ISSN: 2723-1011 (ONLINE)

JURNAL ILMU KENOTARIATAN

VOLUME 6 | ISSUE 1 | MAY 2025

THE POSTGRADUATE PROGRAM OF NOTARY
FACULTY OF LAW
UNIVERSITY OF JEMBER, INDONESIA

FAKULTAS HUKUM
UNIVERSITAS JEMBER
Ilmu, Amal, Integritas

JURNAL ILMU KENOTARIATAN

https://jurnal.unej.ac.id/index.php/JIK/index

VOLUME 06 | ISSUE 01

MAY 2025

This journal is indexed by:

A Production of Faculty of Law at University of Jember

JOURNAL MANAGEMENT
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Jurnal Ilmu Kenotariatan
Volume 6 Issue 1 (2025), pp 01-12
doi: 10.19184/JIK.v6i1.53390
Published Online May 2025

Implementation Principle of Prudence in Using Intellectual Property Rights as Collateral for Bank Credit

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ABSTRACT

Government issued PP Number 24 of 2022, which regulates about riches intellectual as a debt guarantee object for financial institutions, banks or financial institutions non-banks to be able to provide financing to creative economy actors. But , in the practice Still there is problem related emptiness law on riches intellectual used as Banking debt guarantees , namely there is no basis for determining the economic value of an Intellectual Property Right , and if the debtor defaults there are obstacles to the execution of the Intellectual Property Right. Problems the cause uncertainty law and consequences institution finance No accommodate use Property Rights Intellectual as object guarantee . Formulation problem in study This are : 1) Position of Property Rights Intellectual Property as guarantee credit Banking in Indonesia, and 2) Realization principle caution in placement of Property Rights Intellectual Property as guarantee credit Banking . The research method of this article is legal research with a regulatory approach and a conceptual approach. The results of this article are first, HKI can be used as an object of fiduciary guarantee and the general fiduciary provisions apply because HKI is a movable object. The mechanism embodiment principle caution in placement of Property Rights Intellectual Property as guarantee credit banking , can done with analysis of the 5 C principles, namely character , capacity , capital , collateral , and condition of economy

KEYWORDS: *Collateral, Creative Economy, Intellectual Property Rights, Banking.*

HOW TO CITE:
Widyantoro, Agus, and Dita Elvia Kusuma Putri. '*Implementation Principle of Prudence in Using Intellectual Property Rights as Collateral for Bank Credit*' (2025) 6:1 Jurnal Ilmu Kenotariatan 1-12. DOI: ‹https://doi.org/10.19184/jik.v6i1.53390›

I. INTRODUCTION

Banks are institutions trusted by the public financial institution, which has a very noble mission and vision, namely as an institution that is tasked with carry out the mandate of national development in order to achieve an increase in the standard of living people.[1] This is in line with definition of bank in Article 1 number 2 of the Law Number 10 of 1998, namely business entity that collects funds from public in form savings and distribute them to public

[1] Nindyo Pramono, *Hukum Perbankan Buku 1 (Mengenal Lembaga Perbankan di Indonesia Sebuah Pendekatan dari Perspektif Hukum Ekonomi, Penataran Hukum Perdata dan Ekonomi)*, (Yogyakarta: FH UGM, 1999), p. 1..

in form credit and or forms other in frame increase level the lives of many people. For banking, in the provision of credit that is distributed to the community always contain risk, so that in In its implementation, banks must pay attention to principle caution and principle trust.[2]

In practice, for to reduce these risks, it is necessary guarantee of delivery credit in the sense of confidence in ability and the debtor's ability to pay off his obligations according to that promised is an important factor that must be considered by the bank.[3] The nature of a guarantee agreement is generally constructed as an accessory agreement. that is, it is always an agreement that is linked to the principal agreement, serving the principal agreement. In banking practice, the principal agreement is in the form of a credit granting agreement or a credit opening agreement by the bank, with the ability to provide collateral in the form of a mortgage, pledge, fiduciary, security right, *borgtocht* and others.[4] A guarantee the must own mark economical (can rated with money) and objects the can diverted to party others, so that moment debtor default object guarantee the will used For pay off his debt.[5]

In law known adage law:[6] "*da mihi factum, dabo tibi ius* " which if translated in a way free : " Show us the facts, then we will give you the facts." the law." Adage law This own depth meaning, that before can outlined in a way clear analysis law to a problem law, then must outlined moreover formerly fact or existing data. In this case, based on data from the year In 2016, there were 92.37% of creative economy business units that used their own funds to run their businesses, due to the lack of physical assets that could be used as collateral to obtain financing from banks.[7] Whereas economy creative Indonesia today This be in position third after America and South Korea. Condition thus, causing business economy creative experience lack of capital, and hamper development economy national.

For overcome problem said, the government publish Regulation Government Number 24 of 2022 concerning the Creative Economy (hereinafter referred to as PP 24/2022), which regulates about riches intellectual as a debt guarantee object for financial institutions, banks or financial institutions non-banks to be able to provide financing to Creative Economy Actors. The provisions of Article 1 number 4 of PP 24/2022, outline that ; "The Intellectual Property-Based Financing Scheme is a Financing scheme that makes Intellectual Property an object of debt collateral for bank financial institutions or non-bank financial institutions in order to provide Financing to Creative Economy Actors". This provision shows that intellectual property can be used as collateral in banking credit for creative economy actors.

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2 Yasa Aro Telaumbanua, et.al., "Pelaksanaan Penanganan Kredit Macet dengan Memakai Jaminan Hak Tanggungan pada PT. Bank Rakyat Indonesia (Persero), Tbk, Cabang Gatot Subroto", *Jurnal Rectum* 4, nomor 2, (2022): 54-67.

3 Leni Oktafiani, dan Irdanuraprida Idris, "Pelaksanaan Pemberian Kredit dengan Jaminan Hak Tanggungan pada Debitur PT. Bank DKI Jakarta Pusat", *Lex Jurnalica* 12, nomor 2, (2015): 80-94.

4 Sri Soedewi Masjchoen Sofwan, *Hukum Jaminan di Indonesia;Pokok-Pokok Hukum Jaminan dan Jaminan Perorangan*, (Yogyakarta: Liberty, 2011), p.37.

5 J. Satrio, *Hukum Jaminan Hak Jaminan Kebendaan Fidusia*, Bandung, (Bandung: Citra Aditya Bakti, 2002), p.13.

6 Geoffrey Samuel, *Rethingking Legal Reasoning*, (Cheltenham: Edwar Elgar Publishing Limited, 2018), p.17.

7 Moch. Dani Pratama Huzaini, *Kredit Berbasis Kekayaan Intelektual, antara Upaya Pemerintah dan Prudensialitas Perbankan*, Hukum Online, https://www.hukumonline.com/stories/article/lt62f11050ef56b/kredit-berbasis-kekayaan-intelektual--antara-upaya-pemerintah-dan-prudensialitas-perbankan, accessed on November 22, 2024.

But, in the practice Still there is problem on riches intellectual used as Banking debt guarantees, namely:[8]

1. Intellectual property as an object has a different character from objects according to *Civil Code*,
2. There is no benchmark for determining the economic value of an Intellectual Property Right, and
3. In this case, the debtor in default has *an* execution obstacle considering the character of Intellectual Property Rights which is different from objects according to *the Civil Code.*

The problem the cause dilemma, which results in still very little institution finance that uses Intellectual Property Rights Intellectual as object guarantee, and not yet common in Indonesian society.[9] For overcome existence problem said, then formulation problem in study This are:

1. Position of Property Rights Intellectual Property as guarantee credit Banking in Indonesia, and
2. Realization principle caution in placement of Property Rights Intellectual Property as guarantee credit Banking.

According to Muhammad Syahrum, authenticity study meaningful that Topic research that will be implemented nature original, authentic, not is plagiarism from script or work other people's research.[10] Therefore, it will outlined a number of similar research with study this and will outlined difference (*novelty*) with researches namely: 1) Proceedings of the Seminar entitled Legal and Construction Problems HKI burden as Objects Guarantee in Indonesia, by Riky Rustam, 2022. Research That own similarity in matter discuss construction HKI burden in Indonesia. But there is difference in matter journal the focus on the problems HKI burden,[11] whereas study This about the position of HKI as guarantees and mechanisms loading guarantee that reflects principle caution. 2) Journal entitled Property Rights Intellectual as Guarantee Credit Banking, by Ni Kadek Arcani and Ida Ayu Sukihana, 2022. In journal mentioned, there is similarity with study this, related with discussion position and the Concept of HKI as a Guarantee for Banking Credit in Indonesia. However, there are difference in a way fundamental, because study This associated with principle caution banking, while journal the only discuss about the position and validity of HKI as Bank Credit Guarantee.[12] Therefore, research This own novelty.

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[8] Willa Wahyuni, *Tiga Masalah Utama HKI Sebagai Jaminan Utang*, Hukum Online, September 2022, ‹https://www.hukumonline.com/berita/a/tiga-masalah-utama-hki-sebagai-jaminan-utang-lt6315b7a5527e4/?page=all›, accessed on November 18, 2024.

[9] Riky Rustam, *Problematika Hukum dan Konstruksi Pembebanan Hak Kekayaan Intelektual (HKI) sebagai Objek Jaminan di Indonesia*, Prosiding Simposium Nasional Hukum Pidana, Fakultas Hukum Universitas Islam Indonesia, September 2022, p.68.

[10] Muhammad Syahrum, *Pengantar Metodologi Penelitian Hukum: Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi Dan Tesis*, (Riau: Dotplus Publisher, 2022), p.31.

[11] Riky Rustam, *Op.Cit.*, p. 69-77.

[12] Ni Kadek Arcani, Ida Ayu Sukihana, "Hak Kekayaan Intelektual sebagai Jaminan Kredit Perbankan", *Jurnal Kertha Semaya* 10, nomor 6, (2022):1267-1278. DOI: https://doi.org/10.24843/KS.2022.v10.i06.p04

II. METHODOLOGY

The type of research used in this research is legal research (*doctrinal research*), namely research which is a *know-how activity*. in legal science, not just *know-about*.[13] This study uses a statutory regulatory approach, and a conceptual approach. The statutory approach is used to examine all statutory regulations and regulations related to the legal issues being handled. [14]The conceptual approach is used to analyze through views and doctrines that develop in legal science.[15] Study law This is research based library based, which *is* known as according to Terry Hutchinson: " *focusing on a reading and analysis of the primary and secondary materials*." Source material law in study This is material primary law and materials law secondary. Collection ingredients law started with do inventory material primary and secondary law, both from library and the internet (*digital library*). Furthermore material the law that has been collected the identified with use snowball method.[16] The next step in this research is to conduct a study of primary legal materials and secondary legal materials that have been collected using the method interpretation (*interpreratiemethoden*) and construction law or reasoning model (*edeneerweijzen*).[17]

III. POSITION OF INTELLECTUAL PROPERTY RIGHTS AS COLLATERAL FOR BANK CREDIT IN INDONESIA

Financing scheme based on riches intellectual is scheme financing that makes riches Intellectual as object debt guarantee for institution bank finance or institution non-bank finance in order to be able to give Financing to perpetrator economy creative, as regulated in Regulation Government Number 24 of 2022 concerning Regulation Implementation Constitution Number 24 of 2019 concerning the Creative Economy (hereinafter referred to as PP 24/2022). The inclusion of HKI material as an object of banking guarantee is considered very important, especially for business actors who have HKI to be able to access bank credit in order to develop their business, considering that Lots the absence of physical assets that can be used as collateral to obtain financing from banks by the perpetrator economy creative.[18]

As for wealth based financing intellectual submitted by economic actors creative to the institution bank finance or non-bank financial institutions.[19] What is meant by as subject law perpetrator economy creative said, is perpetrator economy creative namely an individual or group of Indonesian citizens or business entities bodied law or No bodied established law based on Indonesian law that does activity economy creative.[20] Activity economy creative, is

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13 Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media, 2017).

