



Legal Consequences of Repurchase Agreement Transaction Against Buyer with Non-Good Faith Party in Civil Law*

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Abstract

Repurchase agreements, which govern transactions within the trading community, constitute a type of securities financing that involves the purchase and sale of instruments on cross-border markets. The author examines a variety of documents about contracts, acquisitions, and document-based communication in this article. The author concurs that truthful consumers must be conscious of purchasers' challenges during transactions and that legal considerations and data transfer must be factored into mortgage and real estate transactions. Therefore, consumers must guarantee compliance with these provisions in good faith or at the very least, have confidence in their compliance. Utilizing a qualitative methodology, this study examines statutory regulations and the literature. According to the conclusion, legal repercussions may result from resale agreements with debtors (consumers) who engage in dishonest conduct during pandemic transactions or contracts. They remain perpetually if they are associated with a transaction; they cannot renegotiate or redeem the debt security.

Keywords: Repurchase Agreement; Transaction; Good Intention

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Transaksi Repurchase Agreement terhadap Pembeli dengan pihak yang tidak beritikad baik secara Perdata

Abstrak:

Perjanjian pembelian kembali, yang mengatur transaksi dalam komunitas perdagangan, merupakan jenis pembiayaan sekuritas yang melibatkan pembelian dan penjualan instrumen di pasar lintas batas. Penulis mengkaji berbagai dokumen yang berkaitan dengan kontrak, akuisisi, dan komunikasi berbasis dokumen dalam artikel ini. Penulis sependapat dengan gagasan bahwa konsumen yang jujur harus menyadari tantangan yang dihadapi pembeli selama bertransaksi, dan bahwa pertimbangan hukum dan transfer data harus diperhitungkan dalam transaksi hipotek dan real estat. Oleh karena itu, konsumen harus menjamin kepatuhan terhadap ketentuan tersebut dengan itikad baik, atau setidaknya memiliki keyakinan atas kepatuhannya. Dengan menggunakan metodologi kualitatif, penelitian ini mengkaji peraturan perundang-undangan dan literatur. Dampak hukum dapat timbul dari perjanjian jual kembali dengan debitur (konsumen) yang melakukan tindakan tidak jujur selama transaksi atau perjanjian pandemi, demikian kesimpulannya. Mereka tetap selamanya jika dikaitkan dengan suatu transaksi; mereka tidak memiliki kapasitas untuk menegosiasikan ulang atau menebus jaminan utang.

Kata Kunci: *Repurchase Agreement*; Transaksi; Itikad Baik

Правовые последствия сделок по соглашению РЕПО против покупателей с недобросовестными сторонами

Абстрактный:

Соглашения о рекупировании, регулирующие операции внутри торгового сообщества, представляют собой тип финансирования ценных бумаг, который включает в себя покупку и продажу инструментов на трансграничных рынках. В этой статье автор рассматривает различные документы, касающиеся контрактов, приобретений и документообоснованного общения. Автор соглашается с идеей о том, что честные потребители должны быть осведомлены о проблемах, с которыми сталкиваются покупатели при совершении сделок, и что правовые соображения и передача данных должны учитываться в операциях с ипотечными кредитами и недвижимостью. Поэтому потребители должны добросовестно гарантировать соблюдение этих положений или, по крайней мере, иметь уверенность в их соблюдении. Используя качественную методологию, данное исследование изучает нормативные положения и литературу. Согласно заключению, правовые последствия могут возникнуть в результате заключения соглашений о перепродаже с должниками (потребителями), которые занимаются недобросовестным поведением во время транзакций или соглашений, связанных с пандемией. Они остаются в вечности, если они связаны с сделкой; у них отсутствует способность к пересмотру или погашению задолженности.

