

## **Subrogation Characteristics of Kredit Usaha Rakyat Program Distribution: An Indonesian Civil Law Perspective**

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Submitted: 20223-02-28 | Reviewed: 2023-04-10 | Revised: 2023-04-27 | Accepted: 2023-04-27

**How to cite:** Izzati, Eriza et al.  
"Subrogation Characteristics of Kredit  
Usaha Rakyat Program Distribution:  
An Indonesian Civil Law Perspective."  
*Dialogia Iuridica*, Vol. 14, No. 2, 2023,  
pp. 144-159.

**DOI:**  
<https://doi.org/10.28932/di.v14i2.6234>

### **ABSTRACT**

*Government creates various programs in order to achieve public welfare. One of them is Kredit Usaha Rakyat, a micro credit program, through which micro, small, and medium-scale enterprises (MSMEs) are expected to strengthen their capital. The distribution mechanism of KUR appears to indicate a subrogation pattern. The term subrogation refers to substitution of creditors by a third party, consequently creating a new party and affecting the KUR agreement. Grounded from this phenomenon, this work aimed to find out the legal relationship among creditors, debtors, and insurance companies in respect to KUR distribution and to find out the legal consequence of subrogation in KUR. To this end, a normative legal study with statute and conceptual approaches was conducted by reviewing and prescriptively analyzing relevant literature. The finding showed that subrogation pattern in KUR distribution did not comply with the subrogation principle regulated in the Indonesian Civil Code, as it did not annul the old agreement between the debtor and creditor and created new arrangement between the debtor, creditor, and the third party (insurance company). In other words, KUR distribution does not implement subrogation as the*

*old arrangement between the debtor and creditor is not void when an insurance company warrants the debtor's debt to the creditor.*

**Keywords:** *Credit Agreement; Collateral Institution; Kredit Usaha Rakyat; Subrogation; UMKM-K*

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## I. INTRODUCTION

Based on General Provision of Law No. 1 of 2013 on Micro Finance Institution, State Gazette of the Republic of Indonesia No. 12 of 2003 (Supplement to the State Gazette of the Republic of Indonesia No. 5394), the financial sector serves as one of the most important sectors in Indonesia's national and public economic development. Financing activities are inseparable from the banking sector, whose roles are strategic and fundamental in supporting the country's national development. In this regard, the government's programs and activities appear not to be inseparable from the banking sector in order to achieve the expected economic growth and development.

Almost every bank's transaction is a business-oriented activity. As a financial institution, a bank's main transactions involve funding and lending, in addition to other services to support the main transactions.<sup>1</sup> Article 3 of Law No. 10 jo. Law No. 7 of 1992 on Banking (Hereafter, Law on Banking) states that a bank's function is to pool and distribute public funds. A bank mainly serves as an intermediary to gather and distribute public funds.<sup>2</sup>

Due to a bank's lending function, this financial institution is often seen as the source of funds by individuals and legal entities. A commercial bank conducts a range of activities, and one of them is to provide credit, as stated in Article 6 of Law on Banking. Credit currently still serves as one of the means to fulfill public needs to obtain funding for their business.

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<sup>1</sup>Usanti, Trisadini Prasastinah. *Prinsip Kehati-Hatian pada Transaksi Perbankan*. Surabaya, Airlangga University Press, 2013, p. 1.

<sup>2</sup>Tasesa, Moektikasari Cerpino. *Pembiayaan Al-Qardhul Hasan Sebagai Perwujudan Corporate Social Responsibility Bank Syariah*. Thesis Faculty of Law Universitas Airlangga Surabaya, 2011, p. 3.

