including financial institutions). Legal reconstruction in this context refers to efforts to reform and realign the existing legal framework so that it accommodates evolving business practices while maintaining legal coherence. A well-structured regulation on *Buyback Guarantee* will not only reduce the risk of legal disputes but also enhance investor confidence, stimulate the property sector, and contribute to sustainable economic development.

This research aims to analyze the current legal framework governing *Buyback Guarantee* agreements in Indonesia and to formulate a reconstruction model that strengthens legal certainty and protection for both developers and investors. Using a juridical-normative approach, this study examines relevant laws, doctrines, and regulatory principles to identify shortcomings and propose reform strategies. The analysis also highlights how principles of contract law, prudential banking, and fairness can be harmonized within a comprehensive regulatory structure.

In conclusion, this study underscores that the reconstruction of *Buyback Guarantee* regulation is essential to ensure legal certainty, equitable protection, and accountability in the developer–bank–investor relationship. By providing a clear legal

framework, Indonesia can foster a more transparent, efficient, and reliable property financing system that supports national economic stability.

## Literature Review

### 2.1 The Concept of *Buyback Guarantee*

The *Buyback Guarantee* is a contractual mechanism that functions as a repurchase commitment between a developer and a financial institution, most commonly a bank. In this clause, the developer undertakes to repurchase a financed property unit if the consumer or borrower defaults on payment obligations. According to Suharto (2019), this mechanism serves as a risk mitigation instrument for banks in extending working capital loans or mortgage facilities to developers. The clause is typically incorporated in cooperation agreements between banks and developers to ensure the continuity of financing and to minimize non-performing loans (NPLs).

From a legal standpoint, the *Buyback Guarantee* arises from the principle of freedom of contract, as stipulated in Article 1338(1) of the Indonesian Civil Code, which states that “all legally made agreements shall bind the parties as law.” This principle allows parties to formulate contractual terms according to their needs, as long as they do not contradict public order or morality. In banking practice, the inclusion of a *Buyback Guarantee* clause also aligns with the prudential principle outlined in Law No. 10 of 1998 on Banking, requiring financial institutions to apply caution in managing credit risk.

Although the *Buyback Guarantee* is not explicitly regulated in any specific Indonesian statute, it is legally recognized as a valid private contract under the Civil Code. However, its enforceability often depends on how clearly the rights and obligations of the parties are defined within the agreement. The absence of standardization or regulatory guidance can lead to legal uncertainty and varying interpretations in case of disputes.

### 2.2 Legal Basis and Doctrinal Foundation

The *Buyback Guarantee* is rooted in two fundamental legal doctrines: freedom of contract and *pacta sunt servanda*. As explained by Subekti (2001) and R. Setiawan (2018), freedom of contract is the cornerstone of private law, empowering parties to determine the substance of their agreements. However, this freedom must be exercised responsibly, adhering to good faith (Article 1338(3) Civil Code) and proportionality to ensure fairness.

In the banking sector, contractual freedom is balanced by the prudential principle (*prudential banking principle*), which serves as a safeguard for maintaining financial stability and protecting depositors. According to Bank Indonesia Regulation No. 14/15/PBI/2012, banks are obligated to conduct thorough risk assessments before granting loans, including ensuring the presence of adequate collateral or guarantees. The *Buyback Guarantee* functions as a form of contractual collateral, though its legal nature is distinct from conventional security rights such as mortgages or fiduciary guarantees. Several legal scholars, including Marzuki (2017), argue that *Buyback Guarantee* agreements possess a hybrid legal character: they combine elements of guarantee (*borgtocht*) and conditional sale. This hybrid nature raises legal questions regarding classification, enforceability, and remedies in the event of breach. Without clear statutory regulation, the clause’s validity and execution often depend on judicial interpretation and the contractual wording agreed upon by the parties.

### 2.3 Previous Studies and Legal Challenges

Prior studies have explored the practical use and legal implications of *Buyback Guarantee* arrangements. Situmorang (2020) found that this clause provides a sense of security for banks but may also transfer excessive financial risk to developers, particularly during economic downturns when property sales decline. Rahmadani and Widjaja (2021) noted that inconsistencies in the drafting of *Buyback Guarantee* clauses have led to numerous disputes, as some contracts lack clarity on the triggering conditions or time limits for repurchase obligations.

