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LEGAL CERTAINTY OF LAND SALE WITH BUYBACK RIGHTS AS AN ALTERNATIVE FINANCING OPTION FOR REAL ESTATE COMPANIES IN LEGAL REFORM EFFORTS

Bahori Ahoen
Fakultas Hukum Universitas Krisnadwipayana
orie_ahoen@yahoo.com

ABSTRACT
The buy-sell transaction with the right of repurchase is a practice commonly found in society. However, from a legal perspective, there is much debate surrounding the validity of this type of transaction. Therefore, in this dissertation, the author raises several issues: How is the legal certainty of buy-sell transactions with the right of repurchase as an alternative financing method? How is the legal protection for the parties involved in such agreements? And what is the future legal reform perspective regarding buy-sell transactions with the right of repurchase? The research method used in this study is normative-empirical juridical, supported by interviews. The data sources are obtained from literature-based research documents. The results of the study show that legal certainty regarding buy-sell transactions with the right of repurchase in Indonesian law has not yet been well established. This is because the provisions previously regulated under Articles 1519 and 1532 of the Indonesian Civil Code are no longer applicable following the enactment of Law No. 5 of 1960. In addition, inconsistent rulings by the Supreme Court have further contributed to legal uncertainty in this matter. As for legal protection, there is no specific regulation that protects the parties involved in buy-sell transactions with the right of repurchase. Consequently, many issues related to the rights and obligations of the parties are brought to court. It is crucial for the parties to fully understand their respective rights and obligations, create clear and detailed agreements, and consider all legal and financial aspects before entering into such transactions. Legal reform regarding buy-sell transactions with the right of repurchase is an urgent necessity to ensure that this scheme can function optimally as a legal, safe, and efficient alternative financing method. Regulatory frameworks governing buy-sell transactions with the right of repurchase are needed, as well as the establishment of dispute resolution institutions specifically for financing schemes based on such transactions.

Keywords: Buy-Sell with Right of Repurchase, Legal Protection, Legal Reform, Alternative Financing

INTRODUCTION

This research examines the legal certainty of sale and purchase transactions with a buyback right and the legal protection for the parties involved in such transactions as an alternative financing method in the effort of legal reform. The buyback phenomenon in the perspective of civil law, especially concerning land, has developed among economically disadvantaged communities, highlighting the importance of legal certainty and protection for the parties involved. One form of financing agreement that has emerged in society is the buyback agreement. However, issues still arise in its implementation because it is not formally regulated by law, despite its widespread practice. Ideally, the law should proactively anticipate emerging legal phenomena to ensure certainty and protection, thereby maintaining order in society.

The sale and purchase transaction with a buyback right serves as an alternative financing method for individuals needing quick funds while intending to reclaim their assets.

This method also offers a way to manage assets for financial gain with relatively lower risks within an agreed timeframe. Additionally, it is preferred by many due to its ability to avoid interest from an Islamic perspective. The buyback right has been applied in financial practices by PT Akuisindo Properti Assetama, PT Calm Indonesia, Koperasi Simpan Pinjam Internusa Mega Fina, and in various regions such as Minangkabau, North Sumatra, and South Sumatra.

The research gap in this study focuses on the buyback right as an alternative financing method, particularly in the property sector, as it has been less explored in previous research, which mainly concentrates on repurchase agreements in the bond market. The buyback right is also considered a research gap because most previous studies analyze it from an Islamic legal perspective concerning riba, whereas this study aims to address the issue from the standpoint of legal certainty within positive law. Previous research has primarily examined court decisions related to disputes involving buyback transactions in general. However, the focus on buyback transactions within corporate organizations, especially as an alternative financing method for companies, remains an underexplored area that this research aims to address.

According to Article 1519 of the Indonesian Civil Code, "The right to buy back goods that have been sold arises from an agreement in which the seller is granted the right to reclaim the sold goods by returning the original purchase price along with compensation as specified in Article 1532 of the Civil Code." This compensation includes costs for arranging the purchase, delivery, and improvements to the goods. Essentially, as long as it does not contradict other agreements, such transactions are permissible, especially since the primary goal of a sale and purchase transaction with a buyback right is to assist economically disadvantaged groups in obtaining credit. Thus, such agreements are allowed as long as they do not violate principles of propriety, public order, and morality, as stated in Article 1337 of the Civil Code.

Article 1520 of the Civil Code stipulates that "The right to buy back must not be agreed upon for a period exceeding five years; if a longer period is stipulated, it shall be shortened to five years." This provision ensures that the buyback right has a definite time limit.

A sale and purchase transaction with a buyback right grants the seller the right to repurchase the goods by reimbursing the buyer for the original purchase price and any costs incurred for the acquisition, delivery, and improvements that increased the value of the goods. Essentially, this type of transaction resembles a loan secured by a sale agreement, allowing the seller to repurchase the goods within a specified period, which cannot exceed five years.

However, based on Supreme Court jurisprudence, Decision No. 78/PK/Pdt/1984 states that a notarial deed that formalizes a debt agreement disguised as a sale and purchase agreement with a buyback right, intended to transfer ownership of the debtor's land to the creditor in case of default, is considered a sham agreement and should be regarded as a debt agreement. This demonstrates the need for clear legal regulations governing the buyback right to ensure legal certainty. Another legal issue arises from Supreme Court Decision No. 1729 PK/Pdt/2004, which asserts that a sale and purchase agreement with a buyback right, as stated in Article 1519 of the Civil Code, is impermissible because it constitutes a disguised (sham) loan agreement and is inconsistent with customary law, which does not recognize the buyback right in sale transactions. Consequently, such agreements are deemed null and void.

Furthermore, Supreme Court Decision No. 3597K/Pdt/1985 states that "A sale and purchase transaction with a buyback right is a type of agreement under Articles 1519 and beyond of the Civil Code, whereas land or house sale transactions fall under the Agrarian Law, which is governed by customary law that does not recognize the buyback right.

Therefore, such agreements are considered null and void." According to the Supreme Court, customary law does not recognize buyback agreements and only acknowledges them as pawn agreements. This aligns with Article 5 of the Basic Agrarian Law No. 5 of 1960, which stipulates that "The agrarian law applicable to land, water, and airspace is customary law, provided it does not conflict with national and state interests, national unity, Indonesian socialism, and other regulations set forth in this law and related laws, while taking into account elements based on religious law." This provision implies that national land law is governed by customary law, which does not recognize the buyback right in sale transactions. Consequently, based on the Basic Agrarian Law No. 5/1960, sale and purchase agreements with a buyback right concerning land and houses are legally null and void.

