



The Dual Legal Status of Developers in Buy-Back Guarantee-Based Subrogation: A Juridical Analysis of Mortgage Property Execution Involving Land Certificates Registered in the Developer's Name

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Abstract

Background: The increasing utilization of *Kredit Pemilikan Rumah* (KPR) schemes in Indonesia has generated complex legal relationships among consumers, banks, and property developers, particularly within *Buy Back Guarantee* (BBG) arrangements. Legal disputes emerge when debtors experience default while land certificates remain registered under developers' names, and developers settle debtor obligations through BBG mechanisms. Through subrogation, developers may obtain creditor positions while maintaining formal ownership, creating uncertainty regarding unilateral cancellation of *Perjanjian Pengikatan Jual Beli* (PPJB), property repossession, and enforcement of rights over financed assets.

Objective: This study examines the legality of unilateral PPJB cancellation and property repossession conducted by developers based on subrogation deeds, as well as the legal consequences arising from the dual position of developers as formal property owners and substituted creditors.

Methods: This research applies a normative juridical approach using statutory, conceptual, and case approaches. Legal materials consist of primary legal sources, secondary legal literature, and judicial decisions related to mortgage financing, subrogation, PPJB, and BBG mechanisms.

Results: The findings indicate that subrogation does not automatically grant developers the authority to unilaterally cancel PPJBs or repossess properties without fulfilling contractual obligations and applicable legal procedures. The developer's role as a substituted creditor must be separated from its capacity as the registered owner of the property.

Conclusion: Legal certainty in KPR practices requires compliance with good faith principles, judicial oversight, and clear contractual arrangements regarding default and subrogation consequences. This study contributes to strengthening legal understanding of the relationship between property rights, contractual obligations, and creditor protection in Indonesian housing financing.

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INTRODUCTION

Housing financing in Indonesia essentially involves a legal relationship among three main parties: the consumer as the buyer and debtor, the bank as the credit institution, and the developer as the seller or provider of housing units (Putra et al., 2023). These legal relationships are interconnected because the success of the transaction depends not only on the consumer's fulfillment of payment obligations but also on the certainty of the legal status of the object used as collateral by the bank. Ideally, the home purchase process begins with the signing of a Deed of

Sale and Purchase (*Akta Jual Beli* or AJB) before a Land Deed Official (*Pejabat Pembuat Akta Tanah* or PPAT), followed by registration of the transfer of land rights at the land office and the issuance of a land title certificate in the buyer's name. Once ownership has been legally transferred, the bank encumbers the property with Mortgage Rights (*Hak Tanggungan*) through a Deed of Granting Mortgage Rights (*Akta Pemberian Hak Tanggungan* or APHT) as security for a Home Ownership Credit (*Kredit Pemilikan Rumah* or KPR) facility. Once the Mortgage Rights have been registered, the bank assumes the position of a preferred creditor, possessing priority rights and executorial authority in the event of default by the debtor (Utami et al., 2025).

However, this mechanism is often not directly applicable in housing development practice, particularly for projects that are still in the development stage (pre-project selling). To expedite sales and meet consumers' financing needs, developers often offer homes before the process of subdividing the master certificate and issuing individual ownership certificates for each unit has been completed. In such circumstances, the legal relationship between the parties is based primarily on a Sale and Purchase Agreement (*Perjanjian Pengikatan Jual Beli* or PPJB), which serves as a preliminary agreement setting forth the parties' undertaking to complete the sale and purchase at a later date (Simalango et al., 2025). At the same time, banks often provide mortgage financing to consumers even though the individual certificates have not yet been issued, the master certificate remains registered in the developer's name, and the AJB and APHT cannot yet be executed because the requisite legal conditions have not been satisfied (Djaja, 2020; Mulia & Wahyudi, 2022; Putra et al., 2023).

This situation gives rise to a transitional legal construction that differs from the ideal housing financing mechanism. From the consumer's perspective, ownership of the home is not yet perfected because there has been no transfer of land rights through the AJB and subsequent land registration (Janisriwati, 2020). From the bank's perspective, the collateral in the form of Mortgage Rights cannot yet be created, so the legal protection afforded to the bank's receivable is not optimal. Meanwhile, the developer remains the registered holder of the master certificate and the party responsible for completing the land-administration process until the individual certificate can be issued (Sarimun et al., 2024). This condition makes the legal relationship among the three parties more complex because each party has rights and obligations that are not yet fully secured by definitive legal instruments.

The implication of this condition is the emergence of various legal uncertainties concerning ownership, the validity of the credit security, the implementation of repayment, and the protection of the parties' rights in the event of a dispute or default. Consumers face the risk of delays in the issuance of certificates or even the developer's failure to complete the project, while the bank has not yet obtained security rights that confer preferential status as contemplated under the Mortgage Rights Law (Samosir, 2026). Therefore, the period between the signing of the PPJB and the execution and registration of the AJB and APHT constitutes a phase of significant legal risk and requires clearer regulation to ensure legal certainty, consumer protection, and financing security for banking institutions (Asror & Mardani, 2025; Azzahra, 2025; Fadhillah, 2026).