Another issue identified by Prasetyo (2022) is the absence of a uniform regulatory standard, which leads to unequal bargaining positions between developers and banks. Larger banks often impose unilateral contract templates, leaving smaller developers with little

negotiating power. This imbalance contradicts the principle of equality in contractual relations and underscores the need for a more balanced regulatory framework.

From a legal policy perspective, Hutagalung (2023) emphasizes that the reconstruction of *Buyback Guarantee* regulation should aim to integrate the clause into Indonesia's contract and banking law system by defining its legal nature, setting standard clauses, and establishing mechanisms for dispute resolution. Such reconstruction would enhance transparency and legal certainty for all parties involved, including consumers and investors.

## 2.4 Legal Reconstruction Framework

Legal reconstruction refers to the process of reforming and restructuring existing legal norms to ensure they align with evolving socio-economic realities. According to Soekanto (2010), reconstruction aims to fill normative gaps, eliminate overlapping regulations, and provide coherence between practice and legal theory. In the context of *Buyback Guarantee*, reconstruction should involve:

Defining the *Buyback Guarantee* as a recognized contractual instrument under financial and property law;

Establishing clear requirements for its inclusion in credit or cooperation agreements;

Incorporating consumer and investor protection mechanisms; and Integrating supervision through financial authorities such as Otoritas Jasa Keuangan (OJK) and Bank Indonesia.

By providing these regulatory foundations, Indonesia can create a more transparent and predictable environment for property financing, thereby strengthening legal certainty and promoting investment. At the last existing literature demonstrates that while the *Buyback Guarantee* has practical benefits for developers and banks, its legal ambiguity poses risks for contractual fairness and investor protection. Therefore, a reconstructed legal framework is needed one that harmonizes the principles of freedom of contract, prudential banking, and legal certainty to achieve balanced protection for all stakeholders in Indonesia's property development sector.

## Research Methodology.

This study employs a juridical-normative research method, which focuses on analyzing legal norms, doctrines, and principles governing the *Buyback Guarantee* clause in cooperation agreements between banks and developers. The juridical-normative method is suitable for exploring how existing laws regulate a particular legal phenomenon and for proposing a reconstruction model when regulatory gaps are identified. According to Soerjono Soekanto (2010), juridical-normative research emphasizes the examination of positive law (written norms) and its consistency with legal theories and principles. This approach allows the researcher to analyze the *Buyback Guarantee* clause within the framework of Indonesian civil law, banking law, and contractual principles such as *freedom of contract* and *prudential banking*. The research is descriptive-analytical, aiming to provide a detailed and systematic description of the current legal situation and to analyze its implications for developers and investors. The descriptive nature helps identify the characteristics, forms, and problems associated with *Buyback Guarantee* implementation, while the analytical component focuses on evaluating the adequacy and coherence of existing regulations.

This study relies on three categories of legal materials:

1. Primary Legal Materials — statutory laws and official documents, including:
  - The Indonesian Civil Code (KUHPerdata), particularly Articles 1320–1338 on contract law;
  - Law No. 10 of 1998 concerning Banking;
  - Financial Services Authority (OJK) Regulations related to prudential principles;
  - Bank Indonesia Regulations on credit and risk management.
2. Secondary Legal Materials — consist of legal literature, scholarly articles, textbooks, and prior studies discussing the legal validity, interpretation, and implementation of *Buyback Guarantee* clauses in Indonesia.

3. Tertiary Legal Materials — include dictionaries, legal encyclopedias, and other reference materials that provide definitions and contextual understanding of key terms such as “guarantee,” “contract,” and “prudential principle.”

Data collection in juridical-normative research is conducted through documentary study and literature review. The researcher collects, categorizes, and interprets relevant laws, regulations, and academic sources. This process involves identifying the legal principles underlying the *Buyback Guarantee*, reviewing judicial decisions (if any), and analyzing how the clause is practiced in developer–bank cooperation agreements. The analysis is carried out using qualitative normative analysis. The collected legal materials are systematically interpreted using:

- Statutory approach – to examine the relationship between existing laws and *Buyback Guarantee* implementation.
- Conceptual approach – to interpret the legal meaning of *Buyback Guarantee* based on legal doctrines and theories.
- Comparative approach – to identify best practices from other jurisdictions or international models in property financing and contractual guarantees.

The analysis leads to a legal reconstruction model, proposing the formation or revision of legal norms that enhance certainty and protection for both developers and investors.