Ключевые слова: Соглашение об обратном выкупе; сделка; добросовестность

A. INTRODUCTION

Trading activities are the process of buying and selling to make a profit. Business is also equated with essential business practices and is often considered the core business of business. Thus, a transaction is a social relationship because the parties involved interact and communicate. This interaction will give rise to a social relationship. Some people are known as customers, and others are known as users. ([Li, 2022](#)), ([Pöyhönen, 1963](#)), ([He; Huang; & Zhang, 2016](#))

The main actors in this activity are traders and consumers. The term transaction reflects that sales are made by one entity and purchases are made by another entity ([Subekti, 2014](#)). Sellers expect value (money), and buyers expect goods to be exchanged. Therefore, activities involving two or more people, which then lead to an agreement between the two parties, can be considered the meaning of the transaction itself. Usually, in a transaction, buyers and sellers bid (negotiate) the price of goods until a price agreement is reached. If the buyer cannot accept all the terms of the value that has been set, then negotiations will be carried out to achieve the desired agreement. This stage is a collection stage or effort to connect sellers and buyers. ([Marandure, et.al., 2016](#))

As creatures, humans have the right to decide and act to survive. Therefore, it is not surprising that people are increasingly involved in a community to meet their needs and to be able to carry out the participatory process, so agreement is needed. The agreement is based on an agreement signed by all parties involved, which ultimately boils down to a legal relationship between the business and the customer. According to the provisions of Article 1313 of KUHP, an agreement is defined as an agreement between many people so they can build relations with each other.

Commercial activity is an interdependent activity because it involves an agreement, which is essentially the result of a dispute between two parties in which the seller transfers ownership of goods in exchange for a payment. At the same time, the consumer wants to get the goods back and is willing to pay a certain amount of money to the exchange owner. If the new customer and seller accept the agreement, everything is considered complete even if the product has not been shipped and paid for. As we all know, contract law is based on voluntary participation. According to B.W., an agreement can only be made with the word "agreement" and thus, an agreement is created. If one of the parties does not find the term "agreement", then no legal relation will be formed. ([Subekti, 2014](#))

Buying and selling in securities financing or repurchase agreements (repo) is also a repurchase agreement in several markets, where the repurchase transaction uses cash and a loan account. However, as with any transaction, acquisition agreements can also be violated. If any party feels disappointed with the existence of the agreement, the person responsible for the loss must be accountable in good faith. Based on some of the above opinions, the author decided to focus his research on the formation of questions related to the legal significance of buying and selling personal consumer goods in civil law. ([Al Hariz & Muryanto, 2010](#))

B. METHODS

This article uses an interdisciplinary legal approach that covers and relates to all areas and goals of human life. ([Warassih, et.al., 2016](#)) The technique applied in this article is a socio-legal technique, a form of analysis that looks at legal regulations from a contextual perspective, not just from a textual perspective ([Warassih, et.al., 2016](#)). Enrichment, conversely, is a case-focused research technique to understand as much as possible of events that occur in social life ([Soekanto, 2008](#)). The legal documents used by the authors include primary and tertiary legal documents, such as legal publications and online sources related to the issues discussed in the text. This research and other legal documents were obtained from primary and secondary sources ([Mamudji, 2005](#)). This study's research and evaluation techniques include internet referrals and discoveries. ([Nazir, 2005](#))

C. RESULT

1. Theoretical Basis of the Repurchase Agreement

Legal views continue to evolve in society ([Rosana, 2013](#)). In various regions of the world, including Indonesia, legal formats are still regulated by strict legal standards. Law is best understood and taught as a synonym for regulation and decree. Although the rule of law does not only act according to provisions but also considers justice in the existing social context. ([Saifullah, 2007](#))

Based on the above, Donald Blake ([Black, 1976](#)) sociologically defines law in his book as "social control implemented by the government, norms that regulate the life of the state and its citizens" in the form of legislation. However, social control exercised by employees, such as postal workers or firefighters, is not part of this category but is included in corporate social control.

