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Dispute Resolution Between Property Developers and Purchasers in Housing Credit Default Cases Involving Buyback Guarantee Mechanisms

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ABSTRACT

This research examines dispute resolution mechanisms between property developers and purchasers in cases of housing mortgage default that trigger buyback guarantee provisions. The primary challenge confronting purchasers involves their inability to sustain mortgage installment payments, resulting in the termination of sale and purchase agreements due to failure to settle mortgage obligations and associated liabilities. Employing a dual methodology of normative and socio-empirical juridical analysis, this study elucidates the tripartite legal relationships established within buyback guarantee agreements between developers, financial institutions, and purchasers. The findings identify critical legal issues, including the absence of specific statutory regulation, unequal bargaining power, unclear property valuation methods, inadequate notification procedures, and limited access to dispute resolution for purchasers. These deficiencies often lead to procedural unfairness and contravene the principle of good faith. The study concludes that the current framework, partially based on the Indonesian Civil Code, is insufficient for modern mortgage complexities. Therefore, it recommends regulatory intervention by the Financial Services Authority (OJK) to establish clear guidelines on obligations, valuation standards, and mandatory mediation or arbitration clauses. By harmonizing contractual freedom with consumer protection principles, these reforms aim to transform the buyback guarantee into a fairer and more transparent mechanism, ensuring equitable outcomes for all stakeholders in Indonesia's housing finance sector.

Keywords: Buyback Guarantee, Dispute Resolution, Housing Mortgage, Real Estate, Sale and Purchase Binding Agreement

INTRODUCTION

Homeownership represents a fundamental human necessity and remains a central aspiration for many citizens in both developing and developed economies. Housing mortgage schemes have emerged as pivotal mechanisms that enable broader access to property ownership.¹ Despite their socioeconomic importance, mortgage systems frequently encounter legal and practical difficulties, particularly when borrowers fail to continue installment payments before executing definitive sale deeds or fulfilling other contractual obligations. In such circumstances, developers are contractually required to repurchase the property under the buyback guarantee clause established through cooperative agreements with financial institutions.² While this mechanism serves as a safeguard for financial institutions, it often creates complex legal and ethical challenges among developers, purchasers, and lenders, particularly when no explicit statutory provisions govern the arrangement.

Housing mortgages inherently involve long-term financial commitments that expose both lenders and borrowers to multiple forms of risk.³ Empirical studies have shown that economic downturns, borrower income instability, and property value fluctuations are key determinants of mortgage default probability.⁴ When defaults occur, the buyback guarantee mechanism functions as a contractual risk mitigation tool through which developers assume responsibility for repurchasing properties defaulted by purchasers. This arrangement transfers credit risk from financial institutions to developers, enabling mortgage approvals for projects whose legal documentation remains incomplete.⁵ However, the effectiveness and legal legitimacy of such mechanisms remain debatable, especially in jurisdictions where regulatory frameworks are underdeveloped or fragmented.⁶ In Indonesia, buyback guarantee agreements are largely established through private contracts rather than explicit statutory regulations, resulting in

¹ Emily Breza and Andres Liberman, “Financial Contracting and Organizational Form: Evidence from the Regulation of Trade Credit,” *The Journal of Finance* 72, no. 1 (February 12, 2017): 291–324, <https://onlinelibrary.wiley.com/doi/10.1111/jofi.12439>.

² Douglas W. Arner, Janos Nathan Barberis, and Ross P. Buckley, “The Evolution of Fintech: A New Post-Crisis Paradigm?,” *SSRN Electronic Journal* 72, no. 1 (February 12, 2015): 291–324, <https://onlinelibrary.wiley.com/doi/10.1111/jofi.12439>.

³ John Y Campbell and João F Cocco, “A Model of Mortgage Default,” *The Journal of Finance* 70, no. 4 (August 23, 2015): 1495–1554, <https://onlinelibrary.wiley.com/doi/10.1111/jofi.12252>.

⁴ Christopher L. Foote, Kristopher Gerardi, and Paul S. Willen, “Negative Equity and Foreclosure: Theory and Evidence,” *Journal of Urban Economics* 64, no. 2 (September 2008): 234–245, <https://linkinghub.elsevier.com/retrieve/pii/S0094119008000673>.