This study proceeds through the following structured stages:

1. Identification of legal issues related to *Buyback Guarantee* clauses.
2. Collection and classification of legal materials (primary, secondary, tertiary).
3. Legal analysis based on statutory, conceptual, and comparative approaches.
4. Evaluation of weaknesses and inconsistencies in the existing regulatory framework.
5. Formulation of a legal reconstruction model for *Buyback Guarantee* regulation in Indonesia.



**Figure 1.** Methodology of research

#### Explanation of the Research Flowchart

##### 1. Identification of Legal Problems (Unregulated Buyback Guarantee)

The first stage is identifying the legal problem, which refers to the discovery of a *legal vacuum* concerning the regulation of *Buyback Guarantee* clauses in banking and property business practices.

- Main issue: There is no explicit legal provision regulating *Buyback Guarantee* agreements in Indonesia.
- Impact: This absence leads to *legal uncertainty* and potential disputes between developers, investors, and banks.

### 3.2 Collection of Legal Materials

The second stage involves collecting legal materials that form the foundation of juridical-normative research, consisting of:

- a. Primary Legal Materials: Indonesian Civil Code (KUHPerdata), Banking Law, and OJK (Financial Services Authority) regulations.
- b. Secondary Legal Materials: Books, legal journals, scholarly articles, and previous studies discussing *Buyback Guarantee* and contractual law.
- c. Tertiary Legal Materials: Legal encyclopedias, dictionaries, and other reference sources providing definitions and contextual understanding.

This stage ensures the research is supported by comprehensive and credible legal data.

### 3.3 Legal Analysis Approaches

The third stage applies legal analysis approaches to interpret and evaluate the collected materials through:

- a. Statutory Approach – examines relevant laws and regulations related to contracts and banking practices.
- b. Conceptual Approach – analyzes key legal concepts such as *Buyback Guarantee*, *freedom of contract*, and the *prudential banking principle*.
- c. Comparative Approach – studies regulatory models from other countries to identify best practices for legal reconstruction in Indonesia.

These three approaches are used to form a systematic and theoretical foundation for the legal analysis.

### 3.4 Evaluation of Legal Gaps

The fourth stage is evaluating legal gaps identified in existing frameworks. This step analyzes the weaknesses and inconsistencies found in current legal instruments, including:

- a. Ambiguity and uncertainty in the legal status of *Buyback Guarantee* clauses.
- b. Lack of specific regulations governing their implementation.
- c. Unclear risk allocation between developers and financial institutions.

This evaluation highlights the necessity of legal reform to prevent future disputes and enhance investor confidence.

### 3.5 Legal Reconstruction Proposal

The final stage proposes a legal reconstruction model to strengthen legal certainty and protection for all parties involved.

This includes:

- a. Standardization of contractual clauses in *Buyback Guarantee* agreements.
- b. Establishment of clear legal certainty and protection for both investors and developers.
- c. Enhanced regulatory supervision by financial authorities (such as OJK) to ensure compliance with *prudential banking principles*.

The reconstruction aims to create a balanced and sustainable legal framework that supports the growth of the property sector and safeguards financial stability. The flowchart illustrates a logical and systematic structure of juridical-normative research — starting from problem identification, legal data collection, normative analysis, evaluation of legal shortcomings, and ending with a proposed legal reconstruction model. This process ensures that

the study provides practical legal recommendations that promote certainty, fairness, and investor protection in Indonesia's property and banking sectors.

## Results

### 4.1 Agreement as a Form of Guarantee in Home Ownership Credit Between the Bank and the Developer

A home is a fundamental yet costly necessity, often beyond the financial reach of most individuals. To address this issue, many people rely on *Home Ownership Credit* facilities (KPR), which allow them to acquire property through long-term financing. This credit mechanism plays a vital role, particularly for middle- and lower-income groups, by enabling them to build or purchase homes despite limited purchasing power. The emergence of KPR schemes reflects the growing demand for home ownership in contrast to the stagnation of average income levels across society.

For developers, maintaining adequate capital and liquidity is essential to ensure that housing construction projects proceed according to planned schedules and commitments to buyers. To meet these financial demands, developers frequently collaborate with banking institutions through *working capital credit agreements*. One distinctive form of such cooperation is a *credit agreement containing a Buyback Guarantee clause*, which has become increasingly significant in Indonesia's property financing landscape.