The practice of sale and purchase transactions with a buyback right as an alternative financing method has been widely adopted by society, both conventionally and under Sharia principles. Companies such as PT Akuisindo Properti Assetama, PT Calm Indonesia, and Koperasi Simpan Pinjam Internusa Mega Fina have implemented this practice. In certain communities, such as those in Minangkabau, North Sumatra, and South Sumatra, the buyer holds control over the goods and may benefit from their use, resembling a buyback transaction. Companies and cooperatives generally adopt either a rental system or a margin-based system.

Interviews with users of financing products involving buyback agreements reveal that such transactions are perceived as highly beneficial and accessible, especially for those in urgent need of quick funds. Respondents expressed their hope that this financing model continues to be available in the future.

Companies engaged in financing through buyback agreements have encountered several challenges, including sellers being unable to repurchase the goods, requiring the company to transfer ownership and evict the seller from the property. In some cases, sellers refuse to vacate the premises, leading to legal disputes. These issues highlight the absence of clear regulations providing legal protection for all parties involved.

Given these challenges, it is evident that buyback transactions offer financing benefits but still lack legal certainty and protection for the parties involved. Therefore, it is not impossible to establish clear legal regulations governing buyback transactions in the context of land and buildings. Such regulations would enhance legal certainty for the public and provide necessary legal protection for those engaged in buyback agreements. The government, as the primary policymaker, plays a crucial role in ensuring legal certainty by enacting appropriate laws and regulations concerning this matter.

RESEARCH METHOD

The research in this paper is based on a literature review that aims to analyse the legal and theoretical concepts of repurchase agreement on land. The normative method is used by analysing several laws, such as Civil Code, Law Number 5 of 1960 concerning Basic Agrarian Principles, financial services authority regulations, several Supreme Court decisions, and interview with related company.

RESULTS AND DISCUSSION

Legal Certainty of Sale and Purchase with Buyback Rights as an Alternative Financing Option.

In the positive law of the Civil Code, there is a sale and purchase with the right to repurchase which is regulated in Article 1519 of the Civil Code, where it is the same as ba'i al-wafa' in sharia. Article 1519 of the Civil Code states that "The power to repurchase goods that have been sold is issued from a promise, where the seller is given the right to take back the

goods sold, by returning the original purchase price accompanied by the replacement mentioned in Article 1532 of the Civil Code." Article 1532 states that "The seller who uses a purchase agreement is not only obliged to return the entire original purchase price but also to replace all costs according to law, which have been incurred when carrying out the purchase and its delivery, as well as costs necessary for corrections and costs that cause the goods sold to increase in price, namely the additional amount. He cannot obtain control or the goods he bought back, except after fulfilling all these obligations. If the seller gets its price back due to a repurchase agreement, then the goods must be handed over to him free from all burdens and mortgages placed on it by the buyer, but he is obliged to comply with the rental agreements that have been made in good faith by the buyer." With this regulation, people can sell their property, including movable and immovable property, to buyers, who then, at a time agreed upon by both parties, will buy the property back. However, since the enactment of Law Number 5 of 1960 concerning Basic Agrarian Regulations, buying and selling with the right to repurchase is not recognized in Indonesia.

Article 3 of the Law Number 5 of 1960 states that: "The implementation of customary rights and similar rights from customary law communities, as long as they actually still exist, must be such that they are in accordance with national and state interests, which are based on national unity and must not conflict with other higher laws and regulations." The state, as the provider of a guarantee of customary law certainty for customary law communities with the enactment of Law Number 5 of 1960 concerning Basic Agrarian Regulations is expected to reduce disputes and provide justice for customary communities. Because Article 3 of the Law Number 5 of 1960 states that national land law is based on customary law. In addition, Article 5 of the Law Number 5 of 1960 that "The agrarian law applicable to the earth, water and space is customary law, as long as it does not conflict with national and state interests, which are based on national unity, with Indonesian socialism and with regulations, contained in this Law and with other laws and regulations, all things with due regard to elements based on religious law."

Customary law as the basis for the formation of national agrarian law faces certain obstacles, which are related to the pluralistic nature of customary law, where each customary community has its own customary law, which of course contains differences. For this reason, similarities are sought, namely by formulating the principles/concepts of legal institutions or legal systems.[1] These are the things that are taken in customary law to be used as the main basis for the formation of national agrarian law, so that national agrarian law can be simple and can guarantee legal certainty. One form of regulation regarding the control, use and utilization of land as regulated in Law No. 5 of 1960 concerning Basic Agrarian Principles is the regulation regarding land use, regulation regarding rights that can be owned over land and regulation regarding legal relations and legal acts regarding land, including the transfer of rights through sale and purchase. Article 26 paragraph (1) of the Law Number 5 of 1960 states that sale and purchase is one of the acts intended to transfer ownership rights. Article 37 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration as amended by Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration (hereinafter referred to as PP No. 24 of 1997), in essence regulates that buying and selling is one of the legal acts to transfer land rights. Buying and selling is a form of agreement that gives rise to an obligation or obligation to provide something in this case manifested in the form of transfer of goods sold by the seller and transfer of money by the buyer to the seller. Regarding the sale and purchase of land, there is an obligation for the seller to hand over the land and an obligation for the buyer to hand over a

[1] Urip Santoso, Hukum Agraria dan hak-Hak Atas Tanah (Jakarta: Prenada Media, 2006), p. 69

certain amount of money according to the agreement.[2] Regarding the sale and purchase of land, customary law applies, because one of the principles in the Law Number 5 of 1960 is customary law. In this customary law, the sale and purchase of land must be carried out in real terms and in cash. Cash means that the transfer of rights by the seller is carried out simultaneously with payment by the buyer and the rights have been transferred immediately. The price paid does not have to be paid in full, the difference in price is considered the buyer's debt to the seller which is included in the scope of debts. Real nature means that the expressed will must be followed by real actions. The legal act of buying and selling land is said to be clear if it is done in front of the village head to ensure that the act does not violate applicable legal provisions.[3] Because buying and selling land according to customary law is in cash, there is no such thing as buying and selling land with the right to buy back.

Furthermore, the Financial Services Authority (FSA), as the institution responsible for regulating and supervising financial service activities in the banking, capital markets, and non-bank financial industry sectors, has also issued regulations on this matter. In 2015, FSA issued a regulation governing repo transactions through the issuance of FSA Regulation No. 9/POJK.04/2015 on Guidelines for Repurchase Agreement Transactions for Financial Service Institutions.

As defined in Article 1, Point 1 of FSA Regulation No. 9/POJK.04/2015 on Guidelines for Repurchase Agreement Transactions, a Repurchase Agreement Transaction, hereinafter referred to as a Repo Transaction, is "a contract for the sale or purchase of securities with a promise to repurchase or resell at a predetermined time and price." FSA Regulation No. 9/POJK.04/2015 emphasizes that all repo transactions must result in the transfer of ownership of the exchanged securities, and the rights associated with the transferred assets also shift from the seller to the buyer.[4] Furthermore, sale and leaseback is regulated under FSA Regulation No. 35/POJK.05/2018, Article 1, Paragraph 6, which states: "Sale and Leaseback, hereinafter referred to as sale and leaseback financing, is a financing activity in the form of the sale of an asset by the debtor to a financing company, accompanied by the leasing back of the asset to the debtor."

