

## **Implementation Of The Sale And Purchase Of Residential Housing Settlement Through Subrogation**

**Anita Oktapiani <sup>1)\*</sup>, I Ketut Oka Setiawan <sup>2)</sup>**

<sup>1,2)</sup>Prodi Magister Kenotariatan, Fakultas Hukum, Universitas Pancasila, Indonesia

\*Corresponding Author

Email: [oktavianitaa.ao@gmail.com](mailto:oktavianitaa.ao@gmail.com), [profesoroka@gmail.com](mailto:profesoroka@gmail.com)

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### **Abstract**

*Buying and selling activities are routines that people do in their daily lives, it can be done anywhere, especially in the business world, both buying and selling goods and services. Everyone has the right to buy anything and vice versa everyone can sell anything according to their needs. However, in the Civil Code limits what can and what cannot be traded as contained in Section 1320 In this study using normative research methods. Settlement of receivables through subrogation in case the debtor fails to pay, the developer will provide warnings to the debtor. The method used in this study is the normative legal research method. Normative research is a method used to answer a problem by focusing on the application of legal principles and doctrines, which are then expected to produce a legal theory or concept that can be used as a guideline or answer to the problem being studied. Implementation procedures for the sale and purchase of residential housing settlement through subrogation is a process by which a third party (usually a financial institution such as a bank or financing institution) pays off the seller's debt to the previous creditor (usually the bank holding the mortgage on the house), then takes over the right to collect or guarantee it from the old creditor. Process often occurs in the sale and purchase of houses that are still in credit status or not yet paid. This effort is done before making further legal efforts and it is important to be done by the developer to confirm that the debtor's House has become property rights for the developer. Another effort is that the developer notifies the debtor to immediately vacate or execute the House. The Bank carries out subrogation of the House does not return the return of the house that has been paid by the debtor either what has been paid as a down payment and installment of the house ownership credit to the bank. The debtor feels aggrieved by this which makes a dispute with the developer. Dispute resolution can be resolved by filing a lawsuit at the Indonesian National Arbitration Board (BANI) and negotiations between the developer and the debtor to reach consensus.*

**Keywords: Sale and Purchase, Subrogation, Land Rights.**

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## **INTRODUCTION**

Buying and selling activities are routines that people do in their daily lives, it can be done anywhere, especially in the business world, both buying and selling goods and services. Everyone has the right to buy anything and vice versa everyone can sell anything according to their needs. However, in the Civil Code limits what can and what cannot be traded as contained in Section 1320. However, in Indonesia Civil Code, regulate limits what can and what cannot be traded as contained in Section 1320, namely: 1. Agreed those who bind him. 2. Tell him to make a deal. 3. A certain thing. 4. A valid reason.

Indonesia Civil Code Section 1457 explains that what is meant by buying and selling is an agreement by which one party binds itself to surrender an item, and the other party to pay the price promised. One of the types of buy-sell is the sale and purchase of residential housing. The existence of home buying and selling activities due to high demand for homes and limited housing supply has become a business opportunity for companies engaged in the housing sector (developers) to build homes in order to meet the needs of the community. The problem of obtaining a home is not easy because it requires relatively large costs, and to overcome this problem, people who buy homes can pay in cash or through installments. For those who cannot pay in cash, they can own a house through credit from a bank or what is known in the community as a Home Ownership Credit (KPR). A mortgage is one way for anyone to own a home other

than buying it outright or paying in installments. A mortgage is generally defined as a form of loan taken out from a bank to purchase a home.