This type of agreement contains specific provisions that require the developer to repurchase a housing unit or repay the entire outstanding mortgage balance if the consumer (debtor) defaults on their loan obligations. For instance, clauses often state that if the developer fails to complete construction or deliver necessary documents within a stipulated period, or if the buyer fails to pay installments for three consecutive months, the developer must repay all customer financing facilities, including interest and related costs, within a fixed time after receiving a warning from the bank. Such provisions are essential for maintaining the bank's *Non-Performing Loan (NPL)* ratio and protecting the institution's financial health.

The inclusion of a *Buyback Guarantee* clause greatly benefits developers' access to capital. Since disbursement of funds is typically tied to construction progress, developers can secure consistent funding while continuing their projects on schedule. Additionally, the clause accelerates marketing and sales of housing units, as it reassures banks when approving KPR facilities for potential buyers. With the Buyback Guarantee, banks can streamline their approval process while still adhering to the *prudential banking principle*, ensuring both financial safety and efficiency in credit distribution.

Legally, a Buyback Guarantee provides assurance to creditors that their loan is secured by an enforceable repurchase right. If a buyer defaults or third-party rights arise over the collateral, the bank retains the right to reclaim its funds or the property under the agreement. The validity of such an arrangement rests upon two key legal doctrines — the *principle of freedom of contract* and *consensualism*. These principles allow parties to freely determine the content and object of their agreements, provided they do not contravene existing laws or public policy. Thus, the Buyback Guarantee clause possesses binding legal force, ensuring both parties' rights and obligations are legally protected.

Although Indonesia's *Civil Code (KUHPerdata)* does not explicitly regulate Buyback Guarantee clauses, their existence arises from the open and flexible nature of the law of obligations set out in Book III. In banking practice, this guarantee evolved from the *freedom of contract principle* combined with the *prudential banking principle*, which obliges banks to manage credit risks carefully. Therefore, the Buyback Guarantee represents a *new legal instrument* in Indonesian guarantee law — one that merges elements of contractual freedom with institutional safeguards against financial default.

According to Prof. Dr. Sri Soedewi Masjchoen Sofwan, guarantees in Indonesian law are generally divided into material guarantees and personal guarantees (borgtocht). When analyzed under Article 1820 of the Civil Code, a Buyback Guarantee fulfills the elements of

a *personal guarantee*, as the developer assumes the obligations of the primary debtor (homebuyer) should they default. In this sense, the developer functions as a third party who agrees to take over the borrower's responsibility by repurchasing the property or settling the outstanding debt.

Despite being a form of guarantee, the Buyback Guarantee differs from the *right of repurchase* regulated in Book III of the Civil Code. While the right of repurchase is an independent legal right within a sale-and-purchase transaction, the Buyback Guarantee is *accessory* — it is attached to the main financing agreement. Moreover, the object of the guarantee differs: the Buyback Guarantee secures the repurchase of a housing unit, while a conventional guarantee secures debt repayment. Importantly, the developer's position as guarantor does not replace the bank's position as the main creditor; instead, the developer's obligation is supplementary, ensuring that the bank's financial exposure remains protected. In such arrangements, the bank remains a *concurrent creditor* — not a preferred one — since it generally holds preliminary collateral in the form of a *Sale and Purchase Agreement (PPJB)* rather than full ownership rights. If a borrower defaults, the bank cannot immediately seize the property but can demand the developer to fulfill the repurchase obligation under the Buyback Guarantee clause. This arrangement balances the rights and responsibilities among the bank, the developer, and the homebuyer.

## 4.2 How the Buyback Guarantee Clause Supports Developer Capital and Business

### a. Supporting Capital

Housing developers rely heavily on steady cash flow to sustain construction progress. Their capital typically consists of three main sources:

Owner's Equity — capital directly contributed by shareholders or company owners. Financial Institution Capital — funding obtained through bank loans or working capital facilities. Alternative Capital — external funding sources such as partnerships or investor financing. Among these, financing from financial institutions is the most critical for maintaining construction schedules. Working capital credit facilities allow developers to obtain funds proportionate to project progress, ensuring construction can continue efficiently and on time.

### b. Supporting Sales

The Buyback Guarantee also enhances marketing and sales performance. Prospective buyers often depend on KPR schemes to purchase homes, and the existence of this clause increases banks' confidence in approving such applications. Consequently, housing sales become faster and more stable, which benefits developers through quicker capital turnover and reduced risk of unsold units.