In order to achieve public welfare and justice, as the constitution mandates, the government need to put efforts to meet public needs.<sup>3</sup> One of the government's efforts to meet its citizen's needs is done by applying the Kredit Usaha Rakyat (KUR) program.<sup>4</sup> The distribution of this program is regulated in the Regulation of Coordinating Minister of Economy of the Republic of Indonesia No. 1 of 2022 concerning Guideline of the Implementation of Kredit Usaha Rakyat (Permenko KUR). This program specifically aims to support MSMEs' capital at individual level, while funds for groups of MSMEs are distributed through the cooperative. The significant role of MSMEs in the national economy has been realized.<sup>5</sup>

Article 1 number 1 of Permenko KUR states that KUR should be distributed with or without insufficient collateral. According to Article 5 number 4 of the Minister of Finance Regulation no. 10/PMK.05/2009 on the amendment of Regulation of Minister of Finance no. No. 135/PMK.05/2008 on Kredit Usaha Rakyat Collateral Facility, in its implementation, the government insures 70% of the credit risk, while the rest, 30%, is borne by the implementer bank. This implementation is the follow-up of the MoU on 9 October 2007 on Credit/Financing Security to Micro, Small, Medium-scale Enterprises (MSMEs) and Cooperative between the Government (Minister of Cooperative and MSEs, Minister of Finance, Minister of Agriculture, Minister of Forestry, Minister of Marine and Fisheries, Minister of Industry, Insurance Company (Perum Sarana Pengembangan Usaha and PT. Asuransi Kredit Indonesia)) and the banking sector (Bank BRI, Bank Mandiri, Bank BNI, Bank BTN, Bank Bukopin, and Bank Syariah Mandiri).<sup>6</sup>

Article 1 number 5 jo. Article 1 number 6 of the Regulation of Coordinating Minister of Economy of the Republic of Indonesia No. 1 of 2022 on Guideline of Kredit Usaha Rakyat Implementation states that the insurance of KUR distribution risk by the

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<sup>3</sup>Pardede, Marulak. *Penelitian Hukum Tentang Implementasi Jaminan Fidusia dalam Pemberian Kredit di Indonesia*. Jakarta, Badan Pembinaan Hukum Nasional Departemen Hukum dan Hak Asasi Manusia RI, 2008, p. 1.

<sup>4</sup>Eka Saputa, Anton. *Pertanggungjawaban Hukum Pemerintah Terhadap Kerugian Bank Pelaksana Program Kredit Usaha Rakyat (KUR) Ditinjau dari Peraturan Perbankan*. Sumatera Utara, Badan Penelitian dan Pengembangan Provinsi Sumatera Utara, 2011, p. 1.

<sup>5</sup>Johari, Martono. *Ringkasan Eksekutif Kajian Dampak Program KUR*. Jakarta, Kementerian Koperasi dan Usaha Kecil Menengah, 2015, p. 2.

<sup>6</sup>Sihombing, Karel. *Kajian Peranan KUR dalam Pemberdayaan Ekonomi Rakyat di Sumatera Utara*. Sumatera Utara, Badan Penelitian dan Pengembangan Provinsi Sumatera Utara, 2015, p. 2.

government is provided through the insurance company and other companies appointed to provide insurance towards the debtor's financial obligation in KUR. The insurance pattern currently done in KUR distribution is done in a subrogation pattern. Subrogation is stipulated in article 1400 of Burgerlijk Wetboek (Hereafter, BW), in which it is defined as a substitution of creditor by the third party with respect to the debtor's debt to the creditor.<sup>7</sup> Subrogation is one of the means to settle debts. It is a condition in which a third party pays the debtor's debt to the creditor and substitutes the old creditor's position while establishing a new debt agreement between the third party and the debtor. In other words, the debtors should pay their debt to the third party as the new creditor. The new creditor, i.e., the third party, is entitled to collect from debtors and the credit collaterals. Substitution of creditor takes place through the agreed payment or by force of law. There are three parties in KUR distribution: (a) debtor as the beneficiary of KUR program, (b) the Implementing bank as the creditor in KUR program, (c) collateral Company that warrants the credit.

The subrogation pattern in Indonesia's KUR program involves these three parties. The implementation of this program creates a legal relationship among these three parties. Based on the description above, this study focuses on discussing the characteristics of subrogation in the KUR program and its legal impact from Indonesian Civil Code perspectives.

To this end, statute and conceptual approaches were applied. The former was done by identifying and discussing the relevant regulation.<sup>8</sup> Meanwhile, the latter was done by reviewing scholars' statements in the literature.<sup>9</sup>

This study applied a normative method that views laws as a doctrine or a set of normative regulation (Law in Book). A normative legal study basically focuses on reviewing internal aspects of positive law to solve certain problems.<sup>10</sup> This approach was done by reviewing legal studies, begun by analyzing the legal concept of subrogation. Applying the statute approach, this study focused on obtaining normative

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<sup>7</sup>Subekti. *Hukum Perjanjian*. Jakarta, Intermasa, 2008, p. 18.