Implementation of the buy-sell residential houses can be done through conventional banks and Islamic banks. A very fundamental and principled difference between sharia banks and conventional banks is the Prohibition of interest on sharia banks in carrying out their activities, including on Sharia financing, whether it is a work contract such as *mudharabah*, *musyarakah*, or financing Salam, *istishna'* or *murābaāhah* which does not use the interest system, but based on the principle of results. Sharia banking products are similar to conventional banking products but are not the same due to the prohibition of *riba*, *gharar*, and *maysir*. Conventional banks use the term credit, while sharia banks use the term financing. Therefore, the products funding and financing in Islamic banks should avoid these prohibited elements. (Ascarya, 2007)

Sharia financing is safer for customers because it has the certainty of the largest installment. So even though interest rates rise, the amount of installments does not change. With Islamic financing, even if there is an increase in interest rates, it will not cause an increase in the margin taken by the bank. Cause from the beginning the financing agreement or contract has set the margin taken by the bank and the amount of installments to be paid by the customer. If you want to buy a house late Sharia financing, then until the financing period ends, the amount of installments to be paid remains. With Sharia principles, because the agreement in front, then until the tenor or term is completed, the amount of fixed installments (fixed). While conventional loans have fixed installments for only a year, two, or three years. After that, the installments are floating (up and down) depending on interest rates and market developments.

Every loan in banking has risks. That risk is problematic. Problematic financing is a situation where the customer or debtor is unable to pay part or some amount of money from the agreed price by exceeding the payment limit or installment that has been agreed. (A. Z Abdul Aziz, 2021) this risk can cause losses to the bank due to financing given to the debtor is bad. This risk also includes the inability of the debtor to give up the portion of the profits that should have been obtained by the bank that had been agreed at the beginning.

Settlement of problematic financing is generally taken in 2 (two) ways, namely (1) rescue financing and (2) settlement financing. Rescue financing is a step taken through settlement negotiations between the bank as the creditor and the customer as the debtor, while the financing settlement is carried out through a legal institution. (Nobertus Purnomolatsu dan Ratna Widyanti, 2018) one way to solve problematic financing can be done by means of Cessie. Cessie is a debt settlement concept that is regulated in the book of accounts receivable. Cessie is the transfer of rights to intangible goods, usually in the form of receivables on behalf of the third party, in which someone sells his collection rights to another party. Indonesia Civil Code not known the term cessie, but in Section 613 Verse (1) mentioned that the delivery of receivables on behalf of and other intangible material, done by making an authentic deed or deed under the hand, which the rights to the material was delegated to another person or third party. (Akhmad Budi Cahyono, 2004)

Debts can be transferred through a process known as assignment, which involves three parties: 1) the original creditor, known as the assignor; 2) the new creditor, known as the assignee; and 3) the debtor, known as the assignee. (J. Satrio, 2012) Cessie in the buy-sale receivables included in *hiwalah al-haqqkarenaakad* transfer of receivables that can occur due to the exchange/sale and purchase. (Devid Frastiawan Amir Sup, 2019) Cessie as a guarantee of debt is included in *hiwalah Al-haqq* which is based on *Kafalah* (guarantee) because both are contracts for the transfer of receivables as security. The *hiwalah* mechanism in Islamic banking financing can be carried out by transferring property collateral to the party bearing the debt. The collateral serves as security for the repayment of debts arising from financing defaults. Therefore, the bank does not directly sell collateral to pay off debts, but can be done by transferring the collateral to someone else. (Syahpawi, 2012)

Debt transfer can also be done through subrogation. The concept of debt settlement such as subrogation actually already exists in Sharia financial institutions, the Fatwa of the National Sharia Council is a Fatwa issued by the Indonesia Ulema Assembly through its organizational device, the National Sharia Council. The fatwa is a legal doctrine for the development of sharia economics in Indonesia. There are at least three fatwas of the National Sharia Council (DSN) of the National Ulama Council (MUI) that regulate it until the end of 2015. The Fatwa number : 12/DSN/MUI/IV / 2000 about *Hawalah*, Fatwa number : 58/DSNMUI/V / 2007 about *Hawalah Bil Ujrah* and *Fawa* number : 90/SDNMUI/XII / 2013 on the transfer of Murabaha financing between Sharia financial institutions. Of the three, no one has been able to accommodate concretely the problem of subrogation. Subrogation is the replacement of rights by the third party that pays to the debtor. Aims to replace the old position of the creditor, not free the debtor from the obligation to pay the debt to the creditor. (M. Ali Hasan, 2019)

