

**PERJANJIAN PEMBELIAN KEMBALI (*BUY BACK
GUARANTEE*) KREDIT PEMILIKAN RUMAH SUBSIDI**

TESIS

*Diajukan guna Memenuhi Persyaratan untuk Memperoleh Gelar Magister
Kenotariatan Pada Fakultas Hukum*

Universitas Andalas



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FAKULTAS HUKUM
UNIVERSITAS ANDALAS
PADANG
2024**

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(Tito Alfayet Zwespa, 2220122011, Program Magister Kenotariatan, Pascasarjana
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ABSTRAK

Perjanjian Pembelian Kembali (*buy back guarantee*) oleh *developer*, kreditur dan debitur bertujuan untuk meminimalisir resiko kerugian kepada pihak kreditur (Bank) dari resiko kredit macet yang dilakukan oleh debitur selama jangka waktu tertentu. Pembelian kembali (*buy back guarantee*) ini tidak diatur secara khusus dalam peraturan perundang-undangan, hal ini dilakukan sebab *buy back guarantee* merupakan implementasi dari prinsip kehati-hatian bank terhadap pemberian kredit. Tetapi, dalam praktiknya *developer* tidak melakukan *buy back* sebagaimana perjanjian dalam Akta *buy back guarantee*, *developer* hanya melancarkan tunggakan debitur. Adapun rumusan masalah pada penelitian ini: 1) Perjanjian pembelian kembali (*buy back guarantee*) terhadap perjanjian kredit kepemilikan rumah subsidi, 2) Pelaksanaan perjanjian pembelian kembali (*buy back guarantee*) terhadap perjanjian kredit kepemilikan rumah subsidi, 3) Akibat hukum praktek *buy back guarantee* terhadap *developer*, kreditur dan debitur dalam kaitan dengan perjanjian kredit pemilikan rumah subsidi (KPR). Metode penelitian ini bersifat deskriptif analitis, dengan menggunakan pendekatan normatif empiris, menggunakan data primer sebagai bahan utama dengan pengkajian terhadap bahan hukum sekunder. Maka kesimpulan dalam penelitian ini adalah: 1) Perjanjian *buy back guarantee* merupakan perjanjian sebagaimana yang dinyatakan dalam Pasal 1313 KUHPerdara yang menyangkut hubungan hukum kekayaan mengenai harta benda antara para pihak, 2) Pelaksanaan *buy back guarantee* terhadap tiga bank yang berbeda ternyata berbeda pula sistem pelaksanaan dan syarat-syaratnya 3) Akibat hukum dari *buy back guarantee* adalah *developer* dapat digugat wanprestasi akibat adanya kasus tidak dilakukan *buy back* terhadap debitur yang menunggak cicilan kepada kreditur. Berdasarkan kesimpulan tersebut maka penulis menyarankan bahwa *developer* seharusnya melakukan *buy back guarantee* dengan melunasi seluruh biaya sebagaimana yang diperjanjikan dalam akta *buy back guarantee*, sehingga dalam hal ini bank dapat memitigasi resiko kerugian baik dalam segi waktu maupun dalam segi keuntungan.

Kata Kunci: Perjanjian, *Buy Back Guarantee*, Perjanjian Kredit, Kredit Pemilikan Rumah.

SUBSIDIZED HOME OWNERSHIP CREDIT BUY BACK AGREEMENT

(Tito Alfayet Zwespa, 2220122011, *Notarial Studi Program, Faculty of Law,
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ABSTRACT

Buy Back Guarantee by the developer, creditor and debtor aims to minimize the risk of loss to the creditor (Bank) from the risk of bad credit carried out by the debtor during a certain period of time. This buy back guarantee is not specifically regulated in statutory regulations, this is done because the buy back guarantee is an implementation of the bank's principle of prudence in providing credit. However, in practice the developer does not carry out a buy back as agreed in the buy back guarantee deed, the developer only pays off the debtor's arrears. The problem formulation in this research is: 1) Buy back guarantee for subsidized home ownership credit agreements, 2) Implementation of buy back guarantee agreements for subsidized home ownership credit agreements, 3) Legal consequences of buy back guarantee practices for developers, creditors and debtors in relation to subsidized home ownership credit (KPR) agreements. This research method is descriptive analytical, using a normative empirical approach, using primary data as the main material with an examination of secondary legal materials. So the conclusions of this research are: 1) The buy back guarantee agreement is an agreement as stated in Article 1313 of the Civil Code which concerns legal property relations regarding property between the parties, 2) The implementation of the buy back guarantee for three different banks turns out to have different implementation systems. and the conditions 3) The legal consequence of the buy back guarantee is that the developer can be sued for breach of contract due to cases of not carrying out a buy back for debtors who are in arrears in installments to creditors. Based on this conclusion, the author suggests that developers should carry out a buy back guarantee by paying off all costs as agreed in the buy back guarantee deed, so that in this case the bank can mitigate the risk of loss both in terms of time and in terms of profits.

Keywords: Agreement, Buy Back Guarantee, Credit Agreement, Home Ownership Credit.