Recent legal scholarship on mortgage practice has consistently described the fragility of such transitional arrangements (Kreiczer-Levy, 2025). Hanyndra (2026) shows that non-performing KPR FLPP loans are often resolved through persuasive measures, debtor substitution, execution of collateral under the Mortgage Rights Law, or *buy back* arrangements, depending on the bank's security structure. Syafiqah & Sigit (2023) explain that a *buy back guarantee* is not expressly regulated as a statutory security right but has developed as a contractual instrument resembling a personal guarantee (*borgtocht*) because it is accessory to the principal credit agreement. Wijaya (2026) further emphasize that when a mortgage object remains within a master certificate that is being subdivided, the bank does not yet hold a perfected Mortgage Right over an individual parcel, while the debtor does not yet hold registered title to the purchased unit. These studies are important because they reveal a recurring regulatory gap: the market requires financing before land documentation is complete, whereas land and security law require a clear, registered, and specifically identified object before strong proprietary and executorial consequences can arise.

The controversy becomes more complex when the *buy back guarantee* is followed by a subrogation deed. In a common scenario, the debtor defaults on mortgage installments, the bank

calls upon the developer under the *buy back guarantee*, the developer pays the debtor's outstanding loan, and the bank executes a subrogation deed that places the developer in the bank's position as the substitute creditor (Suryadi & Alim, 2024). From the perspective of Civil Code doctrine, subrogation is the substitution of a new creditor for the original creditor following payment by a third party, allowing the new creditor to exercise the original creditor's claim to the extent transferred by law or agreement. Wibowo et al. (2025) argue that subrogation protects the substitute creditor and that a buy back clause does not extinguish the debtor's debt; rather, it strengthens the guarantor's right of recourse following payment. This doctrinal view is useful, but it also exposes the central tension of this article: the developer is not merely a third-party payer or substitute creditor; it may also remain the formal registered holder of the land certificate because the AJB and individual certification have not yet been completed. The developer thus appears simultaneously as seller, formal registered holder, buy back guarantor, and new creditor.

This dual status gives rise to a practical question with serious consequences: may a developer unilaterally cancel the PPJB and vacate the mortgage object simply because it has paid the bank and obtained a subrogation deed, while the land certificate remains formally registered in its name? The answer cannot be reduced to a simple assertion of formal title. Indonesian land registration law gives a land certificate strong evidentiary force, but the certificate must be understood together with the contractual chain that established the consumer's possessory and payment obligations. The PPJB is a preliminary agreement rather than a deed transferring land rights, yet it creates binding obligations that cannot be disregarded by the developer. Similarly, a subrogation deed transfers the relevant claim rights from the bank to the developer, but it does not, by itself, transform a personal claim into a registered Mortgage Right or constitute a court order authorizing eviction. The conflict therefore lies at the intersection of contract law, land registration law, mortgage law, consumer protection law, and civil procedure.

Existing studies have discussed each of these components separately. Research on buy back guarantees focuses on their validity as accessory agreements and their usefulness in resolving mortgage arrears. Research on master certificates focuses on the uncertainty faced by banks and debtors before certificate subdivision is completed. Research on subrogation focuses on the substitution of creditors and the protection of third-party payers. Research on the execution of immovable property, such as that by Sari (2026), warns that even court-based execution can become procedurally defective if the physical object and its boundaries are not properly verified with the relevant land authorities. What remains underexplored is the combined situation in which the same developer invokes formal title and subrogated creditor status to justify unilateral cancellation and physical control over an object that has been sold through a PPJB and financed through KPR. This article offers a novel contribution by analyzing that overlap as a problem of status separation: the developer's position as the formal holder of the master certificate must not be conflated with its position as the substitute creditor under subrogation.

The urgency of this analysis is not only doctrinal but also social. Housing is a basic need, and mortgage consumers often occupy a weaker bargaining position than developers and banks. The absence of a completed individual certificate may leave consumers exposed to delayed title transfers, uncertain collateral arrangements, and unclear remedies if they default or if the developer fails to complete the land-administration process. Maghfira (2023) describes the vulnerability of mortgage debtors who have fully repaid their loans but still cannot obtain their certificates because of unresolved developer obligations. If even a fully paid debtor can face uncertainty regarding certificate issuance, a defaulting debtor in a buy back-subrogation situation may be even more vulnerable to disproportionate measures, particularly when the developer argues that the land remains formally registered in its own name. Legal certainty must protect not only the creditor's right to repayment but also the debtor's rights to due process, proportionality, and a predictable resolution.

This article therefore asks, in narrative form, whether the unilateral cancellation of a PPJB and the developer's self-help eviction of a mortgage object are legally valid when based solely on a subrogation deed while the certificate remains registered in the developer's name, and how the law should resolve the developer's dual status as the formal registered holder of the asset and the new creditor with respect to the same object. The purpose is to construct a juridical framework that separates ownership registration, contractual obligations, creditor rights, and execution mechanisms. The argument advanced is that subrogation is valid as a transfer of a claim if its

statutory and contractual requirements are satisfied, but it cannot be used as a shortcut to cancel the PPJB or forcibly vacate the object without compliance with the requirements of good faith, a proper determination of default, applicable judicial procedures, and land-registration rules.