Based on the above regulations, there is a legal gap in this matter, as the practice of buyback transactions with the right to repurchase has been widely used by the public, yet there are no clear regulations providing legal certainty on such transactions. Law should continuously evolve to accommodate the needs of society in line with modern developments and events, ensuring that the public does not face uncertainty. Therefore, specific legal regulations on buyback transactions, particularly concerning land as an object, are essential.

The practice of sale and repurchase agreements as an alternative financing method has been widely implemented in society, both conventionally and in accordance with Sharia principles. This buyback with the right to repurchase has been implemented in several BMTs in Indonesia, PT Akuisindo Property Assetama, PT Calm Indonesia, and Koperasi Simpan Pinjam Internusa Mega Fina.

PT Akuisindo Property Assetama is a company engaged in the property and property rental sales and purchases, in addition to being able to help people with fast funding needs by being able to sell their property with the option to buy it back. The products of PT Akuisindo Property Assetama consist of sale and purchase with the option to buy back, property rental, and property sales. Based on the results of the interview with the resource person Mrs. Elly Sumirah, as the operational manager of PT Akuisindo Property Assetama, buying and selling

[2] Gunawan Widjaja dan Kartini Mulyadi, Jual Beli, (Jakarta: PT. Raja Grafindo Persada, 2003), p. 7.

[3] *Ibid.*

[4] PT. Kustodian Sentral Efek Indonesia (KSEI), *User Manual Repurchasement Agreement (REPO) Versi 1.2.* Jakarta, Divisi Penelitian dan Pengembangan Usaha KSEI, 2010, p. 4.

with a buyback option at PT Akuisindo Property Assetama is a product intended for people who need funds immediately and have property along with complete documents, then they can sell their property temporarily for a certain period of time and can buy back the property.[5]

Furthermore, Mrs. Elly explained that there are 2 (two) buying and selling systems with a buyback option carried out by PT Akuisindo Property Assetama, namely the rental and margin systems:[6]

a. Rental System, prospective sellers sell their property with an agreement to buy back the property at the price when they sell. Based on the agreement between the seller and the buyer because the seller still occupies the house, the seller is given a rental contract for 6 (six) months, and pays rent of 3.5% of the sale and purchase transaction value. After 6 (six) months the asset can be bought back at the transaction value at the time of sale.
b. Margin System, namely when the asset can be emptied by the seller, and sold to the buyer then after 6 (six) months the asset is bought back with the sale transaction value plus a margin fee of 22%.

Both systems can be extended up to 3 (three) times extension on condition that all obligations are paid in advance. The Agent's extension fee is 4% and the Notary's 2 million rupiah from the initial sale transaction value.

In conducting its business, PT Calm Indonesia exercises great caution in adopting customary legal mechanisms, which are recognized under Article 5 of the Basic Agrarian Law as the foundation of agrarian law. However, since customary law does not recognize the concept of a sale with a repurchase right, the company ensures that every transaction is structured in a manner aligned with positive law to prevent potential legal conflicts in the future. To ensure the legality of the sold properties remains in accordance with the law, PT Calm Indonesia collaborates with notaries or Land Deed Officials to verify land certificates, ownership validity, and ensure that the transacted land is free from disputes. Additionally, the name transfer process is carried out through the National Land Agency to guarantee that land ownership is legally transferred in compliance with applicable regulations. To ensure fairness for both parties in land sale agreements with a repurchase right, PT Calm Indonesia always drafts agreements based on the principles of balance and transparency. The company ensures that the contract terms are clearly communicated to the seller, including rights, obligations, and potential risks. This is done to prevent the exploitation of economically disadvantaged conditions that could lead to unfairness.

PT Calm Indonesia also acknowledges that in some cases, sellers might feel disadvantaged due to agreements they do not fully understand, leading to accusations of exploitation. To address this, the company provides legal consultation services to sellers before the agreement is signed and ensures that the entire process is conducted transparently. If a dispute arises, the company prioritizes resolution through mediation in accordance with the principle of fairness as stipulated in Article 1337 of the Indonesian Civil Code. If the seller fails to repurchase the property within the agreed period, PT Calm Indonesia will refer to the terms outlined in the agreement, which typically include dispute resolution mechanisms either through legal channels or mediation. In such cases, the court is often the primary option, as stipulated in Law No. 5 of 1960, but resolution through the Indonesian National Arbitration Board can also be an alternative.

PT Calm Indonesia also applies a fair buy-back pricing standard for both parties. The buy-back price is determined based on an initial agreement between the buyer and seller, considering administrative costs, market value of the land, and a reasonable profit margin. This

[5] Elly Sumirah. Personal interview. Operational Manager of PT Akuisindo Property Assetama.
[6] *Ibid.*

principle aims to maintain a balance of interests and prevent unfairness to either party. Additionally, PT Calm Indonesia has a special policy to support small and medium enterprises (SMEs) by offering more flexible terms. This policy includes a lower profit margin and a longer buy-back period to better align with SMEs' financial capabilities. In managing assets that sellers fail to repurchase, PT Calm Indonesia follows the terms of the agreement, including the process of transferring property ownership. Assets that are not redeemed are typically utilized for long-term investment or resold to other parties in accordance with the company's business strategy. As part of its business strategy, PT Calm Indonesia also collaborates with financial institutions and banks to facilitate buy-back transactions. This partnership aims to support transaction liquidity and provide financing convenience for parties wishing to repurchase their property.

In implementing the land sale with a repurchase option scheme, KSP Internusa Mega Fina follows internal guidelines and standard operating procedures (SOPs) that regulate the transaction process in detail. These guidelines include verifying the data of prospective sellers and buyers, asset valuation by an independent appraiser, drafting agreements before a notary, disbursing funds to the seller, registering the land with the BPN, and establishing dispute resolution mechanisms for potential future conflicts.

To avoid misunderstandings that could lead to interpreting this scheme as a form of pawn or disguised loan transaction, the land sale and repurchase option agreement is drafted explicitly. The agreement clearly states that ownership rights are transferred from the seller to the buyer and are not merely collateral for a loan. The sale price is paid in full to the seller, while the buy-back right is arranged as a separate accessory agreement.

KSP Internusa Mega Fina has prepared a land sale and repurchase option agreement template, legally reviewed by its internal legal team and a notary. This template includes clauses designed to minimize the risk of disputes, such as provisions on the buy-back option period, repurchase price, penalties for default, and procedures for dispute resolution in case of future conflicts.