<sup>8</sup>Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta, Prenada Media Group, 2005, p. 97.

<sup>9</sup>*Ibid.*, p. 138.

<sup>10</sup>Benuf, Kornelius and Muhamad Azhar. "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Jurnal Gema Keadilan*, Vol. 7, No. 1, 2020, pp. 20-33, <https://doi.org/10.14710/gk.2020.7504>.

understanding of the implementation of law on subrogation, particularly in the KUR context in the Indonesian legal system.

## **II. DISCUSSION**

### **1. Legal Principles of Subrogation Agreement**

Book III of Burgerlijk Wetboek (BW) on Contract Law has stipulated that a contract stems from agreement and law (Article 1233 of BW). In article 1313 of BW, agreement is defined as an act through which an individual commit to other parties. An agreement can act as law for the involving parties, as stated in article 1330 of BW. There are four criteria for an agreement to be in force and act as law for the involving parties, as stipulated in article 1320 BW: (a) Involving parties should consent to make an agreement, (b) Involving parties should have capability to make an agreement, (c) The agreement should have a specific subject, (d) The subject should be lawful.

Agreement takes various forms and is regulated in book III of BW, and subrogation constitutes one of the forms of agreement. The definition of subrogation is mentioned in article 1400 of BW, in which it is defined as the substitution of a third party in place of and who succeeds to the rights of the creditor, who himself has paid this creditor, based on agreement or by force of law. Subrogation is also stipulated in Law no. 4 of 1996 on Encumbrance Right of Land and Land-related properties (Hereafter Law on Encumbrance Right).<sup>11</sup> Subrogation is also stipulated in articles 1401, 1402, and 1403 of BW. Subrogation that takes place due to an agreement is regulated in article 1401 of BW: (a) If the creditor, having accepted the payment from a third party, shall transfer the rights, legal claims, privileges and encumbrances, which he was entitled to from the debtor, this subrogation shall occur simultaneously with the payment, (b) If the debtor arranges a loan for the purpose of payment of his debt and the lender shall assume the rights of the creditor, in order to validate this subrogation, the act of lending as well as the release shall then be documented in an authentic deed, and the loan document shall stipulate that the loan is made for the purpose of making the

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<sup>11</sup>Djangkarang, Muhamad Rizky. "Aspek Hukum Pengalihan Hak Tagihan Melalui Cessie." *Jurnal Lex Privatum*, Vol. 1, No. 5, 2013, pp. 75-84, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/3081>.

payment; and the release shall stipulate that the payment was made from the money that was advanced by the new creditor for such purpose.

Such subrogation shall be implemented without the participation of the creditor. Meanwhile, article 1402 BW stipulates that subrogation may occur by force of law: (a) on behalf of an individual who is also a creditor and who settles the debt with another creditor who has priority, due to a privileged debt or mortgage; (b) on behalf of a buyer of any immovable assets who uses the consideration for the sale to repay the creditors who held the goods as collateral; (c) on behalf of those who, together with others or on behalf of others, are obliged to settle such debt, and who shall benefit from the payment of such debt; (d) on behalf of an heir who, having accepted an estate, pursuant to the privilege of estate description, settles the debts of the inheritance with his own money.

As explicitly stated in article 1402 letter c, debt settlement made by the third party is categorized as subrogation by force of law. The third party settles the debtor's debt to substitute the old creditor's position and act as the new creditor, not to free debtors from their debts. In other words, debtors are still obliged to repay their debt to the new creditor.