14 Kadarudin, *Penelitian Di Bidang Ilmu Hukum (Sebuah Pemahaman Awal)* (Semarang: Formaci, 2021).

15 Peter Mahmud Marzuki, *Op.Cit*.,

16 Agus Yudha Hernoko et al., *Dasar Pengajuan Upaya Peninjauan Kembali Terhadap Peninjauan Kembali Dalam Perkara Perdata*, (Sidoarjo: Ziffatama Publishing, 2016), p. 52.

17 Philipus M. Hadjon dan Tatiek Sri Djamiati, *Arugmentasi Hukum*, (Yogyakarta: UGM Press, 2008), p. 52.

18 Trias Palupi Kurnianingrum, *Hak Kekayaan Intelektual Sebagai Jaminan Kredit Perbankan Intellectual Property As Banking Credit Guarantee*, (Jakarta: Pusat Penelitian Badan Keahlian DPR RI, 2017), p. 1.

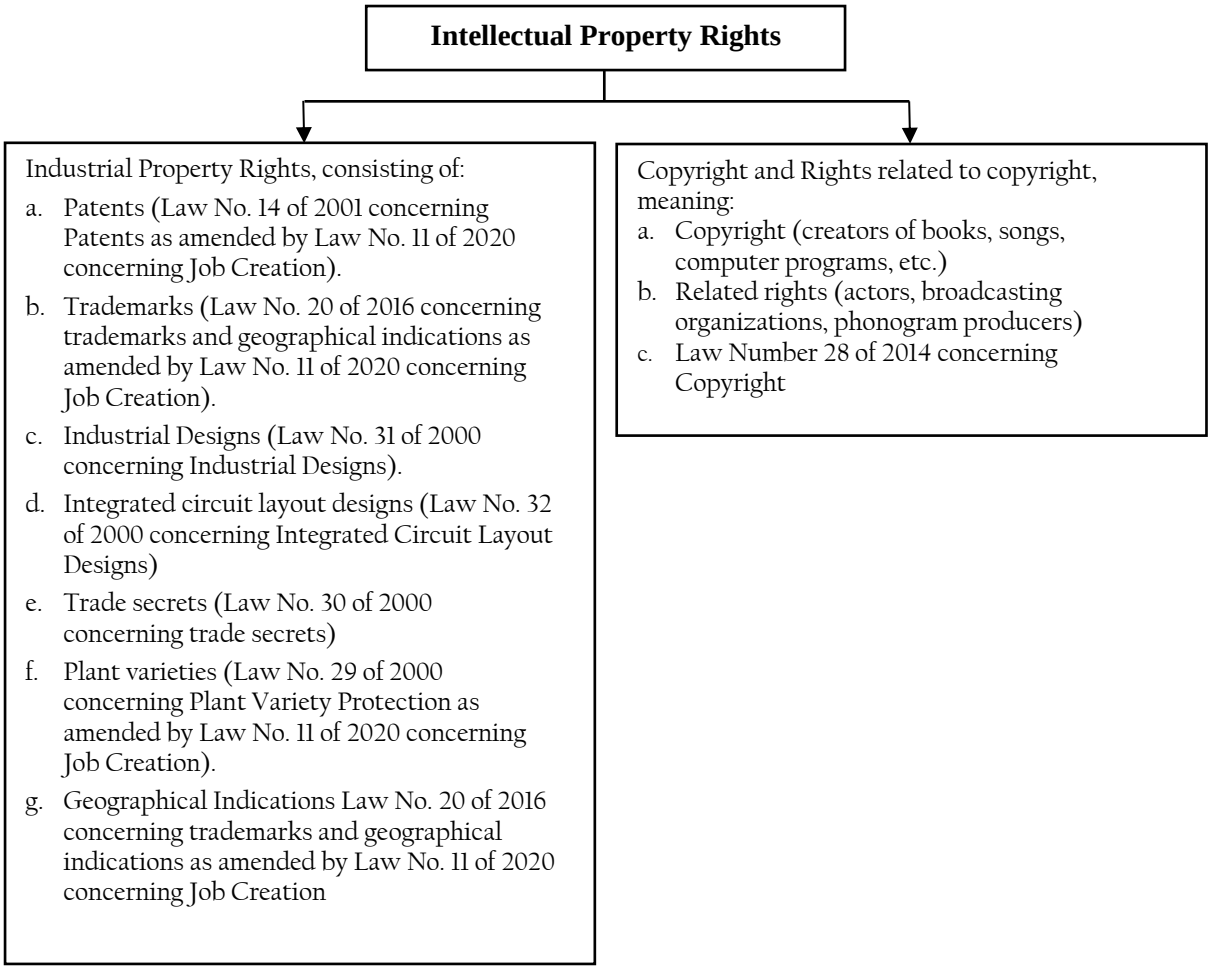
19 Article 7 paragraph (1) of the Regulation Government Number 24 of 2022 concerning Regulation Implementation Constitution Number 24 of 2019 concerning the Creative Economy

20 Article 1 number 2 of the Law Number 24 of 2019 concerning the Creative Economy.

embodiment mark plus from riches intellectual sourced from creativity human based inheritance culture, science knowledge, and/ or technology.

Property is wealth that arises or is born due to human intellectual ability. through creativity, taste and initiative which can take the form of works in the fields of technology, science, art, and literature.[21] More continued, Hariyanto, explaining that Intellectual Property Rights are a form of property rights, namely moving object intangible.[22] HKI categories are divided into two categories, namely copyright and industrial property rights.[23] For understand category Property Rights Intellectual, can understood in chart as following :

Chart 1. Classification of Property Rights Intellectual



Source : Analysis Results Writer

[21] Article 1 number 6 of the Regulation Government Number 24 of 2022 concerning Regulation Implementation Constitution Number 24 of 2019 concerning the Creative Economy

[22] Hariyanto, "Perlindungan Hukum terhadap Hak Pemulia Tanaman atas Produk Tanaman Hibrida sebagai Bagian dari Hak Kebendaan", *Mimbar Hukum* 20, nomor 3, (2008):485-493. DOI: https://doi.org/10.22146/jmh.16291

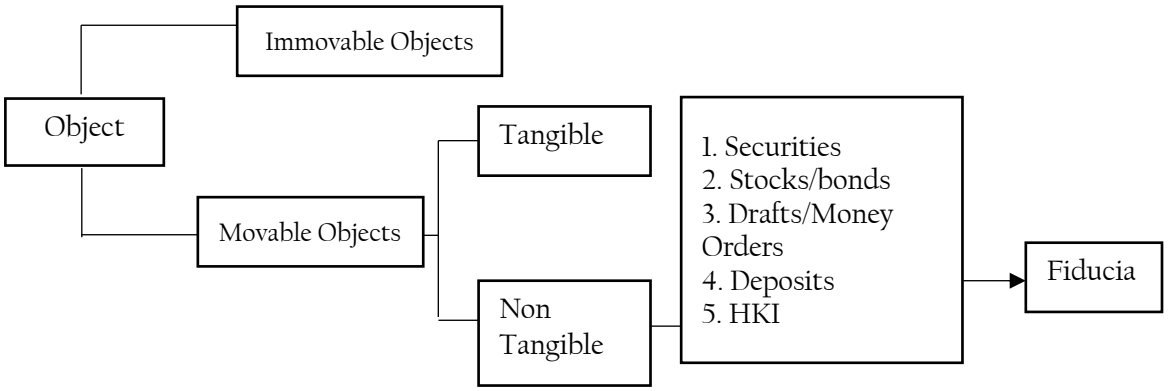
[23] Rahmi Jened, *Interface Hukum Kekayaan Intelektual dan Hukum Pesaingan (Penyalahgunaan HKI)*, (Depok: Raja Grafindo, 2017), p. 14.

Object riches intellectual as above, can guaranteed as guarantee credit banking, with notice provision scheme financing riches intellectual.[24] However, previously need known classification law guarantees in Indonesia, namely:[25]

a. Material Guarantee (Items), namely material guarantees
   Material Guarantee has "material" characteristics in the sense of providing pre-emptive rights over certain objects and has the characteristic of being attached to and following the object in question.
b. Intangible guarantee (personal), namely personal guarantee.
   Individual guarantees do not give preemptive rights over certain objects, however only guaranteed by someone's assets through the person who guarantees it fulfillment of the obligation in question.

Next, in matter This will discussed about development right material riches intellectual in guarantees in Indonesia, namely :

Chart 1 Development of Property Rights



Source : Analysis Results Writer

In Indonesia, the position of HKI as Banking guarantee objects have basically been regulated in statutory provisions regarding HKI, namely as following :

Table. Property Rights Arrangement Intellectual

Copyright	Patent	Brand	Confidential Trade	Industrial Design	Varieties Plant
Copyright can made into as object guarantee fiduciary (Article 16 paragraph (3) of Law 28/2014)	Patent rights can made into as object guarantee fiduciary (Article 108 of Law 14/2021)	No set up special	No set up special	No set up special	PVT rights can switch or diverted Because inheritance, gift, will, agreement in form deed notary, or other reasons that justified by law (Art. 40 paragraph (1) Law 29/2000)

Source : Analysis Results Writer

[24] Rikson Sitorus, *Prospek Hak Kekayaan Intelektual (HKI) sebagai Jaminan Utang*, Seminar OJK, September 2022.
[25] Salim HS. *Perkembangan Hukum Jaminan di Indonesia.* (Jakarta: Raja Grafindo, 2016), p.22.

On the explanation mentioned, it can be known that riches Intellectual property is a form of property rights intangible.[26] It is called as an intangible object d, due to the ownership rights of the results HKI is very abstract when compared to ownership rights of visible objects.[27] HKI can be used as collateral for a debt with a guarantee The right thing is fiduciary guarantee.[28] In essence, Intellectual Property Rights (whatever the type) can also be used as a fiduciary object. and fiduciary provisions because Intellectual Property Rights are movable objects.

IV. MECHANISM FOR REALIZING THE PRINCIPLE OF PRUDENCE IN THE PLACEMENT OF INTELLECTUAL PROPERTY RIGHTS AS COLLATERAL FOR BANK KREDIT

Principle caution or also called *the prudential principle*, taken from the English word "*Prudent*" which meaning "Wise".[29] Providing credit by the Bank to debtor customers based on the principle caution, namely:[30]

> *Banks in carrying out their business activities, including providing credit to debtor customers, must always be guided by and apply the principle of prudence. This principle is manifested, among others, in the form of consistent application based on good faith towards all requirements and laws and regulations related to the provision of credit.*

Implementation principle prudence (*Prudential Banking Principle*) in all over activity banking is one of method For create healthy banking, which in turn will impact positive to economy in a way macro.[31] This is aiming For protect financing from various problem with method know the customer well through identity prospective customer, documents Supporter information from prospective customers and so on.[32]

In casu, the procedure submission HKI financing as guarantee banking consists of from stages data verification, verification legality riches intellectual, assessment riches intellectual, disbursement of funds, and receipt refund., with analyze aspects as following :

1) Legal basis

   Law Number 24 of 2019 concerning the Creative Economy, and related laws with HKI. Then there is PP 24/2022. However, not yet There is support legal in a way technical, because Not yet There is revision about Bank Indonesia Regulations Number 14/ 15 /PBI/2012 About Asset Quality Assessment General Bank.

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[26] Trias Palupi Kurnianingrum, *Op.Cit*., p. 40.

[27] Indra Rahmatullah, *Aset Hak Kekayaan Intelektual Sebagai Jaminan Dalam Perbankan*, (Yogyakarta: Deepublish, 2015), p. 16.

[28] Hariyanto, *Op.Cit*., p.493.