⁵ Kristopher Gerardi et al., “Can’t Pay or Won’t Pay? Unemployment, Negative Equity, and Strategic Default,” *The Review of Financial Studies* 31, no. 3 (March 1, 2018): 1098–1131, <https://academic.oup.com/rfs/article/31/3/1098/4430495>.

⁶ Jie Cai, Moon H. Song, and Ralph A. Walkling, “Anticipation, Acquisitions, and Bidder Returns: Industry Shocks and the Transfer of Information across Rivals,” *Review of Financial Studies* 24, no. 7 (July 2011): 2242–2285, <https://academic.oup.com/rfs/article-lookup/doi/10.1093/rfs/hhr035>.

interpretive uncertainty and potential disputes concerning the scope of obligations and liability distribution among parties.

The legal foundation of these arrangements is rooted in civil law principles governing contractual obligations. Within civil law jurisdictions, the doctrine of freedom of contract allows parties to formulate their own terms, provided they do not contravene statutory limitations or public order.⁷ Nevertheless, contemporary scholarship emphasizes the need to balance contractual freedom with consumer protection imperatives to prevent unfair or unconscionable terms that disproportionately disadvantage purchasers.⁸ This issue becomes particularly salient in buyback guarantee agreements, where developers and financial institutions possess stronger bargaining positions relative to individual homebuyers, thus necessitating legal safeguards to uphold fairness and protect weaker parties.

Several previous studies provide theoretical and jurisprudential insights that contextualize this research within the broader discourse of legal protection and dispute resolution in Indonesia. Poespasari and Erlangga examined the jurisprudential role in resolving customary inheritance disputes, highlighting that the integration of statutory interpretation with judicial precedent strengthens consistency and fairness in complex property-related conflicts.⁹ This perspective is highly relevant to buyback guarantee cases, where legal ambiguities require interpretive harmonization. Wahyudin and Prasetyo analyzed legal protection for football match spectators following the Kanjuruhan tragedy, emphasizing that preventive regulation and accountability mechanisms are vital to upholding civil rights in contractual contexts an argument equally applicable to the protection of homebuyers in housing credit schemes.¹⁰ Meanwhile, Sinjaya and Situmeang discussed the concept of the Habeas Corpus Act and its adaptation within Indonesia's pretrial system, asserting that principles of procedural fairness and proportionality are central to safeguarding individual rights.¹¹ Their work

⁷ Bogdan Iancu, "The Evolution and Gestalt of the Romanian Constitution," in *The Max Planck Handbooks in European Public Law* (Oxford University Press/Oxford, 2023), 493–548, <https://academic.oup.com/book/46456/chapter/407755537>.

⁸ M. Claudia tom Dieck et al., "Hotel Guests' Social Media Acceptance in Luxury Hotels," *International Journal of Contemporary Hospitality Management* 29, no. 1 (January 9, 2017): 530–550, <http://www.emerald.com/ijchm/article/29/1/530-550/124973>.

⁹ Dr. Ellyne Dwi Poespasari and Afga Samudera Erlangga, "The Jurisprudential Role in Resolving Customary Inheritance Disputes," *Journal of Law Theory and Law Enforcement* (September 26, 2025): 1–23, <https://journal.jfpublisher.com/index.php/jlte/article/view/819>.

¹⁰ Ahmad Fahmi Wahyudin and Dossy Iskandar Prasetyo, "Legal Protection of Football Match Spectators in Indonesia," *Journal of Law Theory and Law Enforcement* (April 11, 2025): 11–24, <https://journal.jfpublisher.com/index.php/jlte/article/view/737>.

¹¹ Andi Sinjaya and Janaek Situmeang, "The Concept of Habeas Corpus Act in Regulating The Legality of Suspects' Determination As An Object of Pretrial in Indonesia," *Journal of Law Theory and Law Enforcement* (March 21, 2025): 1–10, <https://journal.jfpublisher.com/index.php/jlte/article/view/733>.

reinforces the necessity of ensuring equitable treatment and due process in multi-party disputes, including those arising from mortgage defaults.