Subrogation is also mentioned in article 6 paragraph (1) of Law on Encumbrance Right. It is stated that when a debt secured by encumbrance right is transferred due to cessie, subrogation, inheritance, or other causes, the right should also be transferred by force of law to the new creditor.<sup>12</sup>

## **2. Fund Distribution to Bank**

The definition of bank has been explained by many economic experts. Kasmir defined bank as a financial institution whose main activity is to collect fund from the public and redistribute the fund to the public, in addition to other services. According to F.E. Perry, bank is a business entity whose business deals mostly with money, accept deposit from the customer, provide funds in withdrawal services, collect checks on behalf of the customer, give credit and/or invest the surplus until it is needed for

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<sup>12</sup>Supriyanto, Edy. "Kajian Tentang Cessie, Subrogasi, Novasi dalam Kredit Perbankan." *Jurnal Yure Humano*, Vol. 2, No. 1, 2018, pp. 70-95, <https://mputantular.ac.id/ojs/hukum/index.php/yurehumano/article/view/60>.

repayment. Article 1 paragraph (2) of Law no. 10 of 1998 on the Amendment of Law no. 7 of 1992 on Banking (Hereafter, Banking Law) defines a bank as a corporate entity mobilizing funds from the public in the forms of deposits and channeling them to the public in the forms of Credit and/or other forms in order to improve the living standards of the common people. It acts as the financial intermediary between parties with excessive funds and those who need funds, and as an institution to streamline the payment traffic.

According to Banking Law, a bank functions to support national development in order to improve the economic growth and national stability and eventually achieve people's welfare. A bank's role as a financial institution is inseparable from credit.<sup>13</sup> As a financial institution, credit is the main activity of the bank. The amount of credit distributed by the bank may determine the bank's profit.<sup>14</sup> A bank that fails to channel credits despite the significant amount of deposit it collects will likely suffer from loss. Credit management refers to how a bank manages the credit, starting from distribution to the credit repayment.<sup>15</sup>

Considering the huge amount of customers' funds collected in the bank, the bank should be able to channel these funds to the community through credit with interests. Interest from the credit is used to pay the deposit interest to other customer. In other words, a banking institution is obliged to mobilize and manage the customer's money in order to obtain profit.<sup>16</sup>

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<sup>13</sup>Savitri, Oka Aviani, et al. "Analisis Manajemen Risiko Kredit dalam Meminimalisir Kredit Bermasalah pada Kredit Usaha Rakyat (studi pada Bank Jatim Cabang Mojokerto)." *Jurnal Administrasi Bisnis*, Vol. 12, No. 1, 2014, pp. 1-10, <http://administrasibisnis.studentjournal.ub.ac.id/index.php/jab/article/view/499>.

<sup>14</sup>Made, Ni Luh. "Efektivitas Penyaluran Kredit Usaha Rakyat PT. BRI (Persero) Unit Blahkiuh terhadap Produktivitas UKM dan Pendapatan UKM Penerima KUR di Kecamatan Abiansemal." *Jurnal Ekonomi dan Bisnis*, Vol. 7, No. 4, 2018, pp. 959-986, <https://doi.org/10.24843/EEB.2018.v07.i04.p02>.

<sup>15</sup>Kasmir. *Manajemen Perbankan, Edisi Revisi*. Jakarta, Raja Grafindo Persada, 2008, p. 71.

<sup>16</sup>Devina, Vincentia and Lusy. "Analisis Pemberian Kredit Terhadap Pendapatan." *Jurnal Riset Akuntansi dan Keuangan Dewantara*, Vol. 3, No. 1, 2020, pp. 78-88, <https://doi.org/10.26533/jad.v3i1.547>.

### **3. Subrogation in Kredit Usaha Rakyat (KUR)**

Kredit Usaha Rakyat (KUR) is one of the government programs that is aimed at supporting the growth of micro, small, and medium-scale enterprises (MSMEs).<sup>17</sup> The Regulation of Minister of Finance No. 135/PMK.05/2008 on KUR Insurance Facility defines KUR as a financing program for MSMEs and Cooperative in the form of working capital and investment, which is supported by insurance facilities, for a productive business. This program is expected to develop economic activities in the real sector in order to countermeasure and alleviate poverty and expand employment opportunities.<sup>18</sup> Other purposes of KUR include: (a) accelerating real sector development and the empowerment of micro, small, and medium-scale enterprises and also cooperative and (b) enhancing access to financing and the development of MSMEs and Cooperatives

Article 2 of Regulation of the Coordinating Minister of Economy on KUR 2022 states that there are at least three main purposes of KUR: (a) Improving and broadening access to financing for productive business, (b) Improving MSMEs' competitive capacity; and (c) Promoting economic growth and employment absorption.