METHOD

This research employed a normative juridical research method using a statute approach, a conceptual approach, and a document-based approach. Normative juridical research was chosen because it focused on analyzing legal norms governing legal relationships in housing finance transactions, particularly those involving *buyback guarantee* mechanisms, subrogation, and the imposition of Mortgage Rights. The analysis examined various provisions of positive law, legal doctrines, and scholarly literature related to the research object to obtain a comprehensive understanding of the legal standing of the parties and the resolution of disputes in accordance with Indonesian legal principles.

The statute approach was conducted by examining various laws and regulations that served as the legal basis for housing finance transactions. The study included provisions of the Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata) concerning contract law, default, reciprocal cancellation of agreements, guarantees (*borgtocht*), torts, and subrogation, as regulated, among others, in Articles 1400–1403 of the Civil Code. In addition, the research analyzed the Basic Agrarian Law and regulations concerning land registration, which govern the issuance of land title certificates and the principle of publicity; Law Number 4 of 1996 concerning Mortgage Rights on Land and Land-Related Objects, which regulates the establishment, registration, and enforcement of Mortgage Rights; and various provisions governing the housing sector, including the use of Sale and Purchase Agreements (*Perjanjian Pengikatan Jual Beli* or PPJB) as preliminary agreements in housing sale and purchase transactions. The research also considered consumer protection provisions as a basis for assessing the balance of rights and obligations among consumers, developers, and financing institutions.

Furthermore, the research used a conceptual approach to analyze various legal concepts that formed the basis of the discussion. This approach was intended to clearly distinguish between personal rights arising from contractual relationships and real rights arising through land registration. It was also used to explain the differences between accessory security arrangements, such as a *buyback guarantee*, and security in the form of Mortgage Rights, as well as to distinguish among collection rights, rights of recourse, preferential rights, and executorial rights in the context of mortgage financing. This approach was crucial to avoiding misunderstandings regarding the legal consequences of subrogation, particularly concerning the limitations of the rights that a developer could acquire after paying the debtor's outstanding debt to the bank.

This research also employed a document-based approach by analyzing various relevant legal documents and scholarly works. The documents reviewed included national and international journal articles discussing *buyback guarantee* mechanisms, mortgage financing involving master certificates, issues concerning the encumbrance of Mortgage Rights before the issuance of individual certificates, legal protection for debtors awaiting certification, the resolution of problematic mortgage loans, and procedures for executing collateral in the form of land and buildings. The analysis of these documents was intended to provide an overview of the development of legal doctrine and practice, as well as the legal issues arising from the implementation of housing financing in Indonesia.

The legal materials used in this research consisted of primary and secondary legal materials. Primary legal materials included various laws and regulations governing civil law, land law, security law, and consumer protection law, as well as legal doctrines developed within the Indonesian private law system. Meanwhile, secondary legal materials consisted of indexed scholarly journal articles, previous research findings, textbooks, expert opinions, and other academic publications discussing issues related to subrogation, *buyback guarantees*, Mortgage Rights, debtor protection, and dispute resolution in housing finance. The selection of these legal materials was based on their relevance to the research focus, specifically the legal relationships among banks, developers, and consumers in housing finance transactions.

The legal materials were analyzed qualitatively through several stages. The first stage was legal interpretation, which involved interpreting the provisions of laws and regulations in accordance with the principles and objectives underlying their enactment. The second stage was

normative systematization, which involved connecting various legal provisions from the fields of contract law, land law, security law, and consumer protection law to form a coherent legal structure. The third stage involved legal analogy, through which principles developed in contract law were compared with the doctrines of Mortgage Rights and subrogation to clarify the legal standing of the parties. The final stage involved a prescriptive evaluation that assessed the adequacy of the applicable legal regulations and formulated recommendations for legal resolution that would provide legal certainty, consumer protection, and certainty for financing institutions and developers.

Because this research relied entirely on legal documents and scholarly literature as data sources, it did not involve human or animal participants. Therefore, the research did not require ethical clearance. The entire research process was conducted through the analysis of legal sources and published scholarly documents, thereby complying with the principles of normative legal research, which emphasizes the study of legal norms, doctrines, and principles.

RESULTS AND DISCUSSION

Results

The first finding indicates that the collateral in Home Ownership Credit (*KPR*) financing does not meet the requirements for complete collateral if the land title certificate for each housing unit has not yet been issued. Under these circumstances, the legal status of the financed object remains in a transitional stage because ownership has not yet been fully transferred from the developer to the consumer. Consequently, the land and buildings subject to financing cannot yet be encumbered with a Mortgage Right, as required under the Indonesian mortgage system.

At this stage, the legal relationship between the consumer and the developer is based solely on the Sales and Purchase Agreement (*PPJB*). The *PPJB* is a preliminary agreement that binds the parties to complete the sale and purchase at a later date after all legal requirements have been met. However, the *PPJB* does not result in the transfer of land rights because the transfer of rights occurs only after the execution of the Sales and Purchase Deed (*AJB*) before a Land Deed Official (*PPAT*) and registration at the land office. Therefore, legally, the consumer does not yet hold registered land rights, even if the consumer has made payments or obtained financing from the bank.