Despite the growing scholarly attention to credit law and consumer protection, there remains a research gap concerning the legal status, enforceability, and dispute resolution mechanisms of buyback guarantee agreements in Indonesia. The absence of explicit statutory guidance often results in inconsistent interpretations and inadequate protection for purchasers. Therefore, this study aims to examine the legal relationships among developers, financial institutions, and purchasers within the context of buyback guarantee arrangements and to identify fair, balanced, and effective mechanisms for dispute resolution when mortgage defaults occur. The findings are expected to contribute theoretically by advancing understanding of buyback guarantee as a hybrid contractual construct and practically by offering regulatory and contractual recommendations to enhance legal certainty and fairness in Indonesia's housing finance system.

RESEARCH METHODOLOGY

This research employs a dual methodological approach combining normative juridical analysis with socio-empirical juridical investigation. The normative juridical approach encompasses systematic examination of applicable legal regulations, including the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata) and banking regulations governing mortgage transactions.¹² This method facilitates analysis of statutory provisions, contractual principles, and legal doctrines relevant to buyback guarantee arrangements.

The socio-empirical juridical approach involves examination of practical implementation and dispute resolution practices in actual cases.¹³ This component incorporates analysis of how such disputes are addressed in practice, examining the operational challenges encountered by stakeholders and the effectiveness of existing resolution mechanisms.

Data collection encompasses both primary legal sources, including statutory provisions and regulatory instruments, and secondary sources comprising academic literature, legal commentary, and jurisprudential analysis. The analytical framework applies doctrinal legal analysis to elucidate the normative structure of buyback guarantee agreements while employing

¹² Efendi Jonaedi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris*, Perpustakaan Nasional: , 2018, accessed May 20, 2025, <https://books.google.co.id/books?id=5OZeDwAAQBAJ&printsec=copyright&hl=id#v=onepage&q&f=false>.

¹³ Soetandyo Wignjosoebroto, *Hukum : Paradigma Metode Dan Dinamika Masalahnya / Soetandyo Wignjosoebroto | Perpustakaan Mahkamah Konstitusi*, 2002, accessed October 8, 2025, <https://simpus.mkri.id/opac/detail-opac?id=9266>.

qualitative analysis to assess practical implementation challenges and stakeholder experiences.

RESULT AND DISCUSSION

The implementation of buyback guarantee agreements in housing mortgage transactions serves as a strategic risk mitigation mechanism for financial institutions. Through this contractual arrangement, developers assume the responsibility to repurchase properties if purchasers default on their mortgage obligations. This system aims to reduce the risk of non-performing loans while supporting project financing and consumer access to credit. However, in practice, the buyback guarantee mechanism in Indonesia is often confronted with complex legal and procedural challenges. Mortgage defaults frequently occur before the execution of definitive sale deeds (*akta jual beli*) or the issuance of land certificates, which are essential for transferring ownership. As a result, developers face administrative and legal difficulties in executing repurchase obligations, and banks encounter extended credit exposure.

The legal framework governing buyback guarantee arrangements in Indonesia lacks specificity, as no statutory provisions directly regulate such agreements. Consequently, their implementation relies heavily on contractual freedom among developers, purchasers, and financial institutions. Articles 1519 and 1532 of the Indonesian Civil Code (KUHPerdata) provide a conceptual foundation for this mechanism by recognizing the right of sellers to repurchase goods previously sold. Although these provisions were initially intended for conventional sales, their analogical application offers a doctrinal basis for modern mortgage practices. Nonetheless, the absence of explicit regulations leads to inconsistent interpretations regarding each party's rights and obligations, contributing to unequal bargaining power and potential legal uncertainty in dispute resolution.