Additionally, the cooperative ensures that every transaction complies with the Basic Agrarian Law. Therefore, continuous verification of land ownership documents and legal consultations are conducted. The agreements drafted always include clauses aligned with agrarian law principles, such as clear ownership rights and a legally valid transfer process.

From a fairness perspective, the cooperative strives to ensure that land sale transactions with a repurchase option are conducted transparently and fairly for both parties. Transparency is maintained by providing open information regarding transaction procedures, rights and obligations of each party, and potential risks involved. To determine a fair land sale price, the cooperative employs certified independent appraisers and verifies the data and documents submitted by the parties involved.

Referring to the discussion that has been done previously, it can be concluded that the Theory of legal certainty has not been reflected in this sale and purchase with the right to repurchase. Legal certainty is a justiciable protection against arbitrary actions, which means that someone will be able to obtain something that is expected in certain circumstances. Society expects legal certainty, because with legal certainty society will be more orderly. The law has the duty to create legal certainty because it aims for public order. On the other hand, society expects benefits in the implementation or enforcement of the law. Law is for humans, so the implementation of law or law enforcement must provide benefits or uses for society. Although there are regulations from the Civil Code, POJK, these are still separate and do not specifically regulate buying and selling with the right to repurchase with land objects. The lack of legal certainty regarding this product causes unrest and confusion in society.

Some of the advantages of buying and selling with the right to repurchase as an

alternative financing, namely:

1. Flexibility: This transaction provides flexibility for non-bank financial institutions to obtain temporary ownership of assets without having to permanently seize the assets.
2. Legal security: The existence of regulations in the Civil Code provides a clear legal basis, thus minimizing the risk of disputes.
3. Liquidity: For customers, this mechanism provides a way to obtain funds without having to permanently lose assets, because there is an opportunity to buy them back.

Therefore, buying and selling with the right to repurchase is a good product, and brings many benefits to society and is mutually beneficial between parties, especially if it is carried out with sharia principles, it can prevent society from usury. This can of course be an alternative financing that can be chosen and implemented. It's just that the role of the government is needed, especially in the fields of law and economy to study this so that it produces a legal umbrella and also provides legal certainty for society, both for users of the product and for fund owners.

The development of this law is very much needed, which basically includes efforts to renew the nature and content of applicable legal provisions and efforts directed at the formation of new laws needed in community development. Renewal of applicable legal provisions is influenced by the development of community needs, especially in terms of economy. The changes were not merely made because the law was felt to be inadequate to regulate the lives of the people, but rather because Indonesian society itself has now experienced fundamental changes aimed at creating a new Indonesian society in accordance with the laws that exist in society. According to His Honor Judge Yakub Ginting, legal reform is divided into two, namely written and unwritten. Unwritten is through reform carried out by the community and written is a legal reform that involves the government and the DPR in reforming it. His Honor Judge Yakub Ginting also added that society is dynamic and law is static, so the law must follow developments and dynamics in society. With the dynamics in society, the law becomes incomplete, unclear and obsolete, so that legal reforms are needed.[7]

According to His Honor Judge Yakub Ginting, if indeed this sale and purchase with the right to repurchase is felt to provide many benefits to the community, it is possible to create a legal umbrella, but the regulation must truly provide justice for the parties, for example if such an agreement must be made, then the sale and purchase value with the option to repurchase must be in accordance with the reasonable sale and purchase value, not just providing a loan value that is not much compared to the reasonable sale and purchase price. To be legal, of course a new law must be created that legalizes it. Many rules must be adjusted if the debt agreement by way of land sale and purchase with the option to buy back is legalized, especially the rules regarding land itself and also rules such as the mortgage law, do not let the various laws conflict with each other.[8] With these changes, it is hoped that economic development in Indonesia can run better, because the development of the Indonesian business world has a place and opportunity that is quite important for economic development, increasing business in the property sector, housing, and others.

The principle of legal certainty requires laws to be clear, consistent, and predictable. However, in the practice of land sales with a right of repurchase, this principle faces significant challenges. The Indonesian Civil Code (KUHPerdata) still permits conditional sales with a right of repurchase, but this contradicts the Agrarian Law (UUPA) of 1960, which is based on customary law that does not recognize such conditional transactions. This conflict between colonial-era law and national agrarian law creates a legal vacuum. There are no specific

[7] Yakub Ginting. Personal interview. Supreme Court Judge Civil Chamber.
[8] *Ibid.*

regulations that clearly prohibit or regulate this practice, yet notaries and land deed officials (PPAT) continue to process such transactions, including the transfer of land titles. Court decisions from the Supreme Court are inconsistent, some reject the practice, while others uphold it if both parties consent.

The uncertainty is worsened by the absence of an official recording mechanism within the national land administration system to register repurchase rights. This situation can disadvantage the original seller and also creates insecurity for the buyer. In conclusion, land sale transactions with a right of repurchase are currently not aligned with the principles of legal certainty. Legal reform and a proper administrative system are needed to ensure clarity, protection for all parties, and to restore public trust in the land law system.

Legal Protection for Parties Conducting Sale and Purchase with the Right to Repurchase

Buying and selling with the right to repurchase, the most important thing to pay attention to is the agreement because a sale and purchase is born because it is based on an agreement, from this sale and purchase, many problems arise until lawsuits are filed in court and what is always reviewed by the judge begins with the agreement made by both parties. An agreement generally contains information about complete letters, prices, down payments and payment methods, guarantees and witnesses, land transfer, ownership status, process of changing or renaming ownership, taxes, fees and levies, validity period of the agreement, dispute resolution and other things that have been mutually agreed upon.[9] With these provisions, the interests of the parties can be protected and if there is a default, there is a legal basis, one of which is the agreement.

The valid requirements of an agreement based on Article 1320 of the Civil Code are:

1. Agreement of the parties
2. The capacity of the parties making the agreement
3. A certain thing
4. A permissible cause

As explained above, it can be analyzed the implementation of the buying and selling system with the right to buy back that occurs in society based on the principles above:

1. The principle of freedom of contract in buying and selling with the right to buy back, the parties carry out and make an agreement using the principle of freedom of contract. where the parties are free to make an agreement or not to make an agreement, the parties are also free to determine with whom the agreement is made, what its contents are and are free to determine the applicable law. If it is related to buying and selling with the right to repurchase, the parties are free to determine what this agreement is made with, for example with a sales and purchase binding agreement (PPJB) where the parties are free to determine the contents of the PPJB which is determined by the parties and in making the agreement it meets the following conditions. the conditions stated in Article 1320
2. The application of the principle of pacta sunt servanda, the parties who make the regulations in the agreement must obey the regulations that have been made, because if the parties do not obey the regulations that have been made then they are said to be in breach of contract so that there will be consequences from the breach of contract which may have been agreed upon in this case. , So when this case is brought to court the judge actually has to use the principle of pacta sunt servanda because the agreement was made by all parties so that it applies as a law then the judge must obey the law made by the parties
3. Application of the principle of good faith in sale and purchase of land, the buyer must examine the land rights sale and purchase agreement, the land owner, the type of land rights,

[9] R. Soeroso, Perjanjian di Bawah Tangan: Pedoman Praktis Pembuatan dan Aplikasi Hukum. (Jakarta: Sinar Grafika, 2010), p. 172.

whether the land rights are time-bound land rights or not, whether the land rights are subject to collateral or not, whether the land rights holder carries out the obligations obligations as a land rights holder. From the seller's side, the seller is obliged to explain all information known and important to the buyer as rights and obligations attached to the land rights as the object of the agreement.