In Mochamad Erwin Radityo's Research (2022), he explained the position and role of the Buy Back guarantor guarantee in the sale and purchase transaction of housing units with mortgage facilities is that the guarantor/developer will buy land and buildings from the buyer and/ or the bank in the event that the debtor defaults/defaults on his debt to the bank, in the event that the bank exercises the right to withdraw land and buildings from the debtor, the guarantor is willing to help the bank until the bank gets / controls the land and buildings, then the money from the sale will be used to pay the debtor's debt to the bank, both the principal debt, interest, and other costs, the guarantee made by the developer will be valid continuously and last until the debtor's debt to the bank has been paid in full.

The form of the legal relationship of the parties in fulfilling the obligations of the buy Back Guarantee guarantee is the relationship between the Bank and the consumer who purchases a housing unit with mortgage facilities from the Bank regulated in the Credit Agreement and/or debt recognition agreement with guarantee and / or guarantee agreement, while the legal relationship between the bank and the, where between the bank and the developer has made and signed a PKS which regulates that the developer is fully responsible and binds itself as a guarantor for the payment of the entire amount of money owed by the consumer/debtor to the bank if the consumer/debtor has neglected obligations to the bank, then between the developer and the consumer / debtor the legal, where the payment of all debts of the debtor / consumer by the developer to the bank gives rise to subrogation or replacement of the rights of the creditor (bank) by a third (developer) who pays to the creditor (bank).

Realization of the buy back Guarantee in case of default by the mortgage debtor, the bank/creditor has 2 (two) alternative options to resolve and restore its rights, namely the Bank exercising its rights based on the agreement made with the debtor, namely the home ownership loan agreement (KPR), or exercising its rights based on the agreement made with the developer, namely the cooperation agreement, where the developer as a guarantor will buy land and buildings from the debtor if before the term of the home ownership loan agreement ends it turns out that the debtor neglects his obligations to the bank.

In resolving disputes over *hiwalah al-haqq* or cession in *murabahah* contracts, this needs to be considered not only from a normative perspective, but also from the perspective of fulfilling the principles of Islamic economics, including the principles of *Mu'awanah* (mutual assistance in partnership), *tabadul manafi'* (mutual benefit), the principle of *'an taradhin* (based on the willingness of the parties), and *'adamul gharar* (no element of uncertainty, honesty, and no harm to the parties). Subrogation is the replacement of rights by a third party that pays to the debtor. Aims to replace the position of the old creditor, not relieve the debtor of the obligation to pay debts to creditors. Subrogation is regulated in Sections 1400 to Section 1403 of the Civil Code. The provision Section 1400 of the Civil Code provides for the formulation, Subrogation is the replacement of rights that should be paid by a third party, who pays the debtor, either based on an agreement or based on law. Based on this formula, subrogation is a payment by a third party to a

legitimate creditor, either directly or indirectly, namely through a debtor who lends money to a third party. So, here the debtor who owes the creditor borrows money from a third party to pay their debt to the creditor. In writing this thesis, only the sale and purchase of housing through settlement by subrogation will be discussed.

## RESEARCH METHODS

The method used in this study is the normative legal research method. Normative research is a method used to answer a problem by focusing on the application of legal principles and doctrines, which are then expected to produce a legal theory or concept that can be used as a guideline or answer to the problem being studied. (Peter M. Marzuki, 2023)

The nature of the research used in this thesis research is descriptive analytical, meaning that the discussion is done by explaining the data in a complete, detailed and systematic way, then the data is analyzed using scientific theories, laws and regulations, especially regulations related to buying and selling housing through Sharia financing institutions. While the type of research used in the writing of this thesis is normative research. (Ronny Hanitijo Soemitro, 1988).