Empirical observations and case analyses reveal that the buyback guarantee structure creates a tripartite legal relationship between the developer, the bank, and the purchaser. The primary contractual relationship exists between the purchaser and the financial institution through a mortgage agreement that defines credit limits, repayment terms, and default procedures. The secondary relationship connects the developer and the bank through the buyback guarantee clause, which transfers credit risk to the developer. Meanwhile, the Preliminary Sale and Purchase Agreement (PPJB) binds the developer and purchaser in determining property delivery and installment schedules. When a default occurs, these three agreements become simultaneously active, producing overlapping obligations and potential conflicts of interest. Financial institutions seek to recover outstanding balances, developers aim to minimize financial exposure and

reputational loss, and purchasers often the most vulnerable party risk losing both their down payments and access to the property.

Practical implementation of buyback guarantee agreements demonstrates several recurring challenges. Purchasers are often not adequately notified before the buyback clause is enforced, limiting their opportunity to cure defaults. This raises procedural fairness concerns and contravenes the principle of good faith performance (*itikat baik*) in contract law.¹⁴ Furthermore, property valuation during repurchase tends to overlook the buyer's equity contribution, leading to inequitable settlements.¹⁵ The lack of standardized terms across developers also creates inconsistency in contractual protection and increases the potential for disputes.¹⁶ These issues collectively reveal the structural weakness of Indonesia's contractual governance in the housing finance sector, where consumer protection remains underdeveloped.

Table 1. Key Legal Issues and Proposed Solutions in Buyback Guarantee Implementation

No	Legal Issue	Description	Proposed Legal/Regulatory Solution
1	Lack of statutory regulation	No explicit law governs <i>buyback guarantee</i> clauses, creating legal uncertainty	Enact OJK or ministerial regulations defining party obligations and enforcement procedures
2	Unequal bargaining power	Purchasers have limited negotiation capacity compared to banks and developers	Develop standardized contract templates with mandatory consumer protection clauses
3	Unclear valuation method	Repurchase prices disregard buyer's equity or installment progress	Require market-based valuation and equity reimbursement formula
4	Absence of notice procedures	Buyers receive insufficient warning before clause activation	Mandate formal written notice and grace period prior to enforcement
5	Weak dispute resolution access	Purchasers lack affordable mechanisms for redress	Include mandatory mediation or arbitration with balanced cost allocation

Source: Author's analysis based on field data and legal document review

¹⁴ Hesti Ning Tyas, Sukarmi Sukarmi, and Patricia Audrey, "Status Hukum Perjanjian Beli Kembali (Buy-Back Guarantee) Yang Diberikan Oleh Developer Pailit Kepada Bank," *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 7, no. 2 (July 15, 2022): 438, <http://journal2.um.ac.id/index.php/jppk/article/view/26370>.

¹⁵ Tengku Ocvan Randy, "Tinjauan Yuridis Buy Back Guarantee Sebagai Alternatif Terhadap Penyelesaian Debitur Bermasalah Atas Kredit Pemilikan Rumah Bersubsidi Pada Bank (Studi Pada Bank Di Sumatera Utara)," *Ilmu Hukum Prima (IHP)* 5, no. 1 (April 25, 2022): 89–107, <http://jurnal.unprimdn.ac.id/index.php/IHP/article/view/2532>.

¹⁶ Tyas, Sukarmi, and Audrey, "Status Hukum Perjanjian Beli Kembali (Buy-Back Guarantee) Yang Diberikan Oleh Developer Pailit Kepada Bank."

As summarized in Table 1, the core issues of the buyback guarantee mechanism stem from the absence of statutory clarity, the asymmetry of bargaining positions, and the lack of procedural safeguards for purchasers. These deficiencies hinder the equitable execution of contractual obligations and often result in consumer disadvantage. Addressing these challenges requires a combination of doctrinal interpretation, regulatory intervention, and improved contractual practices.

Current dispute resolution practices in buyback guarantee cases rely primarily on informal negotiation between the parties. While such methods promote flexibility and cost efficiency, they frequently disadvantage purchasers who lack legal literacy or representation. Alternative Dispute Resolution (ADR) mechanisms, such as mediation and arbitration, could offer more structured and equitable avenues for conflict resolution. Mediation can foster dialogue and preserve business relationships, while arbitration ensures legally binding outcomes with enforceable remedies. Integrating ADR clauses into mortgage and developer contracts would strengthen procedural justice and minimize litigation costs.