KUR is a financing provided by banks to feasible, yet non-bankable MSMEs and Cooperatives. In other words, MSMEs and Cooperatives exhibit a business potential but have not possessed the ability to repay the debt. Therefore, the government provides a micro credit program to support MSMEs' and cooperatives' optimal growth.

KUR is administered with the help from the financial sector and the insurance system. It is firstly distributed through Presidential Instruction No. 6 of 2007 on Acceleration of Real Sector Development and MSMEs empowerment (Hereafter, Inpres 6/2007). This program was designed to support the business capital and accelerate the development of real sectors and MSMEs' and cooperatives' empowerment.

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<sup>17</sup>Sujarweni, V. Wiratna and Lila Retnani Utami. "Analisis Dampak Pembiayaan Dana Bergulir KUR (Kredit Usaha Rakyat) terhadap Kinerja UMKM." *Jurnal Bisnis dan Ekonomi*, Vol. 22, No. 1, 2015, pp. 11-24, <https://www.unisbank.ac.id/ojs/index.php/fe3/article/view/4119>.

<sup>18</sup>Ariska, Fitri. "Pelaksanaan Perjanjian Kredit Usaha Rakyat dengan Jaminan (Suatu Penelitian Pada Salah Satu Bank Pelaksana Kredit Usaha Rakyat di Kota Banda Aceh)." *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan*, Vol. 3, No. 1, 2019, pp. 45-54, <https://jim.usk.ac.id/perdata/article/view/14972>.

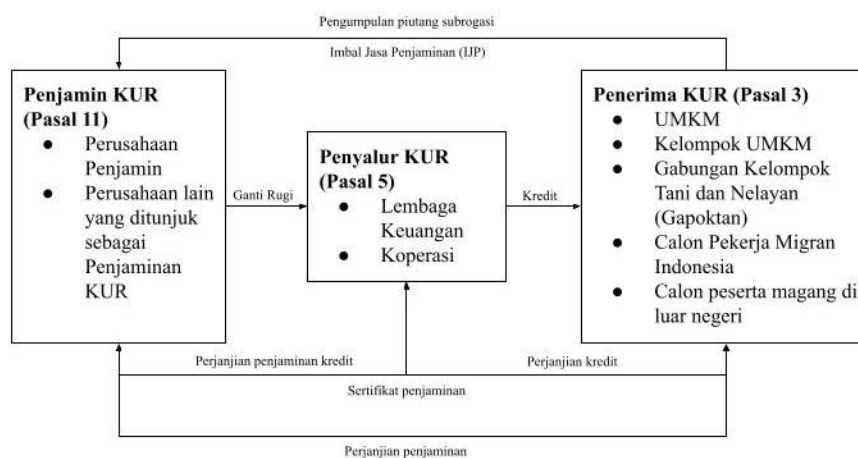


This program is offered in several options: (a) KUR, a financing up to five hundred million rupiah, (b) Micro-KUR, a financing up to five million rupiah, (c) Linkage KUR.

The implementation of Inpres continues until the enactment of the Regulation of Coordinating Minister of Economy of the Republic Indonesia no. 2 of 2022 on the Implementation Guideline of Kredit Usaha Rakyat. At the same time, other regulations issued prior to this regulation are still in force, including article 49 paragraph (2) of the minister regulation.

KUR distribution, as stipulated in article 5 paragraph (1) of the regulation, could be done by financial institutions or cooperatives. The financial institution meant in article 1 number 2 of this regulation include those with conventional or sharia principles under OJK supervision based on the law on financial services.