In practice, there are several lawsuits regarding sales with the right to repurchase with different decisions, some legalize and some cancel. There are many problems regarding this because there are no regulations regarding sales with the right to repurchase, which causes legal uncertainty.

Legal protection according to Soerjono Soekanto is all efforts to fulfill rights and provide assistance to provide a sense of security to victims and/or witnesses which can be realized in the form of compensation, media services and also legal assistance.[10] Legal protection has 2 forms, namely preventive legal protection (prevention) and repressive legal protection (coercion). Philipus M. Hadjon in his book categorizes legal protection into 2 types, namely:[11]

a. Preventive Legal Protection, which is protection carried out to protect the rights of legal subjects before a violation occurs. This preventive legal protection has the function of preventing violations which are generally manifested in the form of regulations in laws. In this preventive legal protection, legal subjects are given the opportunity to file objections or opinions before a government decision gets a definitive form. The goal is to prevent disputes. Preventive legal protection is very important for government actions that are based on freedom of action because with preventive legal protection the government is encouraged to be careful in making decisions based on discretion. In Indonesia there are no special regulations regarding preventive legal protection.
b. Repressive Legal Protection, which is final protection against a violation of rights. This protection is in the form of fines, sanctions, imprisonment, or additional penalties given after a violation of applicable laws and regulations. Repressive legal protection aims to resolve disputes. Handling of legal protection by the General Court and Administrative Court in Indonesia is included in this category of legal protection.

The following are several cases and decisions regarding buying and selling with the right to repurchase. The author obtained several case decisions involving the Company PT Akuisindo Property Assetama and the seller. According to Mrs. Elly's statement, so far the decisions involving the company stated that the Company was the winning party. Therefore, in this case the author will describe the case position of several decisions involving the Company.

1. Supreme Court Decision Number 1201/K/Pdt/2017

   In the case of the verdict, the seller borrowed money by pledging land and buildings with HGB to the buyer which would later be purchased again within a certain period of time, then both parties had agreed and made a sales and purchase agreement, rental agreement and sale and purchase deed before a Notary/PPAT. After the period was over, there was a default, and the buyer changed the name of the land and building. So the seller filed a lawsuit with the District Court. The District Court and High Court decisions won with one of the considerations being that the buyer took advantage of the seller's emergency situation, but in the Supreme Court Decision, the Applicants were in favor.

   The Supreme Court in this decision argued that Judex Facti had misapplied the law with the following considerations: Regarding the abuse of circumstances (undue

[10] Soerjono Soekanto. *Pengantar Penelitian Hukum,* (Jakarta: UI Press, 1986), p. 133.
[11] Philipus M.Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, (Surabaya: Bina Ilmu, 1987), p. 11.

influence) had not been considered sufficiently by Judex Facti. Judex Facti did not consider to what extent the Plaintiff's economic needs could be used as a criterion as a determining reason to be categorized as abuse of circumstances by the Defendants, so that there were no other parties. Although the Plaintiffs were in urgent need of funds, in fact the Plaintiffs could seek funds from other parties, not solely from the Defendants. While the sale and purchase of the disputed object between the Plaintiffs and Defendants was carried out before the official certifier of title deeds (PPAT), therefore the actions of the Defendants cannot be categorized as abuse of circumstances.

2. Supreme Court Decision Number 596 Pk/Pdt/2022

In this case, the position of the verdict explains that Plaintiff Bahori Ahoen (Buyer) was offered verbally by Defendant I Wanti Kawaningsih and known by Defendant II Ismail to sell land and buildings worth Rp.150,000,000. The Plaintiff came to the disputed object and they agreed to carry out the sale and purchase of land based on a sale and purchase agreement. After the minutes of the Sale and Purchase of Land and Buildings were made, the Plaintiff (buyer) and Defendants I and II signed the Deed of Sale and Purchase Agreement (PPJB) which was carried out before Notary Imam Cahyono. The making of this PPJB Deed was due to unpaid taxes. After the making of the PPJB Deed, Defendant I and Defendant II said they still wanted to occupy the disputed object within 6 months, so the Plaintiff made a lease agreement and it was signed by Defendant I and Defendant II. However, Defendants I and II never paid rent to the plaintiff even until the lease contract period was over. The Plaintiff has tried to hold a meeting with Defendants I and II, but the Defendants stated that they would buy back the house by making a Statement of Repurchase made by the Defendants at a price of Rp. 306,764,000. However, the Defendants did not carry out the statement they had made. So the Plaintiff again sent a warning to the Defendants. After that, the Defendants made a statement again which stated that they would vacate the disputed object because they were unable to pay. However, the Defendants did not carry out what they had stated.

Feeling aggrieved, the Plaintiff (Bahori Ahoen) filed a lawsuit with the District Court with Registration Number 93/Pdt/G/2023/PN.Dpk against Defendant I Wanti Kawaningsih, Defendant II Ismail, Defendant III Notary Imam Cahyono. in Court Decision Number 93/Pdt.G/2020/PN.Dpk the Panel granted the Plaintiff's lawsuit in part and declared that the Disputed Land Object was valid and stated that the PJB and AJB were carried out before a Notary. This was also strengthened by the appeal and judicial review decisions.

From the legal decisions that state the legal process of changing the name of the land object in the sale and purchase with the right to repurchase, the decision is based on 2 important principles in law, especially concerning the agreement. While in the decision that rejects it is based on the opinion that the sale and purchase with the right to repurchase is a fake agreement based on the existence of debts, and also in customary law does not recognize the existence of a sale and purchase agreement with the right to return, besides that there is also a judge's consideration based on the abuse of circumstances.