On the other hand, the legal relationship between the bank and the consumer is based on a credit agreement, which governs the rights and obligations of both parties during the financing period. Although the bank has disbursed the loan funds, it cannot yet obtain complete collateral because the Deed of Granting Mortgage Rights (*APHT*) has not yet been drawn up. As a substitute, banks generally hold only a Power of Attorney to Encumber Mortgage Rights (*SKMHT*), which grants the bank authority to encumber the land with Mortgage Rights after the land-administration requirements have been fulfilled. However, the *SKMHT* is not itself a Mortgage Right and does not provide the same legal standing as a registered Mortgage Right evidenced by a Mortgage Rights Certificate.

As explained by Wijaya (2026), the non-issuance of land title certificates for individual housing units prevents banks from immediately encumbering the financed property with Mortgage Rights. This occurs because, legally, consumers are not yet registered as holders of the relevant land rights in the land-registration system. As long as the certificate remains in the developer's name, there is no land right registered in the consumer's name that can be encumbered with a Mortgage Right to secure repayment of the debtor's obligations to the bank.

This situation directly affects the bank's legal standing as a creditor. Under Indonesia's legal system governing security interests over land, a registered Mortgage Right grants the bank the status of a preferred creditor, meaning that the creditor has priority over other creditors in the repayment of its receivables if the debtor defaults or is declared bankrupt. Furthermore, a Mortgage Right provides executorial force and, under the circumstances prescribed by law, enables the creditor to sell the collateral through the mechanisms stipulated by law without first obtaining a judgment on the underlying debt.

However, when a Mortgage Right cannot be registered because the individual certificate has not yet been issued, the bank does not obtain these two privileges. The bank has only a legal relationship based on the credit agreement and therefore occupies, with respect to that debt, the position of an unsecured creditor. Consequently, if a debtor defaults on its obligations, the bank

cannot immediately execute the financed house as collateral to satisfy the debt. Instead, the bank must wait until the land-administration process has been completed or pursue other legal mechanisms, which generally take longer and may involve higher costs.

This situation also increases legal and credit risks for banks. Until a registered Mortgage Right exists, there is potential for disputes regarding land-ownership status, delays in certificate issuance, or even failure by the developer to complete the certificate-splitting process. If these conditions occur simultaneously with the debtor's default, the bank lacks optimal legal protection to secure repayment of the funds it has disbursed.

Therefore, the legal protection ideally provided through a Mortgage Right can become fully effective only after the relevant land-administration process has been completed: the land title certificate must have been issued in the consumer's name, the Deed of Granting Mortgage Rights (*APHT*) must have been executed before a Land Deed Official (*PPAT*), and the Mortgage Right must have been registered at the land office, resulting in the issuance of a Mortgage Rights Certificate. Before these stages are fulfilled, legal protection for the bank's interests remains limited and depends on contractual instruments, such as credit agreements, a Power of Attorney to Encumber Mortgage Rights (*SKMHT*), or buyback guarantees from developers, which do not legally provide executorial powers equivalent to those of a registered Mortgage Right.

To mitigate this risk, financing practices are often accompanied by a buyback guarantee provided by the developer to the bank. Through this mechanism, the developer promises to repurchase the financed object or settle the debtor's obligations in the event of default before the Mortgage Right can be established. While providing additional protection for the bank, the buyback guarantee is essentially a contractual guarantee (*personal guarantee*) rather than a proprietary security interest that grants direct rights over the land. Therefore, its legal force is not equivalent to that of a registered Mortgage Right, and the effectiveness of the legal protection afforded to the bank still depends on the developer's good faith and ability to fulfill its agreed obligations. This finding indicates that the incomplete legal status of the collateral object at the pre-certification stage is a major source of legal uncertainty in housing financing in Indonesia.

The second finding is that a buyback guarantee creates an accessory obligation of the developer toward the bank, rather than an automatic proprietary reacquisition of the housing unit from the debtor. Syafiqah & Sigit (2023) characterize a buyback guarantee as comparable to a personal guarantee because it is dependent on the credit agreement. Hanyndra (2026) also records that buyback arrangements are used as an alternative resolution mechanism in *KPR FLPP* practice, particularly where the bank's collateral structure is not fully supported by an *APHT*. As a legal consequence, when the developer pays under the buyback guarantee, the immediate effect is satisfaction of the bank's claim to the extent of the amount paid and the emergence of the developer's recourse or subrogated claim against the debtor. The payment does not automatically extinguish all contractual relations between the developer and the consumer, nor does it by itself establish that the consumer's possession becomes unlawful from that moment.

The third finding indicates that a deed of subrogation has an important function, but its scope is limited to serving as an instrument evidencing the transfer of a right of claim from the existing creditor to the party that has paid the debtor's debt. In the context of housing finance, subrogation generally occurs when a developer fulfills its obligations under a buyback guarantee by paying the debtor's remaining debt to the bank. After this payment is made, the bank's claim is transferred to the developer, thereby granting the developer the right to seek reimbursement from the debtor for the amount paid.

For subrogation to be legally effective, several conditions must be met: the existence of a valid debt, payment by a third party (the developer), and a legal basis or deed evidencing the change in creditor status. By fulfilling these conditions, the transfer of the right of claim acquires legal legitimacy and provides certainty regarding the party authorized to demand repayment of the debt after payment has been made.