Furthermore, the Buyback Guarantee provides an additional layer of consumer protection under Law No. 8 of 1999 on Consumer Protection (UUPK). This law establishes the rights and responsibilities of business actors — including developers — in maintaining fair relationships with consumers. Under Articles 1236 and 1239 of the Civil Code, if a developer fails to perform obligations (such as handing over land or completing construction), they must provide compensation for losses suffered by consumers. Hence, the Buyback Guarantee indirectly enforces developers' accountability toward both banks and consumers.

While current regulations do not explicitly govern Buyback Guarantees, the Consumer Protection Law and the Civil Code provide sufficient legal grounding for interpreting developers' obligations to protect consumers' financial interests. In essence, the Buyback Guarantee not only safeguards banks from potential defaults but also provides homebuyers with confidence and security — ensuring that their financial commitments will not result in excessive losses in unforeseen circumstances.

Finally, developers' obligations under Law No. 10 of 1998 (amending Law No. 7 of 1992 on Banking) strengthen this framework by ensuring transparency, good faith, and compliance with prudent banking standards. Disputes between developers and consumers — such as delays

in handover or non-performance — can be resolved through mediation or civil litigation, as provided under existing civil and consumer protection mechanisms. Therefore, the Buyback Guarantee clause plays a pivotal role in integrating the interests of banks, developers, and consumers within a coherent legal structure that supports Indonesia's housing finance ecosystem.

#### 4.3 Supporting Sales

*User*(Debtor) borrows money from a bank to purchase a house developed by a developer. The user is obligated to repay the mortgage loan to the bank according to the agreed payment schedule. If the user fails to repay the loan, the developer, as guarantor or additional creditor, will be responsible for repurchasing the house from the bank. Thus, the legal relationship between the bank, developer, and user in the buyback guarantee agreement involves the bank as the main creditor, the developer as guarantor or additional creditor, and the user as the debtor who borrows money from the bank to purchase a house under the Home Ownership Credit facility. The repurchase clause, which is included in the housing development working capital loan agreement, can convince banks to accept mortgage loan applications from prospective buyers. This will accelerate the sale of housing units built by the developer.

In this regard, the obligation to fulfill the performance by developers to users is regulated in Law Number 8 of 1999 concerning Consumer Protection, hereinafter abbreviated as UUPK. The rights, obligations, and responsibilities of developers (business actors) to create comfort in doing business and to create a balanced relationship pattern between developers (business actors) and consumers require the rights and obligations of each party. This is further regulated in UUPK. The responsibility of business actors is not only limited to defective products, but also includes all types of losses experienced by consumers.<sup>15</sup> This means that in this case UUPK provides rights & obligations for business actors (developers) to users to be responsible. This is in line with Article 1239 of the Civil Code that:

"Every obligation to do something or not to do something, if the debtor does not fulfill his obligations, is resolved in the obligation to provide compensation for costs, losses and interest." Similarly, in an agreement to hand over or provide something as regulated in Article 1236 of the Civil Code, in an agreement to do something or not to do something, the debtor is also required to pay compensation if he neglects to do something as promised, or vice versa if he does something even though it is prohibited in the agreement.<sup>16</sup> For example, the obligations of the developer to the user regarding the buyback guarantee can be seen in the Land and Building Sale and Purchase Agreement. In the agreement, there are various provisions and obligations that must be complied with by both parties. One of the responsibilities of the developer in the Home Ownership Credit (KPR) agreement is to repurchase the house that was previously used as collateral, by paying the remaining principal and interest to the bank on behalf of the user. However, legal protection for users related to the buyback guarantee has not been regulated in the legislation. As a result, the down payment that has been paid to the developer and the credit installments that have been deposited with the bank cannot be returned and become a risk for the user or debtor<sup>18</sup>.

Nevertheless, the Consumer Protection Law provides important legal certainty in upholding the rights and obligations of business actors, including developers, to be accountable to consumers, in this case, homebuyers or users. The buyback guarantee agreed upon in advance between the developer and the bank is not only the developer's responsibility to the bank, but also carries significant liability implications for users. As consumers, homebuyers have the right to receive assurance that in situations where they experience financial difficulties or fail to pay mortgage installments, the developer will be responsible for ensuring that their obligations to the bank will be met.