## RESULT AND DISCUSSION

Sharia property has become increasingly popular in recent years in Indonesia. Sharia property or commonly called Sharia mortgages is a way of home ownership based on sharia principles and prohibits *riba* (interest) and speculative transactions that are detrimental to one party. Currently, Sharia mortgages have also been applied in Apartment Ownership (KPA). Sharia mortgages and conventional mortgages have differences in some aspects. Sharia property aspect, the process only involves consumers and developers. The transaction also does not apply the flower system and is considered to contain elements of usury which is prohibited by the teachings of Islam. The development process on Sharia property is carried out after the consumer pays the booking fee, DP, and installments. Meanwhile, the construction process on conventional mortgages applies an indent or *ready-stock* system.

The benefits of Sharia property that can be felt by consumers are fixed installments that will not change even though Bank Indonesia (BI) interest rates fluctuate, this is because the Sharia system does not recognize the existence of *Riba*. Islamic mortgage financing which is usually carried out by the banking industry refers to Act Number 10 Year 1998 on Banking (hereinafter referred as UU Bank) Sharia financing must also follow a number of rules set by fatwa of the National Sharia Council Ulama Indonesia Assembly (MUI). Regulation of subrogation in the Civil Code and the Fatwa of the Sharia Council of the Indonesia Ulema Council is not perfect, especially if it is poured into a contract agreement. So there are advantages and disadvantages of other, namely:

- a. Basically, the subrogation of The Book of law or the Fatwa of the National Sharia Council of the Indonesian Ulema Council has advantages on the side that is based on mutual assistance. Although there are several types of subrogation including profit-based transactions. The value of *Tabarru* lies in the absence of profit taking in subrogation transactions of the Civil Code and uncompensated subrogation (*iwadh*). While the value of *tabarru* that is subrogated with compensation is the taking over of receivables from an incapable person. Purchasing receivables is not solely the case. Because there is still have the ability. So that the subrogation transaction, there must be people who are helped, if the subrogation according to The Book of Law the data of the helped party can be a creditor or debtor, while the subrogation based on the Fatwa of the National Sharia Council, the party being assisted is the creditor.

- b. Indonesia as a country with a Muslim majority, can give great attention to the development of Islamic financial industry. The emergence of fatwas on Sharia subrogation led to an increase in alternatives for Indonesian Muslims to continue doing business in accordance with religious guidance. It is clear that the Syariah subrogation has advantages in terms of spiritual compared with subrogation according to the Civil Code. First industrial business people Sharia not only Muslims, but also non-Muslims participate in it.
- c. In terms of the implementation mechanism, Sharia subrogation has the advantage of subrogation based on the Civil Code. The mechanism in the Fatwa of the National Sharia Council has been implemented in detail, so as to minimize errors in the implementation of the law, especially to prevent future disputes. In contrast to the subrogation of the Civil Code, although in its origin like gives a direct example of the types of subrogation. However, according to the author, it still opens up different interpretation opportunities for each person. So that the parties will provide technical field regarding the subrogation agreement. Finally, it has an impact on the possibility of disputes between the parties in the future.
- d. The Code of Civil Law is one of Ordinance included in the hierarchy of legislation in Indonesia. As stated in Section 7 of the Act Number 12 Year 2011 on the establishment of legislation. The position makes subrogation based on the Civil Code that has advantages and can be made legal directly. Unlike the Fatwa which is only a legal doctrine in Indonesia. So that in its implementation, the provisions of fatwa still have to be positivized which becomes the regulation of legislation in the ordinary financial industry SEOJK or POJK.
- e. In terms of implementation subrogation both based Indonesia Civil Code and Fatwa of the National Sharia Council of the Indonesian Ulema Assembly had the same weakness, namely there are some differences fundamentals to the theory that exists in the provisions of subrogation. The difference can be a gap in the dispute on the day. First, the subrogation based on Fatwa must be in accordance with Sharia. This condition is strongly influenced by the educational background and level of insight of business people or parties who make subrogation agreements.