From the decisions above stating that the sale and purchase carried out is valid, according to His Honor Judge Yakub Ginting, the judge based his decision on the consideration that it cannot be proven that the legal relationship between the parties is a debt. In this case, the agreement made is not a debt agreement but a sale and purchase agreement with the making of a PPJB and AJB carried out legally before a Notary and PPAT, even in some cases it has been changed to a different name. So it can be concluded that formally what is proven is the existence of a legal event of transfer of land rights with a sale and purchase and the transfer is considered

to have been in accordance with the procedure. If it is proven that the legal relationship between the seller and the buyer is actually a debt agreement, the judge can cancel the sale and purchase agreement (PPJB and AJB), and the object of the sale and purchase is only seen as collateral for the debt. In these decisions it can be seen that the PPJB made is a paid PPJB where the seller has received and enjoyed the money paid by the buyer, so that the sale and purchase can be validated. The decision is there to resolve the problems that exist in society, so it is more appropriate and fairer that it is ratified as a sale and purchase because the decision must be fair, beneficial and not cause problems. If it is declared void, then it is the same as the seller having to return the money he has received, and if he is unable to, then in the end the house will also be sold or auctioned to pay the money.[12]

There are obstacles faced in a sale and purchase with the right to repurchase, namely:

1. Uncertainty of asset value
2. Inability of the seller to repurchase
3. Legal risks and disputes
4. Problems of ownership and use of assets
5. Taxation and transaction costs
6. Inadequate regulations
7. Market and liquidity risks
8. Trust between parties

The protections that must be given to the parties in a sale and purchase with the right to repurchase are by making regulations regarding:

1. Written agreement
2. Obligation to fulfill the right to repurchase
3. Protection against misuse of the agreement
4. Asset guarantee
5. Legal sanctions
6. Dispute resolution mechanism
7. Insurance and additional protection

Within the principle of legal protection theory, the law should ensure a balanced guarantee of rights for all parties in a legal relationship, both in terms of ownership and physical control over the object of the transaction. However, in the practice of land sales with a right of repurchase, especially when used by companies as a financing method for individuals facing economic hardship, legal protection often proves to be minimal and unbalanced.

Administratively, the company becomes the rightful legal owner (legal shot) after the land certificate is transferred. Yet, in reality, the land or house often remains under the physical control (title shot) of the original seller. This discrepancy leads to conflict, as sellers may still feel a moral right to the property or lack full understanding of the legal consequences. Meanwhile, the company cannot easily enforce its ownership rights without going through costly and time-consuming legal proceedings.

The situation is further complicated by the absence of specific regulations or administrative mechanisms to record the right of repurchase clause within the national land administration system. As a result, the right of repurchase cannot be legally tracked or used as a basis for administrative enforcement.

This highlights a significant gap in legal protection for both parties due to a lack of clear regulation. The state has yet to provide adequate legal frameworks or administrative systems to manage these issues fairly and effectively. Therefore, legal reform is necessary through explicit regulation of conditional land sales, proper registration systems, and accessible

[12] Yakub Ginting. Personal interview. Supreme Court Judge Civil Chamber.

dispute resolution mechanisms to ensure balanced, fair, and predictable legal protection for all involved.

Legal Reform Perspective on Buyback Transactions with the Right to Repurchase

From the perspective of legal reform theory, the law should evolve in response to social dynamics and contemporary needs, rather than remain static or bound to outdated norms. However, the practice of land sale with a right of repurchase in Indonesia reveals stagnation within the legal system, due to inconsistencies between the colonial-era Civil Code, the Agrarian Law (UUPA), and modern societal needs, particularly in the context of land-based financing.

This type of transaction is commonly used by non-bank institutions as an alternative financing method without involving fiduciary or mortgage mechanisms. In practice, land is "sold" to a company with the condition that the seller can repurchase it within a specified period. However, due to the absence of clear legal regulations governing such arrangements, numerous legal issues arise, ranging from disputes over land ownership transfers to uncertainty regarding rights when the repurchase period ends. The national land administration system also lacks mechanisms to officially register repurchase rights, leading to a lack of legal certainty and protection.

The Supreme Court's jurisprudence has also been inconsistent. Some rulings uphold the practice based on the principle of freedom of contract, while others reject it as incompatible with UUPA and customary land law, which sees land sales as final and unconditional. This legal ambiguity underscores the urgent need for reform. Legal reform theory calls for a re-codification of outdated legal norms to align with present-day realities and ensure balanced legal protection. Without concrete reform, through new legislation, ministerial regulations, or an administrative recording system citizens remain vulnerable to legal uncertainty. Therefore, the state must take decisive steps to regulate conditional land sales explicitly and fairly to prevent ongoing legal conflicts and exploitation of weaker parties.

Buyback transactions with the right to repurchase can be developed into a more effective, modern, and standardized financing mechanism by adopting the implementation and methods used in repurchase agreements (repo). In general, this transaction allows a seller to sell land or buildings to a buyer with the condition that the seller retains the right to repurchase the asset within a specified period at an agreed price. In traditional practice, buyback transactions with the right to repurchase are often seen as an alternative solution for individuals or small businesses to obtain liquidity without having to mortgage their assets to a banking institution or sell them permanently. However, many cases of such transactions result in disputes, especially when the right to repurchase is not exercised as agreed or when one party feels disadvantaged due to changes in the value of the land or building.

To establish buyback transactions with the right to repurchase as a more modern financing mechanism, legal reforms are needed to regulate its legal framework, implementation mechanisms, as well as oversight and dispute resolution processes. One possible approach is to adopt the repo method, which has been successfully implemented in global financial markets.[13]

Repurchase Agreement, or more commonly known as repo, is a buy-sell agreement involving two parties: the seller (borrower) and the buyer (lender). In this arrangement, the seller sells a specific financial asset, such as stocks, bonds, or other securities, to the buyer with a commitment to repurchase the asset at a predetermined time in the future at an agreed price. Repo is often considered a form of a short-term collateralized loan, as the financial asset being

[13] Robert K. Merton, *Teori Perjanjian Pembelian Kembali dan Aplikasinya* (Cambridge: Harvard University Press, 2002), p. 20–30.

sold serves as collateral to secure the repayment of the borrowed funds. This type of transaction is highly popular in global capital and money markets, as it provides market participants with short-term liquidity without permanently losing ownership of their strategic assets.[14]

In a repo transaction, the seller obtains cash from the buyer by using financial assets as collateral, while the buyer earns a profit from the interest paid by the seller upon repurchasing the asset. This transaction is commonly used by financial institutions such as banks, investment firms, or government agencies to meet short-term funding needs, enhance liquidity, or take advantage of short-term asset value fluctuations. Since repo involves financial assets that can be easily traded, the process tends to be faster and more efficient compared to other financing methods, such as loans secured by real estate or other fixed assets.