According to Donald Blake, the government controls the law, and its application highly depends on the surrounding social conditions. Thus, law enforcement aims to improve public order and legal certainty. While public perception plays a vital role in law enforcement, factors law enforcement officials identify also have a significant influence. Only these facts are relevant in the sociology of law, not how behaviour is supposed to be done by law. The correct legal method ignores judgments about legal policy but instead relies on a scientific analysis of legal life as a system of action. ([Pujirahayu, 2020](#))

By law, Indonesia must guarantee the protection of justice for all citizens. This fairness can be achieved by establishing a fair and objective system of rules and procedures ([Friedman, 1993](#)). The large number of cases that occurred and were disclosed in the community, observed directly or through electronic means, shows that the application of law in resolving these cases is baseless and not in line with legal principles. The principle of justice is not reflected in the rule of law. The subject explained that an agreement occurs when one or more individuals agree or promise to take an action. In Van Dunne's latest view, a contract is a legal relationship between two or more people formed by an agreement with legal consequences. ([Ismatullah, 2011](#))

Performance agreements can include giving, taking specific actions, or not doing something. ([Larsen; Hofsoy; Yuan; & Aasen, 2020](#)) Therefore, according to the regulations, the promised product must be truly reliable, at least in the right form and amount. In addition, the principle of the agreement must not be affected by elements prohibited by law and are immoral or unethical. To understand the purpose of an agreement can be understood as a group that maintains rights and obligations. In this case, one of the parties is responsible for the obligations, and the other party obtains interests or rights by joining the agreement. The people or groups involved are known as debtors and creditors. ([Salim, 2015](#))

Based on the provisions of Article 1320 of the KUHP, the terms of the validity of the agreement are as follows:

1. There is an agreement between two parties. Agreement refers to the harmony of statements between two parties. The purpose of this agreement is that the parties wishing to enter into a contract must first agree or provide the nature of the agreement to be made. Therefore, this statement is appropriate because it cannot be seen or known by other parties. Arrangements are never made through surveillance, coercion, or fraud. ([Fitra, 2017](#))

2. Behavioral skills. Behavioural skills are the abilities or skills required to perform actions that may result in legal consequences. (www.pn-sabang.go.id) A

person with the necessary capacity and authority to make the request. By law, that person can be made sue as an adult without incurring any penalty, obligation, or responsibility. They must be responsible before the law, not subject to guardianship and not have intellectual disabilities. ([Gumanti, 2012](#)), ([Piryanti, 2014](#))

3. There is a subject of the agreement. It is necessary agreement to determine the type of goods to be approved. Goods approved must be clear and detailed, at least the type and quantity, even if not specified, as long as it is known in advance or calculated later. This regulation is regulated in Article 1333 of the KUHP. The principle of the implementation agreement regulates the debtor's obligations and creditor's rights. ([Gumanti, 2012](#)), ([Piryanti, 2014](#)), ([Kumalasari, & Ningsih, 2018](#))

4. A valid reason is the main requirement for validity. The fourth requirement to consider an agreement right is the existence of solid reasons, as stipulated in Article 1335 of the KUHP. Agreements made without good reason or with invalid reasons are deemed invalid. At the same time, the contracts entered into must follow rules, morals, and social protection. ([Prodjodikoro, 2004](#))

The first and second paragraphs cover subjective claims related to the subject or parties related to the agreement, while articles 3 and 4 cover objective and subject claims related to the contracts associated with copper materials ([Fuady, 2015](#)). The consequences if one or more of the legal provisions of the agreement are not fulfilled are: ([Fuady, 2015](#)) enforceability of law by law (absent, cancellation). Suppose the contract is considered null and void and has never happened, according to the objective conditions of Article 1320 of the KUHP. The agreement cannot be withdrawn (vernietigbaar can be cancelled). A contract is only considered void if all parties cancel it, so it does not meet the subjective requirements of Article 1320 of the KUHP and indicates that the agreement cannot be implemented (withdrawn). If the agreement is not only void but also unenforceable, the agreement will remain in effect. In this case, administrative sanctions are applied. In a conditional contract, if the conditions are not met, the contract will not be cancelled; only administrative sanctions will be imposed on one or both parties.