Parties involved in KUR distribution and their legal relationship are illustrated in the following figure:



**Figure 1. Legal Relationship among Involved Parties in KUR.**

*Source: Authors*

Distribution of KUR is performed based on MoU among the government, banking sector, and the insurance institution. The government insures about 70-80% of

the credit risk through an insurance institution. In other words, the credit insurance warrants the repayment of credit distributed by the bank.<sup>19</sup>

KUR is one of the bank's high-risk financing programs.<sup>20</sup> The risk in this context refers to the risk stemming from the KUR beneficiary's inability to repay the debt. This risk becomes the basis of the prudential banking principle. Insurance serves as one of the forms of prudential banking principle in order to minimize loss. The field fact shows that some individuals find it difficult to obtain credit and insurance and apply for credit using other people's name, which violates the prevailing law. In other words, only parties involving in the agreement should bear the responsibility and enjoy rights from the agreement, as stipulated in article 1315 of BW:

“An individual may guarantee the fulfillment of a third party's commitments, without prejudice to the claim for compensation of damages against the individual who has guaranteed the third party or has agreed to secure the third party, if such third-party refuses to fulfill the contract.”

Prohibition of using others' name in an agreement is excluded when the agreement is made to secure the third party, stating that the third party will do certain action and if the third-party refuse to do the action as agreed, creditor is entitled to claim compensation from the party who secure the third party, as mentioned in the agreement.<sup>21</sup> The exception is explicitly stated in article 1316 of BW, reading:

One of the forms of agreement with other people's name is the security agreement. The term security is called as *zekerheid* or *cautie* in Dutch language, which is defined as methods with which creditors secure the repayment of debt and general obligation of the debtors. Based on the agreement during the National Legal Guideline Seminar in 1977 in Yogyakarta, security is defined as securing the fulfillment of obligations that could be assessed using money, which stems from the agreement. Meanwhile, Hartono Hadi Suprpto and M. Bahsan define security as something given

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<sup>19</sup>RS, Rini and Aristanto E. “Pengaruh Penyaluran Kredit Usaha Rakyat (KUR), Tingkat Suku Bunga terhadap Kinerja Keuangan Pemerintah Daerah Non-Performing Loan (NPL) dan Biaya Operasi dan Pendapatan Operasi (BOPO).” *Jurnal Akuntansi Berkelanjutan Indonesia*, Vol. 2, No. 2, 2019, pp. 148–164, <http://dx.doi.org/10.32493/JABI.v2i2.y2019.p148-164>.

<sup>20</sup>Widayanti. “Analisis Prosedur Pemberian Kredit Usaha Rakyat pada BRI Palangkaraya Unit Yos Sudarso.” *Edunomics Journal*, Vol. 3, No. 1, 2022, pp. 22-30, <https://doi.org//10.37304/ej.v3i1.4000>.

<sup>21</sup>Miru, Ahmad. *Hukum Perikatan, Penjelasan Makna Pasal 1233 Sampai 1456 BW*. Jakarta, Rajawali Pers, 2014, pp. 65-66.

to the creditor to ensure that the debtor will fulfill his obligation, which could be judged using money arising from the agreement.<sup>22</sup>

In general, types of insurance company recognized by Indonesian law include:<sup>23</sup>

- (a) The Establishment, either is established by law or by an agreement, (b) The nature, i.e., material or security, (c) Right to control, i.e., security to control the material, (d) The community group, i.e, common or private security.

Subrogation known in KUR to date is a subrogation that emerges due to agreement between debtors, creditor, and insurance. To be more specific, subrogation in KUR emerges due to agreement initiated by the creditor, as stipulated in article 1401 paragraph 1 of BW.

With the subrogation, article 284 of the commercial code is in force, which reads:

“An insurer who repay the debtor's obligation should be entitled with rights of the creditors, and the debtor is responsible for every deed potentially damaging the rights of the insurer.”

Subrogation occurs because the payment is done by the third party to the creditor, either directly or indirectly, through the debtor.<sup>24</sup> Payment refers to the voluntary fulfillment of each obligation, which results in the annulment of agreement between the debtor and the creditor.<sup>25</sup> After that, the third party substitutes the position of the old creditor and acts as the new creditor.<sup>26</sup> Subrogation done by the third party does not aim to free debtors from their debts and obligations because the third-party acts as the new creditor.<sup>27</sup>

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<sup>22</sup>H.S., Salim. *Perkembangan Hukum Jaminan di Indonesia*. Jakarta, Rajawali Pers, 2012, p. 22.

<sup>23</sup>Tutik, Titik Triwulan. *Hukum Perdata dalam Sistem Hukum Nasional*. Jakarta, Kencana, 2010, p. 175-176.