The repo system is structured into two main stages: the initial sale and the repurchase stage. In the first stage, the seller transfers financial assets to the buyer at a specific price, which is typically lower than the market value of the asset. This discount reflects the interest rate applied to the repo transaction. In return, the buyer provides cash to the seller. In the second stage, the repurchase, the seller returns the received funds along with the previously agreed-upon interest, while the buyer returns the financial asset that was originally used as collateral.[15]

In practice, the repurchase price is always higher than the initial selling price to reflect the buyer's profit. The interest rate applied in a repo transaction, known as the repo rate, is usually lower than the interest rate on unsecured loans due to the presence of collateral in the transaction. This makes repo a relatively low-cost and secure financing instrument for both lenders and borrowers. Repo mechanisms are often facilitated by clearing institutions to ensure transparency and reduce default risk, especially in transactions involving large sums. In Indonesia, repo transactions are regulated by the Financial Services Authority (FSA) through FSA Regulation No. 9/POJK.04/2015 on Repurchase Agreement Transaction Guidelines. This regulation provides a clear legal framework for the implementation of repo transactions, including requirements for eligible collateral assets, pricing mechanisms, and dispute resolution procedures.[16]

On the other hand, the regulation of repo transactions in Indonesia's capital market also involves the Indonesia Stock Exchange (IDX) as the primary regulator overseeing the trading of stocks and bonds on the exchange. With strict regulations in place, repo transactions provide investors with assurances regarding transparency and transaction reliability. Clearing institutions such as the Indonesian Central Securities Depository (KSEI) also play a crucial role in recording and settling repo transactions to ensure there are no conflicts of interest or execution failures.

In a repo transaction, disputes may arise if one party fails to fulfill its obligations as agreed. For example, if the seller is unable to repurchase the asset within the agreed timeframe, the buyer has the right to sell the asset in the open market to recover the funds that were loaned. However, if the market value of the asset significantly declines, the buyer risks a loss because the proceeds from the asset sale may not be sufficient to cover the principal and interest owed. Conversely, if the market value of the asset rises sharply, the seller may feel disadvantaged as they would have to repurchase the asset at a price higher than its market value. To resolve such disputes, most repo contracts include an arbitration clause as the primary method of dispute resolution. Additionally, if the repo transaction involves a clearing institution or is regulated by the Financial Services Authority (FSA), dispute resolution can be conducted through

[14] Gorton, Gary, dan Andrew Metrick, (2012). Perbankan Sekuritisasi dan Penarikan Dana Repo. *Jurnal Ekonomi Keuangan*, Vol. 104, No. 3 p. 444–447.

[15] Bank Indonesia, *Repo sebagai Instrumen Kebijakan Moneter* (Jakarta: Bank Indonesia, 2018), p. 14–15.

[16] Otoritas Jasa Keuangan (OJK), *Peraturan OJK Nomor 9/POJK.04/2015 tentang Pedoman Transaksi Repurchase Agreement* (Jakarta: OJK, 2015), p. 3–10.

mediation or court proceedings. Clear regulations regarding the rights and obligations of both parties are essential to prevent conflicts.

A repo is a form of short-term collateralized lending, where financial assets such as bonds or stocks serve as collateral. Repo transactions consist of two stages: the sale of the asset and its repurchase. While it may seem similar to buyback transactions with the right to repurchase, repo transactions are more structured and legally protected.[17] By adopting the principles of repo transactions, buy-sell agreements with the right to repurchase can be redesigned to become a safer and more transparent financing instrument.

1. Use of land and buildings as collateral
   In buy-sell agreements with the right to repurchase, land or buildings will function as collateral, similar to financial assets in repo transactions. The value of the land or building should be assessed by an independent appraiser to determine a fair initial selling price and repurchase price. As in repo transactions, the repurchase price will include the loan principal plus an agreed-upon return, equivalent to the interest rate in repo transactions.
2. Well-documented agreements
   Similar to repo transactions, buy-sell agreements with the right to repurchase should be supported by standardized contractual documentation outlining the rights and obligations of both parties, execution mechanisms, and dispute resolution provisions. The agreement should clearly specify the repurchase period, repurchase price, and penalties for contract violations. With clear documentation, the risk of disputes can be minimized.
3. Efficient implementation mechanisms
   Buy-sell agreements with the right to repurchase can leverage digital technology to ensure a more efficient and transparent transaction process. For example, the registration of such agreements can be conducted through an online platform connected to the National Land Agency system. This would ensure that all transactions are officially recorded and that the buyer's rights to the asset during the agreement period are legally protected.
4. Supervision by a dedicated institution or authority
   One of the strengths of repo transactions is the oversight provided by clearing institutions or capital market authorities, ensuring compliance with regulations. Similarly, buy-sell agreements with the right to repurchase could be supervised by a designated government agency or financial regulatory authority. This institution would be responsible for monitoring transactions, ensuring that asset values are appropriate, and assisting in dispute resolution if necessary.

Adopting the repo method in buy-sell agreements with the right to repurchase offers several significant benefits. First, it would become a safer and more standardized financing instrument for both sellers and buyers. Sellers could obtain quick funds without permanently losing their assets, while buyers would have legal protection over the collateralized assets. Second, with a structured mechanism, these transactions could attract institutional investors or financial institutions to participate as buyers, thereby expanding financing access for the public.[18]

Furthermore, a modern buy-sell system with the right to repurchase will enhance transparency and reduce the risk of disputes. With oversight from a dedicated institution, parties involved can feel more confident in conducting transactions. Another advantage is the flexibility of buy-sell agreements with the right to repurchase, which can be tailored to short-

[17] Indradi (2014) Repurchase Agreement (REPO): Dualisme Dalam Perspektif Pajak Penghasilan, *Jurnal Insidetax,* Edisi 24, p. 1.

[18] Sandrawati, E. (2016). *Perlindungan Hukum terhadap Investor dalam Perjanjian Jual Beli Saham Dengan Hak Membeli Kembali (Repurchase Agreement) Yang Diperjualbelikan PT. OSO Securities Cabang Medan* (Doctoral dissertation, Universitas Medan Area). P. 54.

term or long-term financing needs. However, several challenges must be addressed to establish buy-sell agreements with the right to repurchase as a modern financing instrument. One of the main challenges is the need for legal reform to support this type of transaction. Currently, buy-sell agreements with the right to repurchase are generally regulated under the Indonesian Civil Code without specific provisions that protect the rights of the parties in detail. Therefore, a dedicated regulation is needed to govern buy-sell agreements with the right to repurchase, covering aspects such as contracts, registration, and dispute resolution. Additionally, supervision by a dedicated institution requires adequate resources and infrastructure. The government needs to establish a regulatory body or designate an existing authority, such as the Financial Services Authority or the National Land Agency, to oversee the implementation of buy-sell agreements with the right to repurchase.[19]

Economically, buy-sell agreements with the right to repurchase have great potential as a financing solution for individuals who lack easy access to formal financial institutions such as banks. In many cases, people need quick funds by using assets such as land and buildings as collateral. However, the credit process in banks often takes a long time, involves strict administrative requirements, and incurs high costs. Buy-sell agreements with the right to repurchase offer a simpler and faster solution, as transactions are conducted directly between individuals or specific parties without involving complex bureaucracy.