As stated by Wibowo et al. (2025), subrogation, as regulated in Articles 1400–1403 of the Civil Code (*KUHPerdata*), is a legal mechanism that allows a creditor's position to be transferred to a third party that has paid the debtor's debt. The primary purpose of this regulation is to provide legal protection to the party making the payment so that it does not suffer losses after fulfilling an obligation that should have been the debtor's responsibility. In the context of housing financing, this mechanism generally occurs when a developer fulfills its obligations under a

buyback guarantee by paying the debtor's remaining obligations to the bank.

The developer's payment to the bank does not, in itself, extinguish the debtor's underlying debt (Putra et al., 2023). The principal change is in the creditor's position: the bank, which was originally entitled to collect the debt, is replaced by the developer as the creditor to the extent of the subrogated claim. Thus, the underlying debt-receivable relationship remains, and the debtor remains obligated to satisfy the outstanding obligations. However, payment must now be made to the developer, which has replaced the bank through the subrogation mechanism.

The transfer of creditor status also creates a right of recourse for the developer. This right of recourse is the right to seek reimbursement of the amount paid to the bank, together with other rights legally attached to the debt, such as interest, penalties, or other agreed fees, insofar as those rights are transferred and do not conflict with applicable law. With this right of recourse, the developer has a legal basis to collect the debt, issue a demand or warning, negotiate a settlement, or file a civil lawsuit if the debtor fails to fulfill its obligation to reimburse the developer for the funds paid to the bank.

However, subrogation does not grant the developer unlimited authority. The fundamental principle of subrogation law is that the party replacing the creditor acquires only the rights previously held by the original creditor (*nemo plus iuris transferre potest quam ipse habet*). Accordingly, the developer cannot obtain stronger legal standing than the bank possessed. In other words, subrogation transfers existing rights; it does not create new rights that were not previously held by the original creditor.

This principle is crucial in housing-financing practices that remain at the pre-certification stage. In many cases, banks have disbursed Home Ownership Credit (KPR) facilities, but the Deed of Granting Mortgage Rights (APHT) cannot be executed because the land title certificates for the individual units have not yet been issued in the consumers' names. Consequently, the Mortgage Right cannot be registered, and the Mortgage Rights Certificate has not been issued. In this situation, the bank has only a right to collect based on the credit agreement and does not yet have the proprietary security right that would give it preferred-creditor status or the right to execute the collateral under the Mortgage Rights regime.

Because the bank does not have a perfected Mortgage Right, when subrogation occurs, the developer does not acquire any execution rights over the financed house. The developer acquires only the rights that the bank actually possessed, namely, the right to seek repayment of the debt from the debtor. Conversely, the right to execute the house as collateral cannot be transferred because that right never arose due to the unfulfilled requirements for the creation and registration of the Mortgage Right. Therefore, the developer cannot unilaterally take over the house, sell the property, or otherwise exercise control over the house solely on the basis of a subrogation deed.

This finding confirms that the subrogation deed functions as an instrument for transferring collection rights, not as an instrument for transferring ownership rights or creating new collateral rights. Therefore, dispute resolution after subrogation must still be conducted through appropriate legal mechanisms, whether through a default action, enforcement of the provisions of the Sales and Purchase Agreement (PPJB), or other legal procedures that protect the rights of all parties. This understanding is crucial for maintaining legal certainty in housing-financing transactions and preventing the misuse of the subrogation mechanism as a basis for obtaining rights that the original creditor never possessed.

These findings confirm the basic principle of subrogation law: subrogation transfers existing rights and does not create new rights. In other words, the developer merely replaces the bank's legal position as creditor, without gaining additional authority over the housing property. Therefore, subrogation cannot be used as a basis for automatically taking over home ownership, revoking the buyer's rights, or physically taking control of the housing property. These actions must still be carried out through appropriate legal mechanisms, such as settlement based on a Sales and Purchase Agreement (PPJB), a default action, or enforcement procedures stipulated by applicable law.

Therefore, these findings confirm that the primary function of a subrogation deed is to provide certainty regarding the transfer of collection rights from the bank to the developer, rather than to serve as an instrument for transferring ownership rights or creating new collateral rights. This understanding is crucial for maintaining a balance of legal protection among banks,

developers, and consumers, as well as preventing the misuse of the concept of subrogation in resolving housing-financing disputes.

The fourth finding is that the developer's formal registration as the certificate holder does not eliminate the binding effect of the *PPJB*. The certificate may show that the land right remains registered in the developer's name, but the developer's conduct in entering into the *PPJB*, receiving payments, cooperating with the bank, and allowing the buyer's possession creates obligations governed by contract law and the principle of good faith. The consumer's right at this stage may be personal rather than proprietary, but it remains legally protected. Therefore, formal title cannot be invoked selectively to deny the contractual framework that the developer itself created. This is particularly important because delays in certificate splitting may be attributable to the developer's administrative responsibilities, rather than solely to the debtor's default.

The fifth finding is that self-help eviction is not a legally secure execution mechanism. Even where a debtor has defaulted, the object is immovable property, and the determination of boundaries, possession, and rights requires formal procedures. Sari (2026) emphasize that the execution of immovable property requires coordination and measurement safeguards to prevent losses to third parties and protect certainty in land registration. If court-based execution itself must be conducted carefully, private eviction by a developer based solely on a subrogation deed is even more problematic. It risks being characterized as an unlawful act if it causes loss, violates possession without due process, or bypasses judicial determination of default and termination.