Repurchases are often considered a safe investment because the securities act as collateral ([Aprita & Adhitya, 2020](#)). A return agreement is regarded as a money market financial instrument that acts like a mortgage with short-term interest. The customer acts as a short-term lender, and the seller acts as a short-term borrower. Securities are transferred as collateral. Thus, the goals

of each party, security of funds and liquidity, can be achieved. An acquisition agreement is also possible between the two parties. The central bank regulates the money supply and reserves by entering into repurchase agreements. These arrangements are often used to finance the purchase of bonds or other investments. Repurchase agreements are short-term investments with terms known as interest rates or "conditions". ([Fleming, & Garbade, 2004](#)), ([Holmquist, & Gallin, 2014](#))

Repurchase agreements are often seen as a strategy to reduce credit risk. The main risk in buyback trading is the possibility that the trader may be unable to close the trade because he did not buy back the stock sold at expiration. In this case, the purchaser of the security can sell the securities to recover the issued capital. This is considered inherent risk because the security's value may have decreased since its initial purchase. Therefore, if this were to happen, the buyer would have no choice but to hold securities with no long-term value. On the other hand, the lender also bears the risk in this transaction. If the collateral value exceeds the agreed limit, the lender may not resell the collateral. ([Fleming, & Garbade, 2004](#)), ([Holmquist, & Gallin, 2014](#))

2. The Conceptual Foundation of the Principle of Good Faith

For R. Subekti, an honest customer is an individual who does not realize he is interacting with someone who is not the actual owner. Therefore, they are considered as owners and beneficiaries of the goods subject to the transaction, and their rights are guaranteed by law ([Subekti, 2014](#)). Regarding subrogation, Article 531 of the KUHP stipulates that subrogation is defined as a right a person has on his behalf, including legal rights if that person is unaware of the deficiencies. According to Robert, the integrity of the contract encourages the parties to identify and investigate significant facts from the agreement reached. Thus, in practice, the issue of subjective good faith in the transfer of rights is regulated by articles 530-537 of the KUHP (fair trial) and article 1386 of the KUHP (cleanliness). ([Subekti, 2014](#))

Ridwan Khairandy gave an example ([Subekti, 2014](#)). Suppose the judge does not carry out further checks to evaluate whether the customer has fulfilled his obligations in examining important information related to the transaction. In that case, this cannot be carried out. This investigative process can help identify whether a customer can be considered honest. This action will help reveal whether the customer was unaware of the error after considering the critical information from the transaction. Based on this situation, Ridwan Khairandy has

proven that the following criteria can be used to determine whether the buyer acts with good or bad intentions in a transaction. The buyer must know the identity of the owner of the item purchased and vice versa; even if the buyer knows the item is not from the seller but still makes a transaction, the buyer is considered legitimate as a consumer according to applicable law ([Panjaitan, 2021](#)). The explanation above explains whether the idea of good faith can be tested objectively, proportional to integrity, without fraud and without allowing other parties to cause harm or loss to them. This fact is presented and verified by the seller. Therefore, consumers who do not conduct adequate checks in the real estate industry and make transactions are considered unwise (dishonest).

The explanation above explains whether the concept of good faith can be measured objectively, which is the same as honesty, without elements of fraud and does not allow other parties to take advantage of other people to cause harm or loss to them. The seller presents and confirms these findings. Therefore, consumers who do not carry out adequate checks in the real estate industry and make transactions are considered careless (dishonest) consumers. Consumers are no exception; they must be responsible for joining into contracts so that property ownership changes. First, payment must be made following the agreement in the contract.

Furthermore, the buyer must check the subject of the transaction. In other words, they try to ensure the legitimacy of the property to be purchased. Therefore, if the buyers do not check, then the object of the transaction is considered irresponsible. Thus, the purchasers will have no legal protection if the original owner takes legal action.