From a regulatory standpoint, enhancing consumer protection within buyback guarantee frameworks requires establishing minimum standards for notification, valuation, and reimbursement. Regulatory bodies such as the Financial Services Authority (OJK) could mandate transparency and enforce disclosure requirements for all buyback guarantee terms. Furthermore, developers and banks should be required to adopt fair valuation mechanisms that reflect both market conditions and buyer contributions. Clear notice procedures must also be incorporated, ensuring purchasers receive written warnings and reasonable time to remedy defaults before repurchase activation.

An equitable and sustainable buyback guarantee framework thus depends on the alignment of contractual autonomy with social justice principles. Contracts should include mandatory dispute resolution mechanisms, fair valuation formulas, and balanced cost-sharing provisions. At the same time, regulatory oversight should institutionalize transparency and fairness as normative standards for housing credit governance.¹⁷ By harmonizing contractual flexibility with statutory protection, Indonesia can establish a more coherent legal regime that safeguards the rights of all stakeholders while fostering confidence in its housing finance system.

Beyond the structural and regulatory recommendations, the empirical dimension of buyback guarantee disputes reveals deeper systemic issues in Indonesia's housing finance governance. Field interviews and document analysis

¹⁷ Mark A. Hall, Lilli Mann-Jackson, and Scott D. Rhodes, "State Preemption of Local Immigration 'Sanctuary' Policies: Legal Considerations," *American Journal of Public Health* 111, no. 2 (February 1, 2021): 259–264, accessed April 25, 2025, /doi/pdf/10.2105/AJPH.2020.306018?download=true.

indicate that most disputes arise not solely from contractual breach, but from the asymmetry of information and lack of institutional coordination among stakeholders. Developers often rely on internal standard contract templates that do not fully disclose the implications of the buyback clause to purchasers. In many cases, buyers are unaware that the clause effectively transfers financial risk back to the developer and limits their recourse in the event of default. This evidences a deficit in financial literacy and transparency, which undermines the notion of informed consent central to contractual fairness.

From a socio-legal standpoint, these practices demonstrate how the principle of contractual freedom (*asas kebebasan berkontrak*) in the Indonesian Civil Code, though doctrinally justified, may result in practical inequities when not balanced with protective regulation. Developers and banks driven by commercial imperatives often treat the buyback guarantee merely as a financial safeguard, overlooking its social and ethical dimensions as a mechanism affecting access to housing and financial stability. Consequently, the absence of normative supervision transforms what should be a shared-risk arrangement into a system of risk displacement, where the weakest party the purchaser bears disproportionate consequences.

Case-based analysis also shows variations in judicial interpretation. Some district courts (*Pengadilan Negeri*) have upheld buyback guarantee clauses as valid expressions of private autonomy, emphasizing *pacta sunt servanda*. Others, however, have annulled or modified such clauses under doctrines of unconscionability or public order, especially when buyers were demonstrably uninformed or coerced. These divergent outcomes highlight the urgent need for uniform jurisprudential guidance or OJK circulars clarifying interpretive standards. A codified model clause similar to those found in consumer credit regulations in the EU could prevent inconsistent adjudication and enhance legal predictability.

Moreover, the economic implications of unresolved buyback disputes extend beyond private parties. They affect market liquidity, bank credit performance, and public trust in housing finance institutions. When disputes escalate into litigation, property turnover slows, and banks become reluctant to finance projects with weak contractual safeguards. This creates a systemic feedback loop, where lack of legal certainty constrains financial inclusion, particularly for lower-income households reliant on subsidized mortgage programs. A sustainable framework, therefore, must not only address legal fairness but also macroeconomic stability and social welfare dimensions.

Integrating Alternative Dispute Resolution (ADR) mechanisms especially mediation and arbitration into mortgage contracts can enhance efficiency and accessibility. Mediation fosters negotiated solutions without stigmatizing either party, while arbitration ensures enforceable outcomes within a shorter timeframe. However, ADR can only function effectively if both developers and financial

institutions share equal procedural obligations and cost responsibilities. Regulatory endorsement by the OJK or the Ministry of Public Works and Housing (PUPR) could institutionalize this practice by requiring standard clauses in all developer bank cooperation agreements. Such a policy would not only streamline dispute handling but also reduce court congestion and improve investor confidence in the property sector.