The sixth finding is that legal settlement must reconstruct the parties' positions separately. As seller and formal certificate holder, the developer has an obligation to complete the land-administration process and transfer title if the buyer performs its obligations or if the contract remains effective. As buyback guarantor, the developer has an obligation to the bank and may be required to pay when the debtor defaults. As subrogated creditor, the developer may collect the debt from the debtor. These positions may coexist, but they do not merge into a single power to cancel, seize, and evict. Each position has its own legal pathway, evidentiary burden, and remedy.

Table 1

Recommended Legal Settlement of Developer Dual Status

Track	Permissible legal step	Prohibited shortcut
Debt track	Demand reimbursement, negotiate repayment, file civil claim	Treat subrogation as direct title to the house
PPJB track	Serve default notice, calculate restitution, seek court-confirmed termination if disputed	Cancel PPJB unilaterally without proof and accounting
Possession track	Obtain voluntary handover or court execution order	Forced emptying by private action
Land-registration track	Complete splitting/AJB/APHT or correct records after lawful termination	Use master certificate status to ignore buyer's contractual rights

In a Home Ownership Credit (*KPR*) transaction involving buyback guarantee and subrogation mechanisms, the legal relationships among the parties do not exist in isolation but instead form a series of interrelated relationships. Each legal relationship has different legal instruments, gives rise to different rights, and is subject to specific limitations that must be respected. Understanding this legal-status matrix is crucial for determining the rights and obligations of each party and preventing abuse of authority in dispute resolution.

Legal Relationship between Developer and Buyer

The legal relationship between the developer and buyer is based on the Sales and Purchase Agreement (*PPJB*). The *PPJB* is a preliminary agreement that binds both parties to complete the sale and purchase transaction after all legal requirements have been met. Through the *PPJB*, the buyer obtains personal rights to demand that the developer fulfill its obligations, such as completing construction, handing over the housing unit, and executing the transfer of rights through a Sales and Purchase Deed (*AJB*). However, the rights arising from the *PPJB* do not

constitute proprietary rights over the land. The *PPJB* does not automatically transfer land ownership to the buyer because the transfer of rights occurs only after the *AJB* is executed before a Land Deed Official (*PPAT*) and the transfer is registered at the land office. Therefore, even if the buyer has paid part or all of the purchase price, the buyer's legal position remains contractual and does not yet include the status or protection of a registered land-right holder.

Legal Relationship between Bank and Debtor

The legal relationship between the bank and the debtor arises from a credit agreement, which, in the initial stages of financing, is usually supported by a Power of Attorney to Encumber Mortgage Rights (*SKMHT*). Through this agreement, the bank obtains the right to collect repayment of the debt according to the agreed terms and timeframe. Furthermore, the bank has a legal expectation that, once all land-administration requirements have been met, the financing object will be encumbered with a Mortgage Right as collateral. However, until the Deed of Granting Mortgage Rights (*APHT*) has been executed and the Mortgage Right has been registered and evidenced by a Mortgage Rights Certificate, the bank does not possess the executorial rights granted to a registered Mortgage Right holder under the Mortgage Rights Law. As a result, the bank cannot exercise *parate executie*—that is, sell the collateral directly through the statutory enforcement mechanism applicable to a registered Mortgage Right if the debtor defaults. The bank's legal protection at this stage remains limited primarily to its contractual relationship with the debtor.

Legal Relationship between Developer and Bank

The legal relationship between the developer and the bank is formed through a buyback guarantee, namely, an agreement in which the developer promises to pay the debtor's outstanding obligations or repurchase the financing object if the debtor fails to fulfill its obligations. Through this agreement, the developer assumes an accessory obligation intended to provide additional protection against the credit risks faced by the bank. However, a buyback guarantee is not a proprietary security interest comparable to a Mortgage Right. It is a contractual guarantee whose implementation depends on the terms of the agreement and does not, by itself, confer direct ownership rights over the housing object on either the developer or the bank.

Legal Relationship between Bank and Developer after Subrogation

If the developer fulfills its obligations under the buyback guarantee by paying the debtor's debt to the bank, the legal relationship between the parties changes through subrogation, as evidenced by a subrogation deed or another valid legal basis. Through subrogation, the bank's claim is transferred to the developer. In this way, the developer replaces the bank as creditor vis-à-vis the debtor. However, the transferred rights cannot exceed the rights previously held by the bank. If the bank does not yet have a perfected Mortgage Right because the *APHT* has not been executed or the land title certificate has not yet been issued and registered in the debtor's name, the developer does not obtain any executorial rights or ownership rights over the house. The legal principle of subrogation transfers existing rights; it does not create new ones.