In the event of a failure to pay their finances, investors have the right to sell their collateral based on a majority buyback agreement. There are several differences between a buyback agreement and a secured loan. In most mortgages, the investor's probability of financial failure will be flagged automatically. A fixed-term (usually tomorrow or next week) repurchase agreement is an agreement in which the broker sells securities to an affiliate who agrees to buy back those securities at a higher price on a specific date. Based on this agreement, the counterparty has the right to use the securities in the transaction. It will receive a profit equal to the difference between the initial selling price and the settlement price. The interest rate is determined according to the interest paid by the bank at maturity. Repurchase agreements are used to invest cash or financial assets when each party knows how long it will take. ([Sari, 2021](#)), ([Halim, 2022](#))

According to Arie S. Hutagalung ([Santoso, 2015](#)), Urip Santoso believes that potential customers or existing lenders can be trusted with integrity if they

check and verify the legality of ownership before buying a property or using it as collateral for a debt. In addition, Ridwan Khairandi provides a more detailed explanation of the parties' obligations in real estate transactions, which can help clients qualify as honest people. ([Khairandy, 2014](#)) According to him, a person is considered a consumer with good ethics if he always adheres to the prudent principle in transactions and negotiations. This principle arose from the previous case in the Netherlands. Although no specific provisions stipulated the obligation of good behaviour during the last pre-contractual relationship at B.W., the previous case recognized this obligation. ([Khairandy, 2014](#))

The Consumer Protection Act also contains provisions on consumer error, and it was decided that the victims would receive appropriate compensation. Article 6(b) also gives business entities the right to legal protection against crimes that harm customers. Sections 5(b) and 7(a) of the Consumer Protection Act also stress the responsibility of consumers and merchants to act honestly. If one of the parties is harmed in the sale and purchase transaction, Article 19 of the Law on Protection of Consumer Rights and Interests stipulates that the aggrieved party is entitled to reasonable compensation, the economic entity must compensate for damage, pollution, or loss caused by the use of the product or service they produced or marketed. Compensation does not rule out the possibility of a criminal charge based on additional evidence of a criminal element. (www.badilum.mahkamahagung.go.id)

D. DISCUSSION

A mutual agreement is a situation in which one person commits to another person, or both engage in doing something agreed upon. According to Article 1457 of the KUHP, an agreement in which one party shows the product and the other party pays the agreed price is considered a transaction. In a business context, contracts define the rights and responsibilities of each party, the seller and the buyer ([Salim, 2015](#)). Usually, business transactions involve interactions between sellers and buyers who have agreed to the terms outlined in the contract. Therefore, legal regulations related to the enforceability of contracts have been embodied in the company's transaction documents. If one of the parties, the seller or the buyer, does not fulfil their responsibilities properly, then that party is considered negligent. ([Fleming & Garbade, 2004](#)), ([Holmquist & Gallin, 2014](#))

Improvements to the 19th point of POJK No. 09/POJK.04/2015, relating to the takeover of financial services institutions, explains that if there is a difference of opinion or interpretation in the implementation of the contract, cancelling the

contract using a GMRA Indonesia lawsuit must be resolved through an arbitration institution. One arbitrator to choose from is the Alternative Financial Services Dispute Resolution Authority (LAPS-SJK), formerly known as the Indonesian Capital Market Arbitration Board (BAPMI), in the capital market. Although the capital market is significant for investment, potential investors and other parties must be careful and informed to reduce the risk of legal problems. ([Fleming & Garbade, 2004](#)), ([Holmquist & Gallin, 2014](#))

In MARI Decision No. 242K/Sip/1958 dated 5 November 1958 involving Andrianus Hutabarat and ST. Osman Hutabarat v. Kristian Situmeang and Heini Panjaitan, a person's good intentions can be seen from honesty. MARI concluded that a consumer (defendant) is considered honest if he does not know the difference in law. Based on Article 531 of the KUHP, consumers are considered in good faith if they buy goods without knowing that legal defects occur in said property. ([Putro, et.al., n.d](#)) Ridwan Khairandy explained that if a judge does not follow up a similar problem, it is necessary to question whether the consumer has fulfilled his obligation to investigate the material facts of the transaction. Such investigations help determine whether a consumer can be considered honest, as it can reveal whether the consumer was indeed unaware of a flaw after knowing key information in the transaction.