[29] Permadi Gandapradja, *Dasar dan Prinsip Pengawasan Bank*, (Jakarta: Gramedia Pustaka Utama, 2004), p.21.

[30] Sutan Remy Sjadeni, *Perbankan Islam dan Kedudukannya dalam Tata Hukum Perbankan Indonesia*, (Jakarta: Pustaka Utama Grafiti, 1999), p.173

[31] Yunus Husein, "Analisis Yuridis Aturan Prinsip Mengenal Nasabah Dalam Mencegah Tindak Pidana Pencucian Uang Pada Transaksi Perbankan", *Lex Jurnalica* 20, nomor 1, (2023): 32-46. https://doi.org/10.47007/lj.v20i1.6467

[32] Veithzal Rivai, *Islamic Financial Management : Teori, Konsep dan Aplikasi Panduan Praktis untuk Lembaga Keuangan, Nasabah, Praktisi dan Mahasiswa*, (Jakarta: Kharisma Putra Utama Offset, 2008), p.617

2) Legal Subject
   Wealth - based financing intellectual submitted by economic actors creative to the institution bank finance or non-bank financial institutions (Article 7 paragraph 1 PP 24/2022);
3) Condition Submission Financing based on HKI
   At least consists of from : a) financing proposal, has business economy creative, have engagement related to product HKI economy creative ; and d) have letter recording or certificate riches intellectual.
4) HKI requirements as object guarantee
   Among others, a) already recorded or registered with the Directorate General of Intellectual Property; b) already managed Good in a way yourself and/ or diverted his rights to other parties.
5) Form of HKI as a basis for debt guarantee
   Can in the form of a) guarantee fiduciary on riches intellectual, b) contract in activity economy creative, and/ or c) rights bill in activity creative economy. (Article 9 paragraph 2 PP 24/2022)
6) Recording Financing Riches Intellectual
   Efforts that can be made done is with stages 1) The perpetrator economy creative accept financing from institution bank finance and/ or must to record facility financing economy creative ; 2) System recording facilitation financing economy creative organized by the ministry that organizes task government in the field of economy creative.
7) Evaluation Wealth Value Wealth Intellectual
   HKI assessment is carried out by an Assessor Riches Intellectual together with a panel of judges with use approach cost, market approach, approach income, and/ or approach evaluation other in accordance with standard applicable assessment. (Article 12 PP 24/2022)
8) Completion Dispute Financing Creative Economy based on Riches Intellectual
   Done through deliberation For consensus, can completed through court or outside court (Article 40 PP 24/2022).

As above, it has been outlined about stages on scheme financing riches intellectual as guarantee banking.[33] However, with scheme on hopefully Still cause problem or challenge banking, namely:[34]

1. The difficulty count / assess / not existence benchmark special in count need credit, components the economics of an HKI, and the valuation of HKI;
2. HKI appraisal institutions in Indonesia;
3. Term time limited HKI protection ;

[33] Ferdiansyah Putra Manggala, "Dinamika Pembebanan Jaminan Fidusia Terkait Dengan Prinsip Spesialitas," *Jurnal Ilmu Kenotariatan* 4, no. 1 (2023): 78–88.

[34] Meralda Amala Istighfarin, "Perlindungan Hukum Kreditur Dan Pemilik Jaminan Dalam Pelaksanaan Perjanjian Kredit Dengan Jaminan Tanah Milik Orang Lain," *Acten Journal Law Review* 1, no. 1 (August 31, 2024): 64–84.

Lex semper debit remidium (law must can become medicine), in line with adage said, in fact problem as described above, can be overcome with implement principle caution banking.[35] The principle of prudence can be applied by banks by conducting various kinds of analysis, including by implementing the 5C principle, namely:[36]

1) Evaluation Character

   It is the nature or character of a person who will be given credit (the perpetrator) economy creative must be absolutely credible.

2) Assessment Capacity

   Capacity is an analysis to determine the customer's ability to pay credit, from this assessment the customer's ability to manage the business can be seen. This is can done with to observe with Good HKI requirements as guarantee, namely Already recorded or registered with the Directorate General of Intellectual Property, and has managed Good in a way alone and/ or diverted his rights to other parties.

3) Capital Assessment (*Capital)*

   it can be seen from the financial report (balance sheet and profit and loss report) which is presented by taking measurements such as in terms of liquidity and solvency, profitability and other measures. This can done with analyze submission perpetrator economy creative in submission loans, with analyze financing proposals, ensure own business economy creative and have engagement related to product HKI economy creative; and perpetrator economy creative own letter recording or certificate riches intellectual

4) Assessment to Debt Business Prospects *Condition of Economy*

   The assessment of the condition or prospects of the financed business sector should truly have good prospects so that the possibility of the credit being problematic is relatively small. Therefore, in matter HKI assessment involves assessor Riches Intellectuals and/ or assessment panels that meet the requirements condition with use approach cost, market approach, approach income, and/ or approach evaluation other in accordance with standard applicable assessment.

5) Evaluation Collateral

   It is a guarantee given by prospective customers, either in physical or material form. non-physical. The guarantee should exceed the amount of credit given. The guarantee must also be examined for its validity and perfection, so that if a problem occurs, the deposited guarantee can be used as quickly as possible. Therefore, that, it is necessary do checking term time, is it there is dispute, or HKI Already deleted.

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[35] Mohammad Reynaldy Adam and Wiwik Wulandari, "Kepastian Hukum Akta Perubahan Badan Kredit Desa Menjadi PT. Lembaga Keuangan Mikro," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 162–72.

[36] I Dewa Gede Cahaya Dita Darmaangga, et.al., "Penerapan Prinsip Kehati-hatian sebagai Analisis dalam Pemberian Kredit Pada PT BPR Gianyar Partasedana", Jurnal Kertha Semaya 1, nomor 8, (2013): 1-13.

Description mechanism implementation of 5C as embodiment principle caution banking, it is expected capable overcome problem about placement HKI guarantee in credit Indonesian banking, and can realize development economy creative.

V. CONCLUSION

Position of Property Rights Intellectual Property as guarantee credit banking in Indonesia is regulated based on provision Regulation Government Number 24 of 2022 concerning Regulation Implementation Constitution Number 24 of 2019 concerning the Creative Economy. HKI is one form of property rights intangible, and HKI (whatever type) can be used as a fiduciary object and fiduciary provisions in general because HKI is a movable object. Wealth - based financing i intellectual For credit banking submitted by economic actors creative to the institution bank finance, with condition Already recorded or registered with the Directorate General Riches Intellectual, and already managed Good in a way alone and/ or diverted his rights to other parties. In the future need existence revision about Bank Indonesia Regulations Number 14/ 15 /PBI/2012 About Asset Quality Assessment General Bank, which accommodates position riches intellectual as object guarantee credit banking, for give certainty law.

Mechanism embodiment principle caution in placement of Property Rights Intellectual Property as guarantee credit banking, can done with analysis of the 5 C principles, namely character assessment (character), capability assessment (capacity), capital assessment (capital), collateral assessment, and assessment of debtor's business prospects (condition of e conomy), at the stage financing which includes data verification, verification legality riches intellectual, assessment riches intellectual, disbursement of funds, and receipt refund. In embodiment principle caution the banking must cooperate with Assessor Riches Intellectuals and/ or Assessment Panel, as well as Directorate General Riches Intellectuals of the Ministry of Law and Human Rights of the Republic of Indonesia. Need existence improvement competence profession assessor riches intellectual, and provision system management digital collective in provision access to data above riches intellectuals who are made object guarantee and also recording facility funding perpetrator economy creative.

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Jurnal Ilmu Kenotariatan
Volume 6 Issue 1 (2025), pp 13-27
doi: 10.19184/JIK.v6i1.53651
Published Online May 2025

Accountability of Temporary Land Deed Official Not Included as Defendants in Deed Revocation Rulings

Study of Verdict Number 601/Pdt.G/2020/Pa.Tnk.

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ABSTRACT

This study examines the role of the Temporary Land Deed Official (PPATS) in the issuance of legally defective deeds. The case, as adjudicated in Verdict Number 601/Pdt.G/2020/PA.Tnk, indicates that the PPATS was neither designated as a Co-Defendant nor held materially liable to the disputing parties. In the court's consideration, the judge reasoned that the PPATS was not directly implicated in the case since the Grant Deed (Akta Hibah) was not annulled, but rather the "grant" itself. Nevertheless, the judge ruled that the Grant Deed was legally defective, lacked binding legal force, and was declared null and void by operation of law. Consequently, the verdict contains a formal defect (plurium litis consortium) due to the absence of a complete set of necessary parties in the lawsuit, which, in principle, should have resulted in the dismissal of the case. This study addresses two main issues: (1) the legal consequences of a Grant Deed that is null and void by operation of law, and (2) the actions that the PPATS can take to maintain their integrity and professional accountability in the event of such a declaration. This research employs a normative legal approach, utilizing the theory of legal responsibility as its analytical framework.

KEYWORDS: *PPATS, Grant Deed, Responsibility.*

HOW TO CITE:
Soraya, Nilna Firkhana, et. al. '*Accountability of Temporary Land Deed Official Not Included as Defendants in Deed Revocation Rulings (Study of Verdict Number 601/Pdt.G/2020/Pa.Tnk.)*' (2025) 6:1 Jurnal Ilmu Kenotariatan 13-27. DOI: ‹https://doi.org/10.19184/jik.v6i1.53651›

I. INTRODUCTION

Land ownership cannot be established merely by occupying land, as is the case with movable objects. Instead, proof of ownership is required. Ownership of immovable objects, including land, can be transferred under conditions set forth in Article 2, Paragraph (2) of Government Regulation No. 37 of 1998 concerning Regulations on Land Deed Officials (PP PJPPAT).

One method of transferring land rights without financial transactions is through a grant.[1] The transfer of land rights requires specific procedures, particularly the issuance of a deed as legal evidence of the action.[2] This deed, known as an "authentic deed," is regulated under Article 1868 of the Indonesian Civil Code.

In the context of land affairs, a Land Deed Official (PPAT) plays a vital role in creating authentic deeds for the transfer and registration of land rights. The authentic deed prepared by the PPAT holds strong evidentiary value, which can be used as legally binding proof in the event of a dispute. This system protects the interests of both parties involved in the transaction.[3]

Indonesia's vast geography has led to a shortage of PPATS in certain regions. To address this issue, Temporary Land Deed Officials (PPATS) are appointed to fulfill the duties of a PPAT in areas where no PPAT is available. This reflects the essential role of PPATS in ensuring the smooth transfer of land rights.[4]

PPATS are typically sub-district heads or village heads assigned to facilitate the administrative process of land-related transactions. They prepare authentic deeds for legal actions such as grants, sales, exchanges, contributions of capital, distribution of joint rights, and other forms of land transfer as governed by applicable laws.[5]

Based on Salim's books, the region that doesn't have enough PPATS is caused by the requested work area selection.[6] Both prospective PPATs and the transfer of old PPATs will choose urban areas only, while very few PPATs submit applications for rural areas.[7] Of course, this causes rural areas not to have enough PPATs, so these rural areas have a reason to appoint PPATS.

Grants are often made by parents to their children. Regardless of location, whether rural or urban, these legal actions must adhere to proper legal procedures, including the creation of a Grant Deed by either a PPAT or a PPATS. PPATS are subject to sanctions if they violate legal regulations, including those stipulated in the PP PJPPAT, its amendments, the Basic Agrarian Law (UUPA), the Civil Code, and other relevant laws. If an authentic deed prepared by a PPATS causes harm to any party, the PPATS is obligated to provide compensation and assume full responsibility, potentially being listed as a co-defendant.

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1 Nurvannisa Fajrimustika and Fransiscus Xaverius Arsin, "Status Kepemilikan Rumah Yang Dibangun Di Atas Tanah Hibah Pasca Perkawinan Tanpa Perjanjian Kawin," *Kertha Semaya : Journal Ilmu Hukum* 11, no. 11 (2023): 2694–2703.