Debt settlement efforts can also be taken in two ways, namely through litigation or court and non-litigation. Legal efforts through the court are known to be more complicated and very expensive, especially with a very long trial period. So there are still many institutions recommended by the government as an alternative to debt settlement. A subrogation based on the Indonesia Civil Code has the same debt resolution flow as any other engagement. The court is not the only institution to resolve disputes, there is an alternative path that can be taken, according to Act Number 30 Year 1999 about Arbitration and Alternative Dispute Section 1 Verse 10, that describe “*The Indonesian Arbitration Board is one of the alternative dispute resolution institutions for resolving disputes. Alternative dispute resolution through institutions such as BANI is conducted outside of court through consultation, negotiation, mediation, conciliation, and assessment agreed upon by the parties.*”

Debt settlement clauses are usually end of the agreement in accordance with the agreement. The agreement of the parties usually prioritizes deliberation, alternative debt settlement in the form of settlement in BANI and the last is legal action in the state court. By determining the legal domicile, if the parties are different cities, based on the Shariah after not reaching an agreement through deliberation.” This is different from the Sharia subrogation debt settlement route. As included in the closing provisions of the Fatwa which states “If a dispute arises because one party breaches the agreement, the dispute can be resolved through alternative dispute resolution.” Subrogation based on the Indonesia Civil Code using dispute solution similar deliberation consensus that has a period of time and directly contact the law through the District Court if no consensus is reached. This is stated in the dispute resolution clause, namely: any dispute or difference arising between the parties in connection with this Agreement “dispute” shall be resolved by deliberation for consensus within a period of 30 days. If the dispute cannot

be resolved within the time frame after the start of the deliberation, the dispute must be resolved in Jakarta District Court Office. syariah subrogation, agreement made by notary and attended by 3 (three) witnesses. Meanwhile, in the Covenant subrogation receivables, it is not made before a notary and is not attended by hand.

An agreement made for a specific purpose will create a legal relationship between the parties, such as a subrogation agreement which then creates a legal relationship between the developer and the bank based on the provision of credit facilities to the debtor. Between the developer and the buyer is a sale and purchase, while between the buyer and the bank is a credit. And between the developer and the bank is a guarantee in the form of a buyback. The relationship leads to the formation of an agreement between the parties, which is an open agreement with full evidentiary force.

Subrogation is held if the debtor cannot continue the installment payment of the mortgage until the debtor experiences bad credit based on the credit agreement associated with the debtor's House certificate has not been received by the bank from the developer. Some of the reasons / considerations banks ask developers to provide subrogation are: 1) the purchase of housing units by consumers from developers is not or has not been paid in full, so the price will be paid from the results of disbursement from the PR; 2) certificates for housing units are not or have not existed and / or the building has not been completed; 3) the legal relationship between the developer and the debtor is still in the form of binding sale and purchase (Binding sale and Purchase Agreement/PPJB) and cannot be made a deed of sale and purchase before the authorized PPAT; 4) in the binding sale and Purchase Agreement, the right to land has not been transferred from the developer to the debtor. The sale and purchase Binding Agreement can be canceled by the developer, if the debtor is in default / default based on the terms of the sale and purchase Binding Agreement.

In the event that the consumer neglects his obligations or defaults, the bank will request the implementation of the subrogation agreement to the developer. With the implementation of the Buy Back Guarantee, the bank is obliged to submit all consumer credit documents including but not limited to credit agreements, debt acknowledgment deeds and guarantee agreements. Simultaneously with the payment of subrogation by the developer to the bank, both parties draw up and sign an agreement subrogation.

The use of subrogation agreements often causes problems between developers and banks and between developers and debtors due to the lack of clear subrogation arrangements in the Civil Code and agreements that have been made by the parties. So that each party has its own assessment of which subrogation so as not to be harmed by other parties.

Subrogation is the transfer of the creditor to a third party who has made payments on the debtor's debt so that the third party replaces the position as a creditor, thus all the rights and obligations of the debtor turn to him, so that subrogation can be carried out by the third party to avoid the execution of the collateral belonging to the third party as a result of the debtor's default, by paying off the debts of the debtor so that the collateral attached to the object is removed because of the elimination of the debt and receivables. The repayment is not paid on behalf of the debtor but on its own behalf, then here the third party will replace the old creditor's position as a new creditor.