In this situation, Ridwan Khairandy proved that there are criteria for evaluating whether consumers have good or bad intentions when making transactions. Consumers must clearly understand the legal owner of the goods being sold and vice versa. Even if the goods do not belong to the seller, but the transaction continues, the consumer is still considered a legal consumer according to the law. ([Panjaitan, 2021](#)) The existence of contradictory information encourages customers to search for essential data, and the emphasis on responsibility is not only related to doubts that arise. Still, it must also be emphasized in every consumer transaction. The above description indicates that trust can be expressed subjectively, such as honesty, does not contain elements of fraud, and does not allow other parties to take advantage of consumers for harmful purposes—actual claims stated and scrutinized by seller. Therefore, a customer who does not exercise real estate due diligence in a transaction is considered careless (dishonest).

Article 1243 of the KUHP confirms that a party who suffers a loss due to an error or event for which he is not responsible must reimburse for costs depending on the amount of loss, including money and interest. Conversely, Article 1236 of the KUHP forces parties who are guilty or not responsible to pay interest and compensate creditors. As an investor who buys shares for resale, you

have the right to claim physical compensation in the form of money that should have been received on the agreed maturity date and intangible losses such as loss of potential future profits. Explaining paragraph 3 paragraph 3 of POJK related to resale, what is meant by "bankruptcy" in resale includes but is not limited to ([Panjaitan, 2021](#)) 1). Violation of obligations related to asset resale transactions; 2). financial institutions at the time of business closing (freezing); 3). The seller's or buyer's statement is incorrect or material if it is made or repeated and is not violated by another party (does not violate); 4). notifying the disabled party of the fault; and 5). The parties involved in the sale and purchase transaction have filed for bankruptcy.

In stock trading, unintentional mistakes often occur when making resale transactions. One common error occurs when the buying party cannot pay or return the money to the investor or buyer on the agreed maturity date. According to R. Subekti, these errors can be caused by negligence or lack of attention and can appear in various forms: ([Panjaitan, 2021](#)) 1). Failed to perform the capabilities or actions possessed; 2). Complying strictly but not complying with the agreement; 3). Fast but slow delivery; 4). Performing tasks without approval.

Such negligence can lead to legal consequences; the person who suffers losses due to the violation has the right to demand fees, pay interest or request cancellation of said agreement according to this law, the provisions of social law. This will make the legal action process of buying and selling transactions impossible. Even the most significant consequence is the unprotected consumers involved by law.

E. CONCLUSION

When examining this article, the authors agreed on the importance of understanding that a good-faith consumer does not recognize a buyer's fault in the transaction process. A good faith consumer can be explained as someone unaware of the transaction with unauthorized persons or defective goods in Subekti's view. This view aligns with Ridwan Khairandy's view regarding good faith consumers as those who try to buy goods and pay the price believing that the seller owns the goods.

The transfer of formal and material rights with the buyer's affirmation of good faith can only occur if the material and legal requirements are met during the execution of a real estate (mortgage) transaction. A good-faith consumer must know that these requirements are met or at least believe that these requirements are met. Ensure the plaintiff's position is significant to provide legal protection to

all parties involved in litigation. From this analysis, it can be concluded that the risk of losing goods is the legal consequences that may arise from buying and selling contracts with consumers without the intention of committing civil acts. Transactions will remain active without swaps or mortgage payments. This means that consumers are not protected by law when making transactions.

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