2 Asriadi Zainuddin, "Perbandingan Hibah Menurut Hukum Perdata Dan Hukum Islam," *Jurnal Al Himayah* 1, no. 1 (2017): 92–105.

3 Erlan Ardiansyah, Mohammad Saleh, and Rahmia Rachman, "Batasan Tanggungjawab Notaris Terhadap Akta Autentik Yang Dibuatnya," *Recital Review* 4, no. 2 (2022): 432–51.

4 Shirley Zerlinda Anggraeni and Marwanto, "Kewenangan Dan Tanggung Jawab Hukum Pejabat Pembuat Akta Tanah Dalam Pelaksanaan Pendaftaran Hak Tanggungan Secara Elektronik," *Acta Comitas : Jurnal Hukum Kenotariatan* 5, no. 2 (2020): 261–73.

5 Citra Adityana Setyawan and Antiko Wati, "Peralihan Hak Atas Tanah Dengan Kuitansi Jual Beli," *Jurnal Ilmu Kenotariatan* 3, no. 1 (2022): 14–22.

6 Salim HS, *Teknik Pembuatan Akta Pejabat Pembuat Akta Tanah (PPAT)* (Jakarta: Raja Grafindo, 2016).p.67.

7 Ida Ayu Agung Nara Kirana Udiyana and I Made Sarjana, "Kajian Yuridis Terhadap Tanggung Jawab Notaris Dalam Pembuatan Surat Kuasa Membebankan Hak Tanggungan," *Acta Comitas : Jurnal Hukum Kenotariatan* 6, no. 03 (2021): 667-678.

A case involving the annulment of a grant, registered under Case No. 601/Pdt.G/2020/PA.Tnk, illustrates these principles.[8] The plaintiffs, heirs of M. Yusuf Bin Said and Rumsiah, filed a claim to annul a grant. The plaintiffs asserted that the first defendant claimed to be the recipient of a portion of the heirs' estate, while the second defendant was the party granting the grant and signing the Grant Deed.

The case's background reveals that M. Yusuf Bin Said owned a 21,990 m² plot of agricultural/residential land, which was managed by his wife and children (the plaintiffs) after his death in 2007. In 2010, an individual named Dwi Armaranto introduced the first defendant, Yudi Herlambang, to the plaintiffs' mother, claiming he could assist in issuing a land certificate. Yudi Herlambang requested IDR 10 million to process the certification and asked for a portion of the land to be granted to him upon issuance of the certificate.

The plaintiff's mother paid the requested amount, and Yudi Herlambang frequently visited to collect signatures from the plaintiffs' mother under the pretense that they were required for the certification process. Despite continuous inquiries about the certification's status, the certificate was never issued.

In 2014, the plaintiffs' mother passed away. Efforts to follow up on the certificate's status were unsuccessful. In 2019, Yudi Herlambang presented the plaintiffs with several documents, including a Physical Land Control Statement (sporadik) from 2006, a Land Ownership Statement for M. Yusuf dated 2006, and a Land Ownership Statement for Rumsiah dated 2010. In May 2020, two of the plaintiffs were summoned as witnesses by the Bandar Lampung Police in connection with a police report filed by Yudi Herlambang regarding the land.

During questioning, the plaintiffs were shown a Declaration of Heirs and Power of Attorney for Heirs dated September 4, 2018. This declaration claimed that the plaintiffs, along with individuals unrelated to the inheritance (former spouses and non-heirs), were co-heirs of M. Yusuf and Rumsiah and had granted 1,200 m² of the land to Yudi Herlambang. The plaintiffs denied knowledge of and signatures on the declaration, questioning its validity based on several inconsistencies:

1. Non-heirs, including ex-spouses and the second defendant's husband, were listed as co-heirs and signatories.
2. Legitimate heirs (Plaintiffs 1 and 4) did not sign the document.
3. The ex-husband of Plaintiff 2 had divorced her in 2014, yet his signature appeared on a 2018 document.
4. Several individuals listed as signatories denied signing the document.

These discrepancies suggest possible forgery, underscoring the importance of authentic deeds and the role of PPATS in verifying the authenticity of legal documents.[9] The role of the PPATS in this case and their responsibility to maintain integrity as public officials must be critically examined. Any deviation from proper procedure could undermine public trust and jeopardize the legal certainty of land transactions.

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[8] Case No. 601/Pdt.G/2020/PA.Tnk

[9] Arsiendy Aulia, "Prinsip Kehati-Hatian PPAT Dalam Proses Pengikatan Jual Beli Tanah Sebagai Perwujudan Kepastian Hukum," *Recital Review* 4, no. 1 (2022): 244–78.

II. METHODOLOGY

This study adopts a normative legal research approach, utilizing both statutory and analytical approaches.[10] The legal materials used in this research are classified into three categories: primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials consist of statutory regulations and legal instruments that directly address the research topic. Secondary legal materials include legal literature such as books, journals, and articles that provide explanations and analyses of the primary legal materials. Tertiary legal materials are comprised of legal encyclopedias, bibliographies, and indexes that assist in finding the primary and secondary legal sources.[11] The data collection method employed in this research is a library study, where relevant legal texts and literature are reviewed. The analysis of the legal materials is conducted through systematic interpretation and grammatical interpretation, ensuring a thorough understanding of the legal provisions within their respective contexts.

III. ACCOUNTABILITY OF PPATS NOT INCLUDED AS DEFENDANTS IN DEED REVOCATION RULINGS

Every aspect of social life in Indonesia will be regulated by legal products, namely laws and regulations that can be called positive laws.[12] As a country that holds the rule of law, law enforcement must be able to be enforced fairly for all Indonesian people.[13] In a lawsuit filed in court, it must meet both formal and material requirements as follows.[14]

1. **Formal Requirements**
   These requirements relate to the procedural rules established by the applicable regulations. Formal requirements must not be neglected, as failure to comply may result in a defective lawsuit. The essential elements include clearly identifying the parties involved, addressing the correct court, stating the grounds for the lawsuit, and detailing the claims being made.
2. **Material Requirements**
   These requirements concern the content or substance that must be included in the lawsuit. The main material requirements include identifying the parties involved, outlining the posita or legal grounds (fundamentum petendi) which consist of the events and legal basis, and specifying the petitum (claims). Both requirements must be fulfilled by the parties in dispute for the court decision to have legal force and be enforceable without legal defects.

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10 Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2007).
11 Aan Efendi and Dyah Octhorina Susanti, *Penelitian Hukum (Legal Research)* (Jakarta: Sinar Grafika, 2018).
12 Satjipto Rahadjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000).
13 Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (Yogyakarta: Liberty, 2005).
14 Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2008).

According to Yahya Harahap's book, formal defects arising from an error in acting as the plaintiff or defendant can be classified as error in persona.[15] There are several types of error in persona, including:

a. **Disqualification in Person**
   This occurs when the person acting as the plaintiff does not meet the requirements, such as not having the right to file the lawsuit or being legally incompetent to take legal action.
b. **Misidentified Defendant**
   This form of error in persona involves errors in identifying the person being sued. For example, when the person sued is not a party to the agreement, or a lawsuit is filed against a minor without their guardian or parents.
c. **Lack of Parties**
   A lawsuit is considered to have a lack of parties or plurium litis consortium when the plaintiff or defendant is incomplete, meaning there are additional individuals who should have been included as plaintiffs or defendants.

The legal consequence of an error in persona lawsuit is that it may be considered to lack formal requirements, thus constituting a formal defect. As a result, the lawsuit may be declared inadmissible (*niet ontvankelijke verklaard*). [16]

The formal defects that may be present in a lawsuit include, among others, a lawsuit signed by a representative based on a power of attorney that does not meet the requirements stipulated in Article 123 paragraph (1) of the HIR, a lawsuit lacking a legal basis, a lawsuit containing an error in persona in the form of disqualification or plurium litis consortium, and a lawsuit that has an *obscuur libel* defect or violates absolute or relative jurisdiction.[17]

The decision above contains an error in persona, which in this case refers to a plurium litis consortium, meaning that certain parties to the lawsuit are incomplete, and individuals who should have been included as co-defendants were omitted. The missing party in this case is the PPATS who drafted the Deed of Grant No. 42/AH/TBB/BTP/IX/2018, a Subdistrict Head from Telukbetung Barat.

The PPATS can be included as a co-defendant because the issue arose from the Deed of Grant. On page 6 of Verdict Number 601/Pdt.G/2020/PA.Tnk, it is explained that the plaintiffs stated they were unaware of a Declaration Letter stating that Defendant 1, Plaintiff 3, Plaintiff 2, the former husband of Plaintiff 2, the husband of Plaintiff 1, and the husband of Defendant 2 were heirs of M. Yusuf Bin Said (deceased) and Rumsiah (deceased). The heirs confirmed the process of a great part of the land (+1,200 m2) from Rumsiah (deceased) to Defendant 1, and the heirs granted power of attorney to Defendant 2 to sign documents related to the grants of part of the land.

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[15] Yahya Harahap, *Hukum Acara Perdata, Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2017).

[16] Habib Adjie, *Kebatalan Dan Pembatalan Akta Notaris* (Bandung: Refika Aditama, 2011).

[17] Fasatama Prakasa, Mada Apriandi Zuhir, and Herman Adriansyah, "Pembatalan Sertifikat Hak Milik Dibebani Hak Tanggungan (Putusan Mahkamah Agung Nomor 1138 K/Pdt/2012)," *Recital Review* 2, no. 1 (2020): 39–53.

PPATS drafted the deed based on a statement letter and a power of attorney purportedly issued by the heirs.[18] However, it was later proven in court that these documents had been forged, as the heirs testified that they had never signed either the statement letter or the power of attorney. The forgery was confirmed through an examination of the list of names included in the statement letter, which revealed that some individuals listed were not the legitimate heirs of the late Rumsiah, but instead held the status of sons-in-law.[19]

Based on this incident, the PPATS has made a Deed of Grant without the consent of both parties, but only based on the wishes of the Defendant. The PPATS in making an Authentic Deed must pay attention to important things, such as fulfilling subjective and objective requirements in the agreement, and can prove that both parties want the making of the Deed of Grant.[20]

In general, grants are given while the grantor is still alive to avoid potential conflicts among the grantor's children. However, giving grants can lead to internal family conflicts, especially since grants cannot be revoked. Therefore, the grantor must carefully consider the decision to make a grant.[21]

Conflicts often arise in grant-giving because the grantor may have emotional attachments to others and may consider themselves the sole owner of their wealth, believing they have full authority to transfer or bequeath their assets.[22] Sometimes, heirs are unaware of the grant, leading to a loss of their inheritance rights. Another common source of conflict is when the grantor gives assets to others, reducing the inheritance portion of the heirs, as the amount that can be granted is limited to one-third of the estate.

A grant is also a contract that must meet the four essential requirements for validity under Article 1320 of the Indonesian Civil Code, which states:

> "To form a valid agreement, the following four conditions must be met:
> 1. Mutual consent of the parties involved;
> 2. The capacity to enter into a contract;
> 3. A definite subject matter;
> 4. A lawful cause."

These conditions can be explained as follows:

1. Mutual Consent of the Parties: This means the agreement is made voluntarily without any coercion, and based on the free will of the parties involved.

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[18] Hilbertus Sumplisius M. Wau and T. Keizerina Devi Azwar, "Intercept the Land Mafia: An Analysis of the Role of PPAT as a Shield in Illegal Property Transactions," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 88–101.

[19] Emha Ainun Rizal, "Tanggung Jawab PPAT Atas Pembatalan Akta Yang Dibuat Dihadapannya," *Officium Notarium* 2, no. 2 (2022): 354–62.