According to Indonesia Civil Code Section 1400, subrogation may occur because options and due to legislation. For subrogation that occurs because of an agreement, Section 1401 of the Civil Code differentiates again into:

#### 1. By the creditor

Subrogation initiated by creditors because the original creditors received payment from a third party, thereby entitling the creditors to new rights, claims, privileges, and mortgage guarantees. This proposed subrogation must be explicitly stated when the third party makes the payment.

## 2. By the debtor

Subrogation initiated by the debtor is based on the debtor's involvement with a third party through a loan to cover debts owed to the original creditor. In such circumstances, the debtor determines the terms with the new creditor who replaces the original creditor. Under these conditions, subrogation must be carried out with an authentic deed.

The subrogation agreement contains provisions regarding the debt between the debtor and the new creditor, including a letter of settlement from the old creditor and a statement that the payment was made with the debt to the new creditor. Thus, the subrogation proposed by the debtor contains two different legal relationships, namely 1) the debtor's debt settlement to the old creditor and 2) the debtor's debt to the new creditor.

Subrogation that occurs because of the law, payment is made by a third party (new creditor) to the old creditor without being agreed by the parties. According to the provisions of Section 1402 of the Civil Code, this occurs when: 1) a creditor repays another creditor based on privileges or liabilities has a higher Right; 2) a buyer of a fixed object who has used the money for the price of the object to pay off the creditor to whom the object is tied with liability; 3) a person who together with another person or for another person is obliged to pay a debt, has an interest in paying off the debt, such as on payment by one of the creditors on a debt with a contingent liability or payment made by the insurer; and 4.) An heir who received by privilege, but has repay all the debts of the testator.

Regarding the payment of debts made by third parties, this constitutes subrogation that occurs by law, whereby third parties as debtors pay the debts because of an interest in settling them without any relationship between the parties, either between the third parties and the creditors or between the third parties and the debtors, as stipulated in Section 1402 Verse 3 of the Civil Code Civil Code: “for a person who participates in the debt.”

Subrogation by a third party here is not to free the debtor from his debts and obligations but the third party replaces the position of the old creditor into a new creditor so that the debtor has an obligation to pay his debt to a third party as a new creditor.

In the implementation of subrogation followed by the signing of the deed of subrogation, so with the deed of subrogation rights and obligations shift to the developer. With the Acte of subrogation, the developer is obliged to repay the amount of money owed following interest and penalties incurred under the Credit Agreement. So in the deed of subrogation, the bank is obliged to transfer all its rights and obligations to the developer.

But in reality, the debtor does not want to vacate the house despite the subrogation deed. The developer has notified the debtor with a certain period of time that he must vacate the house, the developer has difficulty in getting the house back. To overcome this, the developer will do several ways to solve these problems, including:

### 1. The Developer will provide a warning letter to the debtor

This effort is done before making legal efforts more and it is important to do by the Developer to confirm that the House has become the property of the Developer.

### 2. The Developer notifies the debtor to immediately vacate the House

But in practice, the execution of the execution of the house is often a problem with the debtor as the owner of the House. The bank carries out subrogation of the house ownership credit by not returning the money back to the house that has been paid by the debtor both what has been paid as a down payment and installments of the house ownership credit to the bank. The debtor feels aggrieved by this which makes a dispute with the developer. If in the settlement of the method still does not get a way out of the debtor or the developer, it can be resolved by litigation and non-litigation. In the settlement of disputes between developers and debtors can be resolved by non-litigation and litigation.

In subrogation, it will be a problem if there is no agreement between the parties. For example, if one party wants to carry out subrogation but the other party refuses, a dispute will

arise. To resolve this dispute, an alternative settlement is needed to achieve the main objective, which is considered a win-win solution. However, alternative settlements are relatively new in Indonesia. Even so, these settlements are based on consensus, peace, and mutual agreement. As a basis for Dispute Resolution, dispute resolution can be done by two lines, namely litigation and non-litigation lines.