<sup>24</sup>Mahrus, Moh Lutfi. “Analisis Pencatatan Piutang Subrogasi pada Perusahaan Penjamin.” *Jurnal Riset Terapan Akuntansi*, Vol. 4, No. 1, 2020, pp. 32-48, <https://doi.org/10.5281/zenodo.3865163>.

<sup>25</sup>Purnamayanti, Ni Wayan Ana, et al. “Pengaruh Pemberian Kredit dan Modal Terhadap Pendapatan UKM.” *Jurnal Manajemen Indonesia*, Vol. 2, No. 1, 2014, pp. 1-9, <https://ejournal.undiksha.ac.id/index.php/JMI/article/view/2102>.

<sup>26</sup>Suharnoko and Endah Hartati. *Doktrin Subrogasi, Novasi, dan Cessie*. Jakarta, Kencana Prenada Media Group, 2005, p. 1.

<sup>27</sup>Nopitayuni, Ni Komang and Ni Nyoman Sukerti. “Subrogasi Sebagai Upaya Hukum Terhadap Penyelamatan Benda Jaminan Milik Pihak Ketiga Dalam Hal Debitur Wanprestasi.” *Jurnal Fakultas*

However, in practice, subrogation in KUR does not comply with the subrogation principle in *Burgerlijk Wetboek*. In practice, when debtors were not able to pay their debt and the insurance repaid their debt to the creditor, the right to collect debts, according to the subrogation principle, should move to the insurance company as the third party. In other words, the agreement between debtors and creditors should be annulled and the new legal relationship between debtors and the insurance company, as the third party, arises because the insurance company has settled the debtors' debt to the bank and hence has rights to collect debt from debtors.<sup>28</sup> The field fact shows that even if the debtors' debt has been repaid by the third party, the bank would still collect debt from the debtors, causing the characteristic of subrogation is not properly met.<sup>29</sup> Thus, the concept of subrogation is not found in KUR distribution in Indonesia.

### **III. CONCLUSION**

Kredit Usaha Rakyat is viewed as a financing solution to MSMEs and Cooperatives in Indonesia. However, the practice demonstrates people's high rate of non-performing loan, causing default in KUR agreement between the community (as the debtor) and the financial institution / Cooperative (as the creditor) The default mechanism in KUR agreement involves the third party (insurance) to warrant the debtor's credit security, which is not in line with the subrogation concept stipulated in *Burgerlijk Wetboek* (BW). Therefore, the use of term subrogation in this legal relationship needs to be adjusted to the principles of subrogation in *Burgerlijk Wetboek*, considering that the current concept does not fit the legal relationship in this KUR distribution program. We propose a more suitable legal term: *Borgtocht*, or individual insurance, stipulated in Article 1820 of BW The provision of a guarantee is an agreement in which a third party agrees, for the benefit of the creditor, to fulfill the obligations of the debtor, if he himself fails to fulfill these obligations, considering that

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*Hukum Universitas Udayana*, Vol. 4, No. 2, 2016, pp. 1-5, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/19187>.

<sup>28</sup>Latuconsina, Satiah. "Pengaruh Pemberian Kredit Usaha Rakyat (KUR) Bank Rakyat Indonesia (BRI) KCP Unit Ambon Kota Terhadap UKM Pasar Mardika." *Jurnal Maneksi*, Vol. 5, No. 1, 2018, pp. 11-15, <https://doi.org/10.31959/jm.v5i1.151>.

<sup>29</sup>Rahman, Fadali. "Analisis Rasio Penjamin Kredit Usaha Rakyat pada PT. Jamkrindo Pamekasan di Masa Pandemi." *Jurnal Ilmiah Syariah*, Vol. 2, No. 2, 2022, pp. 1-11, <https://doi.org/10.37348/jurisy.v2i2.189>.

the third party will secure the debtor's obligation to the creditor in case of debtor's default. The concept of borgtocht appears to better fit the legal relationship in KUR in case of debtor's default. Applying this concept, the presence of insurance would not annul the initial agreement between creditors and debtors, and debtors are still obliged to pay their debt to the creditor following the initial credit agreement.

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