[20] Jozan Adolf and Widhi Handoko, "Eksistensi Wewenang Notaris Dalam Pembuatan Akta Bidang Pertanahan," *Notarius* 13, no. 1 (2020): 181–92.

[21] Andi Tira, "Perlindungan Pemegang Sertifikat Hak Milik Atas Tanah Melalui Keputusan Tata Usaha Negara," *Clavia: Jurnal of Law* 17, no. 2 (2019): 15–30.

[22] I Gusti Agung Dhenita Sari, I Gusti Ngurah Wairocana, and Made Gde Subha Karma Resen, "Kewenangan Notaris Dan PPAT Dalam Proses Pemberian Hak Guna Bangunan Atas Tanah Hak Milik," *Acta Comitas : Jurnal Hukum Kenotariatan* 3, no. 1 (2018): 41-58.

2. Capacity to Enter into a Contract: According to the law, some individuals are considered incapable of entering into a contract, such as minors or those under guardianship.
3. A Definite Subject Matter: This refers to the object or the performance of the agreement, such as giving something, doing something, or refraining from doing something, as specified in Article 1234 of the Civil Code. In short, the performance refers to the debtor's obligation and the creditor's right in the agreement.
4. A Lawful Cause: This means that the reason for the agreement must not be prohibited by law or contrary to public morals or order.

These four essential requirements for a valid contract are divided into two categories: subjective and objective requirements. The first two requirements are subjective, as they concern the parties involved in the agreement, while the last two are objective, as they concern the subject matter of the agreement.

If an agreement fails to meet the subjective requirements, it can be annulled, and one party may request the cancellation.[23] If the agreement fails to meet the objective requirements, it is void by law, meaning the agreement is considered non-existent or never to have been made. Each element must be fulfilled, and these elements must align with the conditions for a valid agreement, as the requirements for a valid contract are fundamental to every agreement and obligation.[24]

According to the explanation, the actions stipulated in Article 22 of Government Regulation on Land Deed Officials are intended to fulfill the authentic nature of a deed. The reading of the deed is conducted directly by the PPATS, followed immediately by the signing of the deed by the parties, witnesses, and the PPATS itself.[25]

The act of reading and explaining the contents of the deed aims to ensure that the parties involved fully understand the provisions contained in the document. Tan Thong Kie identifies three key benefits of reading the deed before the parties, as follows:

1. **Error Correction Opportunity**: At the final moment of formalizing the deed, the authorized official has the opportunity to identify and correct any errors in the text that may have gone unnoticed during the drafting process.
2. **Clarification for the Parties**: The parties are given the opportunity to ask questions regarding any unclear provisions in the deed before it is signed.
3. **Re-evaluation and Adjustment**: The process of reading the deed allows both the official and the parties to reconsider, raise questions, or request changes to the wording of the deed if necessary.

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[23] Malik Hariyanto, Prija Djatmika, and Diah Aju Wisnuwardhani, "Implementation of the Article 32 of Government Regulation Number 24 of 2016 Concerning Land Deed Official's Honorarium," *Jurnal Ilmu Kenotariatan* 5, no. 2 (2024): 123–37.

[24] Holla, Rafi Salhi, and Clarissa Oktaviriya Prakoso, "Legal Certainty Regarding the Conversion of Land Certificates To An Electronic System Based On Security Principles," *Jurnal Ilmu Kenotariatan* 5, no. 2 (2024): 88–101.

[25] Mochamad Icksan, "Pembatalan Akta Pejabat Pembuat Akta Tanah Yang Dinilai Cacat Hukum Oleh Pejabat Badan Pertanahan Nasional," *Jurnal Ilmu Kenotariatan* 3, no. 2 (2022): 95–104.

The author agrees that the deed should be read and its contents explained by the authorized official — in this case, the PPATS — as a means of ensuring that the parties fully understand the agreement's contents. This process also serves as a method for verifying the accuracy of the parties' identities and correcting any errors in wording that may not have been noticed during the drafting stage. Such a reading is expected to ensure that the parties have a clear understanding of the deed's contents, thereby minimizing the risk of multiple interpretations and preventing potential legal disputes in the future.[26]

The presence of witnesses in the preparation of the deed represents a formal aspect of the PPAT deed, as witnesses act as individuals who can testify to the events they personally observed during the deed's preparation.[27] Witnesses serve as parties who attest that the deed has been read before the parties and has been signed by the parties, witnesses, and the PPAT itself. In simple terms, witnesses ensure that all formal procedures required for the creation of an authentic deed have been fulfilled.[28] This requirement also applies to the PPATS.[29]

According to Gustav Radbruch, legal certainty must be maintained to ensure the security and orderliness of legal actions. Therefore, a grant Deed serves as a legal guarantee. The characteristics of a Grant Deed can be annulled by the court for several reasons, including:

Non-compliance with formal and material requirements stipulated by civil law regulations: a. The formal requirements of the deed must comply with the procedural provisions for authentic deeds, such as the date, location, and the authenticity of the signatures on the deed. b. Material requirements relate to the essential conditions for a valid contract.[30] Violation of the law by parties involved in the grant transaction, such as using the grant transaction to circumvent the rightful inheritance rights or employing methods that violate principles of justice and honesty.[31]

The case in Verdict Number 601/Pdt.G/2020/PA.Tnk clearly violated and/or failed to meet several requirements for a grant, including the elements of a grant, the conditions for a valid contract, and the characteristics of a Grant Deed. Regarding the elements of a grant, the following must be present: the grantor, the recipient, the object of the grant, the grantor must be legally competent, the grantor must be the rightful owner of the granted property, and the grant must be formalized through a deed issued by an authorized official. In this case, the element requiring the grantor to be the rightful owner of the granted property was not met, as the property in question was still part of the inheritance of M. Yusuf (deceased).

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[26] Bhim Prakoso et al., "The Legal Certainty of Wakaf Without The Existence of A Wakaf Power Deed Made by The Officer Making The Wakaf Power Deed," *Co-Value Jurnal Ekonomi Koperasi Dan Kewirausahaan* 15, no. 2 (2024): 824–34.

[27] Kirana Indra Sari, "Pembatalan Akta Hibah PPAT Kepada Anak Angkat Tanpa Persetujuan Ahli Waris (Studi Kasus Putusan MA No. 1818K/Pdt/2008)," *Jurnal Akta Notaris* 3, no. 1 (2024): 16–30.

[28] Bayu Praditya Herusantoso, "The Antinomy of Agrarian Reform Regulations After the Establishment of the Land Bank Authority," *Jurnal Ilmu Kenotariatan* 5, no. 1 (2024): 17–27.

[29] Irfan Iryadi, "Kepastian Hukum Kedudukan Camat Sebagai PPAT Sementara," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 11, no. 1 (2020): 1–17.

[30] Maulana Syaputra, Irhamsah, and Refki Ridwan, "Konsekuensi Hukum Dan Tanggung Jawab Notaris Terhadap Akta Yang Mengandung Unsur Penyalahgunaan Keadaan," *SENTRI* 3, no. 4 (2024): 1901–10.

[31] I Ketut Tjukup et al., "Akta Notaris (Akta Otentik) Sebagai Alat Bukti Dalam Peristiwa Hukum Perdata," *Acta Comitas : Jurnal Hukum Kenotariatan* 1, no. 2 (2016): 32.

Furthermore, both subjective and objective conditions for a valid contract were not met. The subjective condition that was not fulfilled was the lack of agreement from the heirs to grant the property to Yudi Herlambang, thus one of the parties was considered unwilling to enter into the agreement. The objective condition violated was that the object of the grant did not have a lawful cause, as the property was not fully owned by Rumsiah (deceased) and was still in the process of certificate division, meaning the land was still jointly owned. Therefore, the land could not be granted to another party based on the agreement of only one party. Additionally, the evidence on page 31 of the decision indicates that the land was an inheritance from Rumsiah's (deceased) husband, M. Yusuf (deceased), clarifying that Rumsiah (deceased) did not have the right to grant the land. According to Article 22 of Government Regulation PP PJPPAT, which states:

> *"PPAT deeds must be read/explained to the parties in the presence of at least two witnesses before being immediately signed by the parties, the witnesses, and the PPAT."*

This article reflects the principle of caution that PPATS must follow when creating a deed. The explanation indicates that the action described in Article 22 of PP PJPPAT is intended to fulfill the authentic nature of the deed, with the reading being done by the PPAT, and the signing by the parties, witnesses, and PPAT occurring immediately after the reading.[32]

Talk about annulments of a grant deed, there are two types of annulments. Absolute annulment refers to the complete cancellation of an agreement, rendering it as if it never existed.[33] In contrast, relative annulment does not automatically void the agreement but allows the affected parties to request annulment through the court. Absolute and relative annulments can be distinguished in three key ways:

a. Absolute annulment cannot be upheld, while relative annulment can be requested for cancellation;
b. Actions subject to absolute annulment do not serve as a basis for expiration, whereas relative annulment does;
c. Judges, by their authority, do not consider actions void by law unless a party requests it, while in the case of relative annulment, they act only upon request.

Therefore, the revocation of a grant falls under relative annulment, as certain individuals have the right to request the cancellation of the grant.[34] It may also be considered an absolute annulment or void by law, with the annulment having consequences that can be invoked upon request by a party.[35]

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[32] Muhammad Iqbal Akbar Nugraha and Edith Ratna, "Penunjukan Camat Sebagai Pejabat Pembuat Akta Tanah Sementara Di Kota Tasikmalaya," *Notarius* 15, no. 2 (2022): 638–48

[33] Muhammad Nabil and Nia Kurniati, "Hilangnya Keabsahan Hak Atas Tanah Akibat Kelalaian Pejabat Pembuat Akta Tanah," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 3, no. 1 (2023): 93–108.

[34] Mega Mentari, Ana Silviana, and Mira Novana Ardani, "Tanggung Jawab Pejabat Pembuat Akta Tanah Sementara Atau PPATS Terhadap Batas Waktu Pendaftaran Akta Jual Beli Tanah Berdasarkan Pasal 40 Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah (Studi Di Kota Depok)," *Diponegoro Law Journal* 9, no. 2 (2020): 359–72.

[35] Sari, "Pembatalan Akta Hibah PPAT Kepada Anak Angkat Tanpa Persetujuan Ahli Waris (Studi Kasus Putusan MA No. 1818K/Pdt/2008)."

In Verdict Number 601/Pdt.G/2020/PA.Tnk, the annulment of the Grant Deed falls under relative annulment, as other heirs of the grantor may request its cancellation due to legal defects, such as the object of the grant still being jointly owned by the heirs, as well as forgery of the power of attorney and declaration letter by the recipient. Thus, the objective conditions for a valid contract were not fulfilled in this grant agreement.[36]

The legal consequence of a grant being annulled through a court decision is that, once the annulment has gained final legal force, ownership of the granted property will revert to the grantor. As a result, all property previously granted will be restored to the grantor's ownership. This can be illustrated in Verdict Number 601/Pdt.G/2020/PA.Tnk, where Rumsiah (deceased) had, through a statement and power of attorney, granted a plot of land to Yudi Herlambang. Following the court's annulment of the grant, which has become legally binding, the land will revert to the ownership of the grantor, in this case, the heirs.

The cancellation of an authentic deed, in this case, a Grant Deed issued by a PPAT, which includes PPATS, may occur due to violations of both formal and material requirements of the deed, as well as other actions related to legal or ethical violations by the parties involved in the grant transaction.[37]

Understanding the factors that may lead to the cancellation of a PPATS Grant Deed by the court highlights the complexity of legal transactions and the importance of ensuring legal certainty in legal actions.[38] This is because an authentic deed has full legal force and is considered one of the ways to guarantee the legal certainty of the parties in an agreement.[39]

This serves as a reference for legal practitioners and parties involved in grant transactions to avoid certain risks that could lead to the cancellation of the Grant Deed by the court. PPATS plays a crucial role in creating Grant Deeds, especially in areas where there is insufficient availability of PPAT. A Grant Deed involves an agreement to transfer ownership of an object, such as land, to another party, as seen in Decision Number 601/Pdt.G/2020/PA.Tnk.