Nevertheless, the main economic drawback of buy-sell agreements with the right to repurchase is the legal uncertainty that accompanies them. This uncertainty not only harms individuals but also negatively impacts the overall economic climate. For example, disputes related to buy-sell agreements with the right to repurchase—such as the buyer refusing to honor the repurchase right or violations of the agreed timeframe—reduce the economic value of such transactions. This risk makes buy-sell agreements with the right to repurchase a less trusted instrument among the general public as a financing solution, thereby decreasing their attractiveness compared to other financing schemes such as bank loans or leasing.[20]

Therefore, legal reform is a strategic step to enhance public trust and provide legal certainty for buy-sell agreements with the right to repurchase. With legal reform, these transactions can be more systematically regulated and integrated into the national legal system, ultimately supporting economic activities. Clear regulations regarding the rights and obligations of the parties involved, transparent implementation mechanisms, and an effective oversight system will create a sense of security for individuals who wish to use buy-sell agreements with the right to repurchase as an alternative financing method. For example, by ensuring that the seller has an absolute right to repurchase the asset within the agreed timeframe, legal reform will prevent the misuse of power by the buyer.

On the other hand, from the buyer's perspective, legal certainty in buy-sell agreements with the right to repurchase also guarantees that their ownership rights over the purchased asset remain recognized throughout the agreement period. This certainty can create opportunities for buyers to utilize the asset productively, such as using it as collateral in other transactions or as an income-generating investment. Thus, well-regulated buy-sell agreements with the right to repurchase not only benefit sellers but also create economic opportunities for buyers, ultimately contributing to overall economic growth.[21]

Therefore, legal reform is a strategic step to enhance public trust and provide legal certainty for buy-sell transactions with the right to repurchase. With legal reform, these

[19] Ibid p. 55.

[20] Badan Kebijakan Fiskal, *Kajian Ketidakpastian Hukum dan Dampaknya terhadap Iklim Ekonomi* (Jakarta: Kementerian Keuangan, 2022), p. 27–30.

[21] Edi Setiadi dan Nurul Elina, *Hukum Jaminan di Indonesia* (Bandung: Refika Aditama, 2019), p. 210–215.

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In the context of developing buy-sell transactions with the right to repurchase as a superior alternative financing method, it is essential to study and adapt the successful implementation of the repurchase agreement (repo) method in the modern financial system. Repo, a financing mechanism based on a buy-sell agreement with a repurchase commitment, offers transparency, legal certainty, and operational efficiency, which can serve as a reference for enhancing buy-sell transactions with the right to repurchase. By incorporating the advantages of repo, such as clear regulations, strict supervisory mechanisms, and certainty in dispute resolution, buy-sell transactions with the right to repurchase can be optimized to become a secure, flexible, and widely accessible financing instrument for various segments of society.[23]

One of the most important aspects of legal reform in buy-sell transactions with the right to repurchase is the regulation of the rights and obligations of the parties involved. Legal certainty can only be achieved if the parties understand and have clear guidelines regarding their respective rights and obligations. In the context of buy-sell transactions with the right to repurchase, both parties, the seller (debtor) and the buyer (creditor) have legally interconnected positions. Therefore, their rights and obligations must be explicitly regulated in legislation or other implementing regulations.[24]

The implementation mechanism of buy-sell transactions with the right to repurchase also requires a more systematic legal reform. Currently, the execution of such transactions is often based solely on contractual agreements between the parties, without comprehensive guidelines or standardized procedures. This creates opportunities for misuse or violations, especially if one party acts dishonestly or lacks an understanding of their legal rights. Therefore, more detailed regulations are needed regarding the steps for executing buy-sell transactions with the right to repurchase.

The success of buy-sell transactions with the right to repurchase as an alternative financing method also depends on the role of institutions that oversee and support the implementation of this scheme. At present, there is no specific institution responsible for regulating and supervising such transactions. Therefore, one proposed legal reform is the establishment of a specialized institution or the strengthening of existing institutions, such as

[22] Salim HS, *Perkembangan Hukum Jual Beli di Indonesia* (Jakarta: Rajawali Press, 2018), p. 150–155.

[23] Otoritas Jasa Keuangan, Peraturan OJK Nomor 9/POJK.04/2015 tentang Pedoman Transaksi Repurchase Agreement.

[24] Kementerian Hukum dan HAM, *Rancangan Undang-Undang Hukum Perdata* (Jakarta: Kemenkumham, 2021), hlm. 220–225.

the Financial Services Authority (FSA) and the National Land Agency.[25]

A registration and supervisory institution can be established to register all buy-sell transactions with the right to repurchase and ensure that these transactions comply with applicable regulations. This institution can also be responsible for providing information to the public regarding the status of assets involved in such transactions, thereby preventing future disputes. Additionally, this institution can serve as a mediator or facilitator in the event of a dispute between the parties.[26]

In addition, a specialized dispute resolution institution with expertise in buy-sell transactions with the right to repurchase needs to be established. This is because one of the main issues in such transactions is the potential for disputes between the parties, especially if one party fails to fulfill its obligations. This institution could take the form of an independent arbitration body or be part of an economic court. With a dedicated and focused dispute resolution institution, the resolution process can be carried out more quickly, efficiently, and fairly.

COCLUSION

The buyback with the right to repurchase offers significant potential as an alternative financing solution due to its fast and straightforward process. However, legal uncertainties regarding ownership status during the agreement and the seller's right to repurchase often lead to disputes, reducing trust in this mechanism. To ensure legal certainty, clear regulations must define the rights and obligations of both parties, the status of the asset throughout the contract period, and the procedures for exercising the repurchase option. Strengthening legal protections will help prevent imbalances in bargaining power, ensuring that sellers retain a fair opportunity to buy back their assets while buyers have secure ownership rights. Legal reforms should include the establishment of specific and comprehensive regulations, mandatory registration of agreements with relevant authorities, and standardized contracts to prevent misinterpretation. Additionally, the implementation of effective dispute resolution mechanisms, such as mediation or arbitration, can provide a fair and efficient alternative to lengthy court proceedings. With proper oversight and integration into the formal financial system, buyback sales can serve as a legally secure and widely accepted financing instrument, benefiting both individuals and businesses while contributing to financial inclusion and economic growth.

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[25] Nurhasan Ismail, *Reformasi Hukum Ekonomi Indonesia* (Bandung: PT Citra Aditya Bakti, 2020), p. 240–245.

[26] *Ibid,* p. 250-255

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