Legal Relationship between Developer and Debtor after Subrogation

After subrogation occurs, the legal relationship between the developer and debtor becomes one between a substitute creditor and debtor. The basis for this relationship may be the developer's right of recourse or a settlement agreement entered into after the developer has paid the debtor's debt to the bank. In this position, the developer has the right to demand reimbursement of the amount paid to the bank, together with other rights legally attached to the debt to the extent that such rights have been transferred. The developer may also pursue various legal remedies, such as negotiation, a formal demand, or a civil lawsuit if the debtor fails to fulfill its obligations. However, this right does not authorize the developer to take unilateral action against the housing property. The developer cannot vacate the house, take physical possession of the property, or evict the occupants without the debtor's consent or a legally binding court decision. Any action concerning control or possession of the property must still be carried out through applicable legal procedures to avoid violating the principles of protection of property rights and due process of law.

This legal-status matrix shows that each legal relationship in a Mortgage Right buyback-subrogation transaction has different instruments, rights, and limitations. A *PPJB* creates only contractual rights between the developer and buyer; a credit agreement gives the bank the right to collect the debt before the Mortgage Right is created; a buyback guarantee is a contractual guarantee; and subrogation transfers the right to collect without creating new proprietary rights. Therefore, dispute resolution must always be based on the legal standing of each party and must not conflate contractual rights with proprietary rights. This approach provides legal certainty, maintains a balance of interests among the bank, developer, and consumer, and prevents developers from exploiting their dual status to obtain rights not granted by law.

Discussion

The validity of unilateral *PPJB* cancellation must be assessed through contract law, not solely on the basis of the developer's certificate status. A *PPJB* is a reciprocal agreement: the developer promises to sell and subsequently transfer the object, while the buyer promises to pay the purchase price, often through bank financing. If the buyer defaults, the developer may have grounds to seek termination and restitution, but termination must comply with the contract, the Civil Code, and the principle of good faith. Indonesian doctrine concerning reciprocal agreements traditionally requires careful consideration of Articles 1266 and 1267 of the Civil Code. Even where a contract contains a clause waiving court intervention, the party seeking termination should establish the occurrence of default, provide a warning or demand where required, and apply a proportionate settlement of payments already made, penalties, occupation value, and outstanding debt. A mere statement by the developer that the *PPJB* is canceled because the developer has paid the bank under a buyback guarantee is legally insufficient when the consequences affect possession of immovable property and the consumer's accrued contractual rights.

The subrogation deed should be understood as an instrument concerning the transfer of the creditor's claim, not as a deed of land transfer or an executorial title for vacating the property. The bank's claim against the debtor may be transferred to the developer, but land ownership and possession follow different legal routes. A land right is transferred through an *A/Band* registration, while a Mortgage Right is created through an *APHT* and registration. If the individual certificate has never been issued and the debtor was never registered as the holder of the relevant land right, there is no completed land right in the debtor's name that can be subjected to Mortgage Right execution. Conversely, if the developer remains the registered holder of the land right, that fact does not automatically invalidate the buyer's contractual possession under the *PPJB*. The legal consequence is asymmetrical: the developer may have stronger formal title but is not thereby automatically vested with stronger execution rights.

This distinction is consistent with the accessory nature of a buyback guarantee. Because the buyback obligation depends on the principal credit relationship, the developer's payment should be interpreted as performance of a guarantee-like contractual obligation to the bank. It may generate reimbursement rights, but it does not create a new autonomous power over the house. If the law allowed a developer to use payment under a buyback guarantee and subsequent subrogation to evict a buyer without judicial review, the buyback guarantee would effectively become a private enforcement device stronger than a registered Mortgage Right. Such a result would be inconsistent with the logic of the Mortgage Rights Law, which grants executorial powers to the holder of a properly registered Mortgage Right and provides mechanisms for the sale of collateral through public auction. The developer cannot obtain through contract what the statutory security system withholds because the formal collateral requirements were incomplete.

The unresolved certificate situation also creates a risk of unjust enrichment and double recovery. Suppose the developer has received the down payment, received disbursement from the bank, then paid the bank following the debtor's default, and thereafter cancels the *PPJB* and retakes the unit. Without judicial accounting or a properly documented settlement, it is unclear whether the developer has returned the buyer's payments, deducted lawful penalties, accounted for the value of occupation, or avoided recovering twice for the same economic value. The function of a court or negotiated settlement is not merely formal; it ensures transparent calculation of the parties' respective rights and obligations. The debtor's default does not entitle the developer to disregard its accounting obligations, while the buyer's possession does not entitle the buyer to

disregard the unpaid loan. Legal certainty requires a settlement formula rather than unilateral dominance by either party.

A more coherent remedy is to separate the dispute into three tracks. The debt track concerns the developer's subrogated claim against the debtor. The developer may demand payment, negotiate rescheduling, file a civil claim, or seek another available payment remedy under applicable procedural law. The contract track concerns the *PPJB*. If the default is material and settlement fails, the developer may seek judicial confirmation of termination, restitution, damages, and an order for voluntary or compulsory handover. If the debtor can cure the default or another buyer can substitute for the debtor, the parties may preserve the transaction through novation, debtor substitution, or refinancing. The land-registration track concerns the master certificate, certificate splitting, *AJB*, and Mortgage Right registration. If the contract remains in force, the developer must continue the process toward execution of the *AJB* and transfer of the certificate; if the contract is terminated, the land registration remains in the developer's name, but possession and payment settlement must be resolved lawfully.