Document examination and object tracing are not merely seen as administrative functions by the PPATS, but as the application of integrity in the legal process of real estate transactions. A public official is expected to have extensive expertise and experience regarding applicable regulations, as well as high awareness of potential changes.[40] Therefore, a PPATS must be knowledgeable about Indonesian regulations to ensure smooth legal implementation that does not cause harm to anyone.[41]

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36 Nur Fitriayu Surachman, "Kajian Pembuatan Akta Jual Beli Dari PPATS Sebelum Dan Sesudah Perkaban No. 8 Tahun 2012," *Otentik's : Jurnal Hukum Kenotariatan* 4, no. 1 (2022): 55–79.

37 Zainuddin, "Perbandingan Hibah Menurut Hukum Perdata Dan Hukum Islam."

38 Misbah Imam Soleh Hadi and Bayu Indra Permana, "Kontruksi Hukum Pembebasan Pajak Penghasilan Terhadap Peralihan Hak Atas Tanah Dalam Pembagian Hak Bersama Waris," *Jurnal Ilmu Kenotariatan* 3, no. 1 (2022): 1–13.

39 Khafid Setiawan, Bhim Prakoso, and Moh. Ali, "Notaris Dalam Pembuatan Akta Kontrak Yang Berlandaskan Prinsip Kehati-Hatian," *Jurnal Ilmu Kenotariatan* 2, no. 2 (2021): 43–52.

40 Tiyas Putri Megawati, Aulia Dwi Ramadhanti, and Faizah Nur Fahmida, "Akibat Hukum Penandatanganan Surat Kuasa Jual Mutlak Sebelum Debitor Mengalami Kredit Macet," *Jurnal Ilmu Kenotariatan* 5, no. 1 (2024): 76–87.

41 Anggraeni and Marwanto, "Kewenangan Dan Tanggung Jawab Hukum Pejabat Pembuat Akta Tanah Dalam Pelaksanaan Pendaftaran Hak Tanggungan Secara Elektronik."

In addition to being a professional responsibility of the PPATS, caution is also a means of protecting the legal interests of all parties involved. Thus, verifying the identity and legal status of the parties is a crucial first step in creating an authentic deed, including a Grant Deed. Errors or negligence at this stage could result in legal consequences in the future, as in the case of Decision Number 601/Pdt.G/2020/PA.Tnk. PPATS is responsible for ensuring the integrity of the legal process, guaranteeing that all parties involved and the supporting documents in the deed are authentic and accountable.

Article 279 of the Civil Code (RV) regulates intervention, specifically "Tussenkomst," which refers to the participation of a third party in a civil dispute on their own initiative, without siding with either the plaintiff or the defendant, but rather to defend their own interests. Therefore, PPATS should be able to take such action to maintain its integrity as a public official who has issued a Grant Deed, which has subsequently become a subject of litigation.

This contrasts with "vrijwaring" or a guarantor, where a third party participates in a civil dispute because they were brought in by one of the parties to share the responsibility. This is intended to free the initiating party from the potential consequences of the judgment on the main matter. The defendant may request this participation in a reply. The third party's involvement may be voluntary or forced. Thus, it becomes clear whether the actions of the PPATS were intentional or accidental, shedding light on the matter.

Based on the theory put forward by Hans Kelsen, PPATS in the case of Decision Number 601/Pdt.G/2020/PA.Tnk can be subject to collective liability, liability based on errors, and/or absolute liability, therefore to ensure this, PPATS can be used as a Co-Defendant to hear his testimony. There 3 (three) responsibilities are based on, as following:

1. Collective Liability
   Collective liability means that someone must be responsible for a violation committed by another person, in Decision Number 601/Pdt.G/2020/PA.Tnk it has been proven that the statement letter and power of attorney from the heirs are forgeries. If the one who forged the letters was Yudi Herlambang, then PPATS must also be responsible for his negligence by making a deed of gift, so that the deed can be used to carry out actions that violate laws and regulations, to the detriment of the heirs, both materially and non-materially. Therefore, the PPATS becomes one of the parties who must be responsible for violations committed by others, namely Yudi Herlambang along with other defendants who participated.
2. Responsibility Based on Fault
   In terms of liability based on fault, it means that an individual must be responsible for violations committed intentionally. The sub-district head who acted as the PPATS made the deed of gift which was canceled in Decision Number 601 / Pdt.G / 2020 / PA.Tnk, if he becomes a Co-Defendant, then it can be examined whether what was done by the PPATS was intentional or unintentional. If it was done intentionally, especially to gain profit, where he knew that it had violated the laws and regulations, then the PPATS would certainly be included in the responsibility based on the error made.

3. Absolute Responsibility
   Absolute responsibility means that a person must be responsible for violations that were committed unintentionally or unexpectedly. Decision Number 601/Pdt.G/2020/PA.Tnk, if it turns out that in this case the PPATS does not know for sure and is convinced that the statement letter and power of attorney given by Yudi Herlambang are fake documents, then the PPATS can be held responsible, because the PPATS did this beyond his authority, because of his ignorance which resulted in unintentionally violating the applicable laws and regulations to issue a Deed of Grant which contains legal defects, with consequences that he did not expect until the Plaintiffs filed a lawsuit in court and caused a dispute.

Of course, this can be questioned because the PPATS has the authority to check the objects and subjects in the agreement before being stated in an authentic deed. So there is an obligation that is violated by the PPATS until the deed is null and void.

IV. CONCLUSION

The Verdict contains a personal error, which in this case refers to plurium litis consortium, meaning that certain parties in the lawsuit are incomplete, and individuals who should have been included as co-defendants were not listed. Furthermore, in this instance, the revocation of the donation falls under relative annulment, as specific individuals have the right to request the cancellation of the donation. This can also be considered an absolute annulment or null and void by law, with the cancellation having consequences that can be initiated at the request of one of the parties.When a grant's deed executed by a PPATS becomes legally void due to a lawsuit from the aggrieved party, the PPATS may, on its own initiative, become a party referred to as Tussenkomst to provide testimony regarding the authenticity of the deed and uphold its integrity as a public official, while also preserving public trust.

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Jurnal Ilmu Kenotariatan
Volume 6 Issue 1 (2025), pp 28-42
doi: 10.19184/JIK.v6i1.53687
Published Online May 2025

Legal Implications of the Transfer of a Testamentary Grant's Object to Another Person by the Testator

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ABSTRACT

This research is motivated by a lawsuit filed by Imelda Sanny Chandra (Plaintiff) against her grandmother, Mrs. Tinningrum Tjandra (Defendant I), regarding the transfer of a testamentary grant object—a plot of land and a building in Surabaya—to Mrs. Koesoemo Dewi Raharjo (Defendant II) through a sale and purchase agreement. The Plaintiff argues that the object rightfully belongs to her based on Testamentary Grant Deed Number 119, which was executed by Defendant I before a Notary in Jakarta. One of the clauses in the deed states that the object would be transferred to the Plaintiff upon reaching the age of 30. Currently, the Plaintiff is 32 years old and intends to reclaim the testamentary grant object. Ruling Number 3258 K/Pdt/2023 in conjunction with Ruling Number 1270/Pdt.G/2021/PN.Sby declared the Testamentary Grant Deed valid and annulled the agreement between Defendant I and Defendant II. However, in the context of Article 958 of the Indonesian Civil Code concerning the execution of testamentary grants and Article 996 of the Civil Code regarding the revocation of testamentary grants, this study aims to analyze the legal nature of testamentary grants and the juridical implications of the grantor transferring the object to another party. The goal is to provide legal certainty regarding the testamentary grant deed, the sale and purchase binding deed, the power of attorney to sell, and the sale and purchase deed issued in connection with this ruling. This research employs a normative juridical method with a legislative approach, a teleological approach, and a case approach. The data sources include primary, secondary, and tertiary legal materials. The analysis is conducted through grammatical and systematic interpretation.

KEYWORDS: *Testamentary Grant, Transfer of Rights, Juridical Implications.*

HOW TO CITE:
Dewinta, Putri Thania, et. al. '*Legal Implications of the Transfer of a Testamentary Grant's Object to Another Person by the Testator*' (2025) 6:1 Jurnal Ilmu Kenotariatan 28-42. DOI: ‹https://doi.org/10.19184/jik.v6i1.53687›

I. INTRODUCTION

The law governs various aspects of human life, including wealth-related matters. Property is an essential aspect of a person's life, serving both as a means to fulfill daily needs and as a part of estate planning. In Indonesia, inheritance law is regulated, among others, in Book II of the Indonesian Civil

Code.[1] Inheritance law consists of provisions that regulate the transfer of rights and obligations over a deceased person's assets to surviving parties.[2]

Unlike general inheritance, according to Tan Thong Kie,[3] a testamentary grant is a special form of testamentary disposition that grants one or more specific parties a certain number of goods or all goods within a particular category, such as all movable or immovable property.[4] Regarding testamentary grants, Article 957 of the Indonesian Civil Code states:

> "A testamentary grant is a specific disposition in which a testator grants to one or more persons certain goods, or all goods of a particular kind, for example, all movable goods, immovable goods, or the usufruct rights over part or all of their property."

The recipient of a testamentary grant only acquires specific assets without being burdened with any obligations. The recipient has the right to demand the execution of the testamentary grant from the heirs.[5] In the process of transferring rights over a testamentary grant object, the testator or grantor may establish certain conditions that the recipient must fulfill before receiving the grant, provided that these conditions do not contradict applicable laws and regulations.[6]

In practice, the public often lacks an understanding of the essential aspects of a testamentary grant. Legal issues frequently arise when clauses regarding conditions for the transfer of rights over an object exist, which may lead to future conflicts, as seen in Case Ruling Number 3258 K/Pdt/2023. Furthermore, in Indonesian society, a testamentary grant is often equated with a contractual agreement, which needs clarification.

Based on Court Ruling Number 1270/Pdt.G/2021/PN. Sby, on June 23, 2000, Mrs. Tinningrum Tjandra (Defendant I) granted a testamentary gift to Imelda Sanny Chandra (Plaintiff) in the form of land and a building registered under Defendant I's name. The testamentary grant was executed through Notarial Deed Number 119 before Drs. Atrino Leswara in Jakarta, with the condition that the object of the grant could only be transferred, sold, or pledged after the Plaintiff reached the age of 30. The Plaintiff is now 32 years old and is entitled to the testamentary grant object following the deed's provisions.

However, one year earlier, Plaintiff discovered that the grant object had been transferred by Defendant I to Mrs. Koesoemo Dewi Raharjo (Defendant II) through the Sale and Purchase Binding Deed and Power of Attorney to Sell Number 52, dated December 16, 2013, Sale and Purchase Deed Number 193/2014, and Ownership Certificate Number 51. The Plaintiff felt disadvantaged as she was unable to own and utilize the land and building.

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1 Meita Djohan OE, "Kedudukan Dan Kekuatan Hukum Warisan Tunggu Tubang Menurut Adat Semende," *Keadilan Progresif* 9, no. 1 (2018):90-102.

2 Djaja M. Meliala, *Hukum Perdata Dalam Perspektif BW* (Bandung: Nuansa Aulia, 2013).

3 Tan Thong Kie, *Studi Notariat: Serba-Serbi Praktek Notaris* (Jakarta: Ichtiar Baru van Hoeve, 1994).

4 Muhamad Syaifullah et al., "Pengalihan Atas Harta Warisan Di Indonesia," *Dih: Jurnal Ilmu Hukum* 16, no. 2 (2020): 372757.