Some ways to resolve disputes between developers and debtor related to the implementation of the subrogation deed are as follows:

#### 1. Arbitration

The term arbitration comes from the word “arbitration”, which means the power to resolve a case according to discretion. When paying attention to the above understanding it is clear that the arbitral institution is indeed intended to be an institution that serves to resolve a case or dispute but does not use a classical settlement method, in this case the judiciary. Arbitration is different from a court where the court uses a permanent or standing court, while arbitration uses a forum that is formed specifically for these activities.

Arbitration is clearly regulated through Act Number 30 Year 1999 concerning Arbitration (hereinafter referred to as UUAADR). Arbitration is explicitly mentioned in Section 5 of the UUAADR, which stipulates that “Arbitration can only be used to resolve disputes in the field of trade and rights that, according to the law, are entirely in the hands of the disputing parties.”

If a dispute arises at a later date, it can be resolved through alternative dispute resolution if an arbitration agreement has been previously entered into. Arbitration agreements are regulated in Article 1 Paragraph 3 of the UUAADR, which stipulates that “agreements containing arbitration clauses shall be made by the parties before a dispute arises or agreements shall be made separately after a dispute arises.” Arbitration agreements must be made in writing and agreed upon by the parties without prejudice to the rights of the parties.

#### 2. Negotiations

To achieve satisfaction for all parties through discussion and bargaining, the parties can negotiate to resolve disputes, including changing agreements, conducting evaluations, or other issues. Negotiation is a process in which the party bargain to reach an agreement through dynamic discussion to find a mutually beneficial solution for all parties. In practice, negotiations are based on two reasons: 1) Determining rights that cannot be determined independently, such as buying and selling, and 2) Resolving disputes between the parties.

The parties face to face carefully in discussing the problems they face in a cooperative and open way. Negotiation through discussion or deliberation directly between the disputing parties whose results are accepted by the parties. To discuss the differences that arise between the debtor and the developer related to the implementation of the deed of subrogation is done through deliberation for consensus which aims to achieve a win-win solution. So, the dispute can be resolved or not depends on the desire of both parties who have good faith in the problem. For a negotiation can take place effectively and reach an agreement that is stable, there are several conditions that affect it, namely: a. Understanding is based on a deep understanding (understanding); b. Efforts to realize the idea (understanding); c. Understand the reality to achieve the goal (authority); d. Understand the relative reality so as to increase bargaining power (relative bargaining power equivalent); e. Provides problem fixes.

In the implementation of subrogation, disputes may arise between the parties, which can be resolved through negotiation. The debtor insists on requesting money and credit installments, while the developer insists that it has rights to the house. Negotiations between the parties can prepare material to be discussed regarding the dispute, which is to prepare a strategy on how offers can provide a good solution for all parties. If the offer is accepted, the parties agree to the offer, resulting in a new commitment for the parties

## CONCLUSION

Implementation procedures for the sale and purchase of residential housing settlement through subrogation is a process by which a third party (usually a financial institution such as a bank or financing institution) pays off the seller's debt to the previous creditor (usually the bank holding the mortgage on the house), then takes over the right to collect or guarantee it from the old creditor. Process often occurs in the sale and purchase of houses that are still in credit status or not yet paid.

Settlement of receivables through subrogation in case the debtor fails to pay, the developer will provide warnings to the debtor. This effort is done before making further legal efforts and it is important to be done by the developer to confirm that the debtor's House has become property rights for the developer. Another effort is that the developer notifies the debtor to immediately vacate or execute the House. The Bank carries out subrogation of the House does not return the return of the house that has been paid by the debtor either what has been paid as a down payment and installment of the house ownership credit to the bank. The debtor feels aggrieved by this which makes a dispute with the developer. Dispute resolution can be resolved by filing a lawsuit at the Indonesian National Arbitration Board (BANI) and negotiations between the developer and the debtor to reach consensus.

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