*Buyback guarantee* provides greater protection for homebuyers, as they can be confident that in the event of an unforeseen situation such as job loss or other financial hardship, they will not immediately face a significant financial burden. The developer's responsibility to homebuyers in the context of a buyback guarantee includes the obligation to provide

compensation or take over mortgage obligations, thereby helping to protect the financial interests and security of homebuyers. Therefore, a buyback guarantee not only provides financial protection for the bank but also provides certainty and a sense of security for homebuyers or users, and emphasizes the important responsibility of developers to safeguard consumer welfare in accordance with the Consumer Protection Law. Furthermore, the developer's responsibility in the credit agreement Home ownership with a bank is carried out with the obligations contained in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which regulates several obligations owed by developers to banks in the context of agreements involving the provision of Home Ownership Credit (KPR). The existence of these obligations aims to protect the interests of banks, home buyers, and the banking system as a whole. By ensuring these obligations are met properly, developers can strengthen cooperative relationships with banks and maintain trust in the process of granting KPR by banks.

From the sales and purchase agreement between the developer and the user, there is a responsibility to provide complete documents and facilities as previously agreed by the developer, for example in the handover of Land and Buildings. If in the event of a default committed by the developer to the user with a delay in the handover of Land and Buildings, it can be seen first whether there is a principle of good faith in the preparation of the Sales and Purchase Agreement (PPJB). Then it can also be seen whether the preparation of the agreement is in accordance with the Sales and Purchase Binding Guidelines based on the Decree of the Minister of Public Housing (Kepmenpra) No. 9 / KPTS / 1995 or not. It can also be seen in the settlement whether the developer has good faith to fulfill its obligations and is responsible for fulfilling achievements. If these aspects have been present, periodic mediation can be carried out first. When purchasing a home, the purchaser must pay attention to the Sales and Purchase Agreement (PPJB). If mediation fails to provide a solution, the purchaser can file a civil lawsuit in court. The PPJB also typically contains a clause governing sanctions for delays in completing the land and building. An example of this agreement can be found in the agreement attached by the author to this article.

## Conclusion

The Buyback Guarantee clause has become an important innovation in Indonesia's property financing system, serving as a legal and financial bridge between banks, developers, and consumers. This clause not only provides assurance for the continuity of project financing but also enhances investor and consumer confidence in housing transactions. From a legal perspective, the Buyback Guarantee operates within the principles of freedom of contract (*pacta sunt servanda*) and prudential banking, which allow parties to establish agreements that are legitimate as long as they do not contradict statutory regulations, morality, or public order. However, the current legal framework in Indonesia does not explicitly regulate the Buyback Guarantee mechanism. Its implementation remains heavily dependent on contractual arrangements between developers and financial institutions, leading to asymmetry of rights and obligations and potential legal uncertainty for the parties involved. The absence of standardized clauses and regulatory oversight can expose developers to excessive liability and limit investor protection, particularly when disputes arise over project delays, defaults, or repurchase obligations.

The findings of this study demonstrate that the Buyback Guarantee clause is legally valid as a form of personal guarantee (*borgtocht*) under the Indonesian Civil Code, provided it fulfills the elements of consent, legal object, and lawful cause. Nonetheless, due to its hybrid nature—combining aspects of financing security and repurchase commitments—the clause requires specific legal recognition to clarify its position within Indonesian contract and banking law. Such recognition would ensure that both creditors (banks) and guarantors (developers) operate under clear, equitable, and enforceable legal parameters. To achieve this, a legal reconstruction is necessary. The proposed reconstruction should focus on three key dimensions:

Regulatory Clarity – The government, through the Financial Services Authority (OJK) or the Ministry of Public Works and Housing (PUPR), should issue implementing guidelines or amendments that define the legal status, limitations, and procedures of Buyback Guarantee clauses. Standardization of Contract Clauses – Uniformity in drafting Buyback Guarantee provisions will help prevent ambiguity, reduce legal risks, and ensure fairness among contractual parties. Strengthened Supervision and Dispute Resolution – Enhanced monitoring of developer-bank agreements, coupled with clear dispute resolution mechanisms (through mediation or arbitration), can safeguard the balance of interests between developers, consumers, and investors.

By reconstructing the legal framework surrounding the Buyback Guarantee, Indonesia can foster greater legal certainty, fairness, and protection for all stakeholders in the housing and property financing ecosystem. Such reform would also reinforce the national goal of sustainable economic growth through the development of a stable, transparent, and inclusive real estate financing system.

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