5 Nurvannisa Fajrimustika and Fransiscus Xaverius Arsin, "Status Kepemilikan Rumah Yang Dibangun Di Atas Tanah Hibah Pasca Perkawinan Tanpa Perjanjian Kawin," *Kertha Semaya : Journal Ilmu Hukum* 11, no. 11 (2023): 2694–2703

6 Syaifullah et al., "Pengalihan Atas Harta Warisan Di Indonesia."

In Cassation Ruling Number 3258 K/Pdt/2023, the Supreme Court ruled that the Defendants had committed an unlawful act by selling the granted object that rightfully belonged to the Plaintiff and by failing to surrender it when requested. The judge annulled the Sale and Purchase Binding Deed and Power of Attorney to Sell Number 52, as well as the Sale and Purchase Deed Number 193/2014. Additionally, the judge declared the Testamentary Grant Deed, executed before a Notary in Jakarta, as valid and enforceable, establishing that the grant object rightfully belonged to the Plaintiff.

An unlawful act, as defined in Article 1365 of the Indonesian Civil Code, is as follows:

> "Any act that violates the law and causes harm to another person obligates the person responsible for the harm to compensate for the damage incurred."
> The elements of an unlawful act can be outlined as follows:
>
> 1. Unlawful Act
>   An act is considered unlawful not only based on written legal norms but also on unwritten legal norms within society, such as the principles of propriety and morality.
> 2. Fault
>   Fault can be classified into two types: intentional misconduct and negligence due to a lack of caution or recklessness.
> 3. Loss
>   In civil law, losses are categorized into material and immaterial losses. Material losses are tangible, whereas immaterial losses depend on the judge's assessment. The determination of immaterial loss is challenging due to the absence of a fixed benchmark, making it entirely dependent on the judge's objectivity.
> 4. Causal Relationship
>   Causality in civil law aims to examine the link between an unlawful act and the resulting harm, ensuring that the perpetrator can be held accountable for the damage caused.

A testamentary grant is a confidential declaration made between the grantor, a notary, and witnesses who sign the testamentary grant deed.[7] This confidentiality aims to prevent disputes among heirs and ensure that the testamentary grant remains the absolute will of the grantor, free from any external interference.

The issue arises because the execution of a testamentary grant takes effect upon the testator's death, as stipulated in Article 958 of the Indonesian Civil Code. Meanwhile, Article 996 of the Civil Code regulates the revocation of a testamentary grant if the object itself has been transferred. However, in both court rulings—Ruling Number 3258 K/Pdt/2023 in conjunction with Ruling Number 1270/Pdt.G/2021/PN. Sby—the judges upheld the validity of the testamentary grant deed and annulled the legal actions taken by Defendant I and Defendant II regarding the sale of the land.

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7 M. Syahrul Borman, "Kedudukan Notaris Sebagai Pejabat Umum Dalam Perspektf Undang-Undang Jabatan Notaris," *Jurnal Hukum Dan Kenotariatan* 3, no. 1 (2019): 74–83.

Once a person has expressed their intent in a deed, the inheritance will be distributed according to the testamentary grant.[8] A testamentary deed can be understood as the final request of a deceased person, as their wishes are executed only after their death.[9] These wishes may include the transfer of assets, settlement of debts, or other provisions. The revocation of a testamentary grant may occur automatically if the object of the grant has been transferred.[10]

Therefore, there is a legal vacuum regarding the nature of ownership transfer, which is not explicitly regulated in positive law, leading to legal complexities. Policies related to testamentary grants and wills are generally necessary as guidelines for their implementation. This is because of judicial considerations in Ruling Number 3258 K/Pdt/2023 in conjunction with Ruling Number 1270/Pdt.G/2021/PN. Sby did not align with the fundamental nature of testamentary grants, Article 958 of the Civil Code, and Article 996 of the Civil Code.

II. METHODOLOGY

This study employs a normative juridical research approach, focusing on the discussion of the application of legal principles or norms within the Indonesian legal system.[11] The research is based on legal materials by examining relevant concepts, theories, and legislation related to the research issue.[12] Three types of approaches are utilized in this study: the statutory approach, the teleological approach, and the case approach.[13]

The legal materials used in this study include Primary legal materials, serve as the main references for the substance of this research. Primary legal materials are binding and authoritative. Secondary legal materials consist of books by scholars, experts, and other legal journals.[14] Secondary legal materials provide analytical guidance by offering insights into primary legal materials, facilitating the research process.

Tertiary legal materials, assist researchers in identifying or explaining primary and secondary legal materials. These include dictionaries such as the Indonesian Dictionary, English Dictionary, Legal Dictionary, and other relevant sources.

The legal material search technique involves library research, where the researcher identifies, classifies, and inventories relevant legal sources. This process is intended to streamline the utilization of legal materials within this study. Meanwhile, legal material analysis is conducted using systematic and grammatical interpretation methods.

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8 Bayu Indra Permana, Bhim Prakoso, and Iswi Hariyani, *Problematika Pengenaan Pajak Penghasilan Terhadap Objek Waris: Dalam Perspektif Kepastian Hukum* (Yogyakarta: Bintang Semesta Madani, 2023).

9 Juristie Widyadhana, Putri Kemalasari, and Shania Anindya Fitriani, "Urgensi Pembuatan Akta Kesaksian Dan Akta Pernyataan Ahli Waris Oleh Notaris," *Jurnal Ilmu Kenotariatan* 5, no. 1 (2024): 62–75.

10 Asriadi Zainuddin, "Perbandingan Hibah Menurut Hukum Perdata Dan Hukum Islam," *Jurnal Al Himayah* 1, no. 1 (March 1, 2017): 92–105.

11 Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33.

12 Muhammad Zainuddin and Aisyah Dinda Karina, "Penggunaan Metode Yuridis Normatif Dalam Membuktikan Kebenaran Pada Penelitian Hukum," *Smart Law Journal* 2, no. 2 (2023): 114–23.

13 E. Fernando M. Manullang, "Penafsiran Teleologis/Sosiologis, Penafsiran Purposive Dan Aharon Barak: Suatu Refleksi Kritis," *Veritas et Justitia* 5, no. 2 (2019): 262–85.

14 Suhaimi, "Problem Hukum Dan Pendekatan Dalam Penelitian Hukum Normatif," *Jurnal Yustitia* 19, no. 2 (2018).

III. TRANSFER OF THE TESTAMENTARY GRANT OBJECT BASED ON THE INDONESIAN CIVIL CODE AND LAND LAW

A testamentary grant is part of a will but is not entirely the same as a will in its entirety. A will consists of two types: testamentary grants and wills for the appointment of heirs. The definition of a testamentary grant refers to Article 957 of the Indonesian Civil Code, which states:

> "*A testamentary grant is a specific provision in which the testator grants one or more individuals certain assets, or all assets of a certain type; for example, all movable assets, all immovable assets, or usufructuary rights over part or all of their property.*"

This article implies that in a testamentary grant, the grantor specifically determines the property or assets to be given or bequeathed to the recipient. The testamentary grant is made by the grantor while they are still alive, without any coercion from any party, and entirely based on their will.[15] In a testamentary grant, the grantor also has the right to determine the portion of their assets that will be given to heirs or other parties who are not heirs.[16]

If a person passes away without making any provisions regarding their inheritance, the distribution of assets will be carried out by the applicable legal provisions. For Muslims, inheritance will be distributed based on Islamic Law, following the Compilation of Islamic Law. Meanwhile, for non-Muslims, inheritance distribution will follow Civil Law. In the Indonesian Civil Code, a will (testament) is divided into two categories:

a. A Will (Testament) Containing an Appointment of Heirs (*Erfstelling*)

   The law regarding this type of will is regulated under Article 954 of the Indonesian Civil Code, which states:

   > "*A will for the appointment of heirs is a will in which the testator grants one or more individuals the property they leave behind upon their death, either in full or in part, such as half or a third of the estate.*"

   Furthermore, Article 955 of the Civil Code explains the position of heirs appointed through a will, stating:

   > "*At the time of the testator's death, both heirs appointed by the will and those who are granted a portion of the inheritance by law shall, by operation of law, obtain possession of the estate left behind.*"

   This type of will is generally intended for individuals classified as heirs under the general title (onder algemene titel), referring to individuals such as a spouse or those of lineal descent or blood relations.

b. A Will (Testament) Containing a Testamentary Grant (Legaat)

   A testamentary grant is regulated under Article 957 of the Civil Code, which defines it as a special provision within a will. Therefore, recipients of this

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[15] Bayu Indra Permana, Dominikus Rato, and Dyah Ochtorina Susanti, "Kedudukan Pembagian Hak Bersama Waris Sebagai Peralihan Harta Yang Dibebaskan Pajak Penghasilan," *MIMBAR YUSTITIA : Jurnal Hukum Dan Hak Asasi Manusia* 7, no. 1 (2023): 44–62.

[16] Misbah Imam Soleh Hadi and Bayu Indra Permana, "Kontruksi Hukum Pembebasan Pajak Penghasilan Terhadap Peralihan Hak Atas Tanah Dalam Pembagian Hak Bersama Waris," *Jurnal Ilmu Kenotariatan* 3, no. 1 (2022): 1–13.

type of will are considered heirs under the special title (onder bijzondere titel), referring to individuals outside the legal heirs, such as adopted children or other individuals outside of the bloodline. Article 875 of the Civil Code further explains:

> *"A will or testament is a document containing a person's declaration regarding their wishes after their death, which may be revoked at any time."*

According to the Basic Agrarian Law, there are two forms of land rights transfer, as follows:[17]

a. Transfer of Rights

   The transfer of land rights through deliberate legal actions refers to the process in which land rights are transferred from the original rights holder to another party through intentional legal acts, such as sale and purchase, donation, or other agreements. Consequently, the recipient legally acquires ownership of the land in question.

b. Succession

   The transfer of land rights through succession occurs when land rights pass from the original owner to another party due to the owner's death or inheritance.[18]

This study focuses on land rights transfer based on a will, which is regulated under Article 26, Paragraph (1) of the Basic Agrarian Law, stating:

> *"(1) Sale and purchase, exchange, donation, transfer by will, transfer according to customary law, and other acts intended to transfer ownership rights, as well as their supervision, shall be regulated by government regulations."*

If the recipient of a bequest grant wishes to transfer ownership of land and/or buildings, the process can be carried out with the assistance of an executor of the will. The executor can draft a Deed of Grant before a Land Deed Official by attaching the Deed of Bequest Grant previously made by the testator before a Notary. This process ensures that the transfer of rights is conducted under the applicable legal provisions and is supported by legally valid documents

In a bequest grant, the Notary plays a crucial role as a public official authorized to create the Deed of Bequest Grant and register it in the Central Register of Wills. This registration allows heirs to verify the document after the testator passes away. The execution of a bequest grant before a Notary provides legal certainty, as the deed is authentic and holds full legal force. Therefore, the Notary plays a vital role in ensuring that the document has binding legal authority.

A Deed of Bequest Grant is made by the grantor voluntarily, without coercion from any party. The process is confidential, involving only the Notary and designated witnesses. Based on Articles 930 to 953 of the Indonesian Civil Code, the making of a will only involve the grantor,

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[17] Zuman Malaka, "Kepemilikan Tanah Dalam Konsep Hukum Positif Indoensia, Hukum Adat Dan Hukum Islam," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 21, no. 1 (2018): 101–24.

[18] Diya Ul Akmal, Hanif Fitriansyah, and Fauzziyyah Azhar Ramadhan, "Reformasi Hukum Pertanahan: Perlindungan Hukum Hak Atas Tanah Terhadap Pengalihan Hak Secara Melawan Hukum," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 14, no. 2 (2024): 193–214.

Notary, and appointed witnesses. Furthermore, Article 16, Paragraph (1), Points a and f of the Notary Law emphasize the Notary's duty to maintain the confidentiality of the bequest grant deed.