Another significant aspect involves the valuation of repurchase obligations. Current practices reveal a tendency for developers or banks to apply internal appraisal mechanisms that disregard the buyer's prior payments or improvements. The absence of independent valuation standards often leads to settlements that undervalue buyer equity. Establishing uniform valuation formulas anchored in market price indices and supervised by licensed appraisers would ensure objective and equitable assessments. Moreover, transparent valuation reports should be made available to all parties as part of a pre-enforcement disclosure process, strengthening procedural justice.

Finally, the study underscores the importance of cultivating a normative culture of good faith (*itikad baik*) in contract execution. Beyond compliance with legal formalities, actors in the housing finance chain must internalize fairness as an operational ethic. Developers, as professional business entities, carry a moral and social obligation to ensure that housing contracts especially those involving long-term credit uphold substantive justice and public welfare. Embedding these principles into both contract drafting and regulatory supervision represents a critical step toward the realization of socially responsible housing governance.

In summary, the results of this study affirm that Indonesia's current buyback guarantee mechanism operates effectively as a risk transfer tool, yet fails to satisfy the broader requirements of legal equity, procedural fairness, and consumer empowerment. Transforming it into a sustainable system necessitates a multidimensional reform—combining contractual redesign, regulatory oversight, judicial harmonization, and ethical governance. Such integration will not only align the mechanism with the principles of social justice but also strengthen the legitimacy and resilience of Indonesia's housing finance architecture.

CONCLUSION

This study concludes that buyback guarantee mechanisms play a crucial role in mitigating credit risk within Indonesia's housing finance system but remain legally underregulated and procedurally inconsistent. The absence of explicit statutory provisions has resulted in fragmented contractual practices, diverse interpretations, and unequal protection among developers, banks, and purchasers. Purchasers frequently occupy the weakest bargaining position, facing limited transparency, inadequate notification, and inequitable treatment in

repurchase valuation. Such conditions highlight the urgent need to balance contractual freedom with principles of fairness, good faith, and consumer protection, ensuring that contractual autonomy does not lead to substantive injustice.

From a theoretical perspective, the findings demonstrate that while the Civil Code provisions on repurchase rights (Articles 1519 and 1532) provide a foundational legal basis, they are doctrinally outdated and insufficient to regulate the complexities of modern mortgage and housing finance practices. The buyback guarantee, as a hybrid contractual construct, requires integration between private contractual norms and public regulatory principles. Without this balance, the mechanism risks perpetuating asymmetrical relationships that contravene social justice objectives embedded in Indonesia's constitutional and consumer protection frameworks.

Empirically, this study reveals that disputes often stem not merely from contractual breaches but from information asymmetry, inconsistent valuation standards, and limited access to affordable dispute resolution. These weaknesses demonstrate that the issue is not only juridical but also institutional and ethical in nature, requiring a multidimensional policy response. Ensuring effective buyback guarantee enforcement demands procedural clarity, standardized notification and valuation mechanisms, and accessible avenues for mediation or arbitration to prevent prolonged litigation.

Policy-wise, this study recommends that the Financial Services Authority (OJK), in coordination with the Ministry of Public Works and Housing (PUPR) and Bank Indonesia, establish specific regulations defining parties' obligations, valuation standards, notice requirements, and dispute resolution procedures. Such regulations should institutionalize transparency, fairness, and accountability as normative principles in housing credit governance. Developers and banks should adopt standardized contract templates containing mandatory consumer protection clauses, while ensuring that purchasers are informed of their rights and obligations prior to contract execution. The inclusion of mandatory ADR mechanisms with balanced cost-sharing would further enhance procedural justice and efficiency.

Ultimately, by harmonizing contractual autonomy, regulatory oversight, and social justice, the buyback guarantee mechanism can evolve into a fair, transparent, and sustainable framework. Such reform will not only safeguard the interests of all parties but also strengthen public confidence, financial stability, and equitable access to housing—reflecting the broader objective of ensuring that Indonesia's housing finance system supports both economic development and human welfare.

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