Where the Mortgage Right object remains covered by a master certificate, the bank and developer should also strengthen preventive clauses. The cooperation agreement between the bank and developer should define whether the buyback obligation means repurchase of the unit, payment of the outstanding debt, substitution of the debtor, assignment of receivables, or a combination of these mechanisms. It should state the procedures for default notice, grace periods, valuation, deduction of paid installments, treatment of taxes and administrative fees, handover of possession, and dispute resolution. The *PPJB* should clearly align with the bank-developer agreement so that the buyer understands the consequences of default. However, contractual clauses cannot authorize violence, unilateral forced entry, or physical eviction without due process. Contractual certainty cannot override mandatory procedural protections.

Consumer-protection principles further support this restrictive approach. Housing buyers depend on developers for certificate splitting, construction completion, and legal handover. The developer is usually the party with superior knowledge of and control over the land-administration process. If the certificate remains in the developer's name because the developer has not completed the certificate-splitting process or the *AJB*, it would be problematic to allow the developer to use that incompleteness against the buyer without accountability. Maghfira (2023) study on debtors who have repaid *KPR* loans but have not obtained certificates illustrates that certificate-related problems may persist even when debtors have fulfilled their financial obligations. Therefore, in default cases, the inquiry should include whether the developer has performed its own obligations and whether the debtor's default is the sole cause of the failed transaction.

The juridical answer to the first research problem is therefore negative in principle: unilateral *PPJB* cancellation and self-help eviction based solely on a subrogation deed do not constitute a valid and complete execution mechanism when the certificate remains in the developer's name. They may be partially valid only as internal contractual steps if the *PPJB* expressly provides a termination mechanism, the debtor's default is established, the required notices are served, accounting is conducted fairly, and the debtor voluntarily surrenders the unit. Once the debtor disputes the occurrence of default, the amount owed, the validity of the termination, or the right to possession, the developer must seek judicial resolution. Any physical eviction without consent or a court order exposes the developer to claims of unlawful acts and damages.

The juridical answer to the second research problem is that the developer's dual status should be resolved through functional separation and procedural sequencing. First, the developer should be recognized as the formal certificate holder for land-registration purposes while remaining bound by the *PPJB* and the housing-related obligations it assumed. Second, the developer should be recognized as a subrogated creditor with respect to the debt paid to the bank, but its remedies should be limited to the repayment claims and accessory rights actually transferred from the bank. Third, court-confirmed termination or consensual settlement should be required before possession is recovered through compulsory means. Fourth, completion of land administration or appropriate cancellation records should clarify whether the unit will be transferred to the debtor, sold to a substitute buyer, or retained by the developer following proper restitution. This framework prevents the developer from simultaneously acting as judge, creditor,

owner, and execution officer.

CONCLUSION

Subrogation based on a buy-back guarantee is legally recognizable when the developer validly pays the debtor's obligation to the bank and the transfer of the claim is supported by a deed or statutory basis. Nevertheless, its effect is limited to the substitution of creditor rights. It does not automatically cancel the PPJB, does not create a registered mortgage right over a parcel for which an individual certificate has not yet been issued, and does not authorize the developer to empty the mortgaged property through private enforcement. The certificate remaining in the developer's name strengthens the formal registration evidence, but it must be read together with the PPJB, the bank's credit structure, the buyer's payments, the developer's own land-administration obligations, and the requirement of good faith. The proper legal approach to the developer's dual status is functional separation. As the formal certificate holder and seller, the developer must either proceed toward certificate splitting, execution of the AJB, and transfer of title when the contract remains effective, or seek lawful termination and restitution when the debtor materially defaults. As a subrogated creditor, the developer may demand repayment from the debtor for amounts paid to the bank, but only through negotiation, a civil claim, or other lawful debt-enforcement mechanisms. Vacating the mortgaged property requires voluntary surrender or court-based execution after the right to terminate and repossess has been legally established. This approach protects the developer's economic interests without sacrificing the debtor's due-process protections and the certainty of the land-registration system.

For future practice, bank-developer cooperation agreements, PPJB clauses, buy-back deeds, and subrogation deeds should be drafted as an integrated transaction package. The documents should clearly define default, notice, cure periods, the accounting of payments, valuation, refunds or penalties, handover procedures, and dispute resolution. Notaries and PPATs occupy preventive, evidentiary, and corrective roles within this integrated structure: preventive, by conducting legal due diligence concerning the certificate, authority, encumbrances, taxes, licensing, and consent requirements; evidentiary, by executing authentic deeds that clearly distinguish contractual payment obligations, subrogated claim rights, and land-transfer requirements; and corrective, by ensuring that the transaction is completed through certificate splitting, execution of the AJB, transfer of title, and registration of the APHT once the legal prerequisites have been fulfilled. They should not draft or authenticate clauses that treat a cover note, buy-back guarantee, or subrogation deed as an immediate legal basis for privately vacating the mortgaged property. Regulators should consider clearer rules governing KPR transactions involving master certificates, particularly regarding the consequences of a developer's buy-back and subrogation before individual certificates and mortgage rights have been completed. Accordingly, the role of the notary/PPAT is not merely administrative; it is a safeguard for legal certainty. Precise deed drafting and the timely completion of AJB-APHT procedures help prevent the developer's dual status from being used to bypass debtor protections and formal land-execution procedures.

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