As a result, a Notary cannot disclose the contents of the deed to the heirs before the testator's death. The original copy of the Deed of Bequest Grant is stored as part of the Notary's protocol and cannot be accessed without legal authorization. The contents of the deed can only be disclosed after the grantor's passing.

The confidentiality of a bequest grant is maintained to protect the interests of all parties, prevent conflicts or disputes between the heirs and the grantor during the grantor's lifetime, and ensure that the grantor's wishes are fulfilled without pressure or external interference.

Therefore, the formal requirements for fulfilling a bequest grant must be met:[19]

a. The testator must be of sound mind, meaning that the grantor of the bequest must be mentally sound and not suffering from memory impairment. This requirement is stipulated in Article 895 of the Indonesian Civil Code.
b. The property designated as the object of the bequest grant must be legally owned and verifiable as the testator's personal property. Article 966 of the Civil Code states that if the property does not belong to the grantor, the bequest grant is deemed null and void.
c. A bequest grant must be unconditional and take effect only upon the testator's death. Thus, the execution of the bequest grant occurs after the testator passes away and is not subject to any conditions.
d. The testator must be legally competent to perform legal acts, including creating a will or a bequest grant.

A will, including a bequest grant, must be executed before a Notary, who is responsible for recording its full contents and registering the will, including the bequest grant, in the Central Register of Wills. Consequently, upon the testator's death, the will serves as legally binding evidence that must be executed following the grantor's wishes.

A bequest grant is made solely based on the testator's will, without any external interference, including from the Notary handling the process. Therefore, the bequest grant remains confidential to prevent disputes among heirs and ensure that the testator's intentions are carried out without outside influence. A bequest grant is executed confidentially, and its secrecy is guaranteed under the Amendment to the Notary Law, which mandates that a Notary must maintain the confidentiality of both the deed's contents and the notarial protocol. This confidentiality serves several purposes, including protecting the testator's wishes, preventing conflicts, and safeguarding assets until the testator's passing. Any Notary who violates this obligation may face strict sanctions, both civil and administrative.

Article 16(1) of the Amendment to the Notary Law is further reinforced by Article 3(4) of the Notary Code of Ethics, which states:

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19 Supriadi, *Hukum Agraria* (Jakarta: Sinar Grafika, 2007).

> *"A Notary and any other person (as long as they are carrying out the duties of a Notary) must: Act honestly, independently, impartially, with integrity, diligence, and full responsibility, following the applicable laws and the Notary's oath of office."*

The execution of a bequest grant takes place only upon the testator's death. To facilitate its implementation, a bequest grant deed must be presented along with other required documents before the Land Deed Official.[20]

A bequest grant has distinct characteristics that must be understood, as outlined in the Indonesian Civil Code. These include its pure and unconditional nature, as well as the fact that it only takes effect after the testator's passing, at which point the beneficiary has the right to claim the bequeathed assets.[21]

The difference between a bequest grant and inheritance lies in their legal basis and distribution method. Inheritance is governed by applicable inheritance laws, which regulate the amount of assets heirs receive. In contrast, a bequest grant is a voluntary gift, with the value of assets entirely determined by the testator's wishes.[22]

If a bequest grant causes detriment to legitimate heirs, a compromise can be sought to find a fair resolution for all parties. Ideally, a bequest grant should not disadvantage any party, particularly the legitimate heirs. A bequest grant may be revoked or annulled without a separate revocation process due to certain legal actions, as stipulated in Article 996 of the Indonesian Civil Code, which states:

> *"Any transfer of ownership of all or part of the property that has been bequeathed, whether such transfer is made by the testator through a sale with a repurchase right or through an exchange, shall result in the revocation of the bequest grant for the transferred or exchanged property unless such property later returns to the testator's estate."*

Additionally, Article 966 of Civil Code specifies:

> *"If a testator bequeaths a specific property that belongs to someone else, the bequest grant shall be null and void, regardless of whether the testator was aware that the property was not theirs."*

This provision aligns with Article 966 of Civil Code, affirming that a testator cannot bequeath property they do not own, whether they are aware or unaware that the property does not belong to them. In such cases, the bequest grant is deemed null and void.

From these legal provisions, it can be concluded that the object of a bequest grant remains under the ownership of the testator until their death. Therefore, the testator retains full rights over the property and may sell, transfer, or take any other legal action regarding the bequeathed property before their passing.

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[20] Syaifullah et al., "Pengalihan Atas Harta Warisan Di Indonesia."

[21] Debby Flora Siahaan and Benny Djaja, "Kepastian Hukum Akta Hibah Wasiat Yang Objeknya Dijual Oleh Pemberi Hibah Wasiat Kepada Pihak Lain (Studi Kasus Putusan Nomor 1270/Pdt.G/2021/Pn.Sby)," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7, no. 3 (2023): 1894–1903.

[22] Muhammad Afif Ma'ruf and Widhi Handoko, "Tanggung Jawab Notaris Terhadap Peralihan Protokol Notaris Yang Diserahkan Kepadanya," *Jurnal Notarius* 16, no. 3 (December 12, 2023): 1528–42.

Land law in Indonesia also regulates how land ownership can be transferred to another party, whether through sale and purchase or other commonly used methods, such as bequest grants.[23]

The execution of a bequest grant must follow a meticulous procedure to ensure its legal validity.[24] The grantor must draft the bequest grant in writing, witnessed by two individuals who also sign the authentic deed before a notary.[25] The will must specify the details of the assets to be granted, the recipient of the bequest, and any other provisions desired by the grantor, as long as they do not contradict existing legal regulations.[26]

In Indonesian land law, a bequest grant is one of the legal mechanisms for the transfer of land rights from a testator to a recipient.[27] This process requires the involvement of the court to request a legal determination and a Land Deed Official to issue the necessary deeds.[28] This ensures a smoother process for obtaining a land certificate under the recipient's name.

IV. LEGAL IMPLICATIONS OF BEQUEST GRANT OBJECTS IN FIRST INSTANCE DECISION NO. 1270/PDT.G/2021/PN.SBY AND CASSATION DECISION NO. 3258 K/PDT/2023

Human life is inherently connected to law as a norm that regulates social order. This principle also applies to inheritance law in Indonesia, which is a part of both civil law and family law. Inheritance law provides legal certainty for heirs regarding the distribution of assets. In First Instance Decision No. 1270/Pdt.G/2021/PN.Sby and Cassation Decision No. 3258 K/Pdt/2023, the facts of the case are as follows, on June 23, 2000, Defendant I, Ny. Tinningrum Tjandra, executed a bequest grant in favor of the Plaintiff, Imelda Sanny Chandra.

The Bequest Grant Deed was notarized before Notary Drs. Atrino Leswara, based in Jakarta, under Deed Number 119. The object of the bequest was a plot of land and a building located at Jalan Plampitan X No. 12, Peneleh Subdistrict, Genteng District, Surabaya, as stated in Certificate of Ownership No. 51 under Ny. Tinningrum Tjandra's name. The grant deed stipulated that the object could only be transferred, sold, or mortgaged after the beneficiary, Imelda Sanny Chandra, reached the age of 30 years. The Plaintiff is now 32 years old, meaning that, under the terms of the bequest grant, she is legally entitled to the object of the bequest.

In both the First Instance Decision No. 1270/Pdt.G/2021/PN.Sby and the Cassation Decision No. 3258 K/Pdt/2023, the courts examined the enforceability of Clause 119 in the Bequest Grant Deed, which states:

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23 Urip Santoso, *Pendaftaran Dan Peralihan Hak Atas Tanah* (Jakarta: Kencana, 2010).

24 Bayu Indra Permana, Mohammad Rafi Al Farizy, and Ferdiansyah Putra Manggala, "Responsibility of Notary for Registered Private Deed in the Perspective of Law of Evidence," *Jurnal Justiciabelen* 7, no. 1 (2024): 66–75.

25 Intan Nabila, "Implikasi Hukum Akta Hibah Wasiat Yang Obyeknya Milik Pihak Lain Dan Tanggung Jawab Notarisnya (Studi Kasus Putusan Pengadilan Negeri Surabaya Nomor : 559/PDT.G/2018/PN. SBY)," *Indonesian Notary* 3, no. 2 (2021).

26 Ajie Ramdan, "Problematika Legal Standing Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 11, no. 4 (2014): 737–58.

27 Jozan Adolf and Widhi Handoko, "Eksistensi Wewenang Notaris Dalam Pembuatan Akta Bidang Pertanahan," *Notarius* 13, no. 1 (2020): 181–92.

28 Resa Eka Nur Fitriasari, "Peran Jabatan Notaris Dalam Penyimpanan Protokol Notaris Yang Disimpan Dalam Bentuk Elektronik Arsip," *Jurnal Hukum Dan Kenotariatan* 6, no. 2 (2022): 1052–71.

> *"The bequest grant I have made may only be transferred, sold, or mortgaged after my granddaughter, Imelda Sanny Chandra, reaches the age of 30 years."*

The courts likely considered whether this restriction on transfer was legally valid and whether the bequest grant remained enforceable given that Plaintiff had met the required age condition.

The judge's considerations further stated that Plaintiff has the right to claim the bequest object, as she has met the conditions stipulated in Bequest Grant Deed No. 119. Consequently, the court nullified all legal actions taken by Defendant I and Defendant II concerning the sale and purchase of the land and residential building located at Jalan Plampitan X No. 12, Peneleh Subdistrict, Genteng District, Surabaya.

The judge ruled that the Defendants' actions constituted an unlawful act, violating the following provisions of the Indonesian Civil Code: Article 1320 Civil Code – Establishes the legal requirements for a valid contract, including mutual consent, legal competence, a specific object, and a lawful cause. Article 1338 Civil Code – Stipulates that all agreements made legally are binding as law upon the parties involved. Article 1365 Civil Code – Regulates unlawful acts, where any act causing harm to another party must be compensated.

Additionally, the decision refers to Article 958 Civil Code, which states:

> *"All pure and unconditional bequest grants, from the day of the testator's death, confer upon the beneficiary (legatee) the right to claim the bequeathed object and this right transfers to all heirs or their successors."*

The sale of the property violated the provisions in the bequest grant, which explicitly stated that the object could only be transferred after the Plaintiff turned 30 years old. There is an inconsistency with Legal Provisions – The bequest grant should be executed without conditions, as stated in Bequest Grant Deed No. 119. The fact that its implementation was subject to restrictions contradicts the material requirements for a valid bequest grant under Indonesian law.

Potential Conflicts – The failure to adhere to the legal requirements for bequest grants led to legal disputes, as seen in the case decisions. If a bequest grant does not comply with the relevant legal provisions, it risks creating conflicts among heirs and legal uncertainty regarding property ownership.

Based on Article 996 Civil Code, any transfer of ownership, including sale, exchange, or transfer with the right of repurchase, automatically revokes the bequest grant if the object has been transferred to another party. This legal principle applied in the case shows that:

The sale of the bequeathed property to Defendant II automatically nullified the bequest grant, as the testator (Defendant I) transferred the object before passing away. This aligns with Article 996 Civil Code, which states that:

> *"if the object is transferred, the bequest is revoked unless the object returns to the testator's estate."*

Although the bequest grant was revoked, the sale and purchase agreement between Defendant I and Defendant II remained valid. This is because the transaction was conducted when the object was still legally owned by Defendant I, making it a lawful legal action at that time.

The judge in Case No. 1270/Pdt.G/2021/PN.Sby also cited Article 1320 Civil Code, which establishes the legal validity of an agreement. The four requirements for a valid contract are:[29]

1. Mutual Consent;
2. Legal Capacity;
3. A Specific Object;
4. A Lawful Cause;
5. Violation of the Object Requirement

The judge determined that Defendant I violated the legal conditions of the agreement because the property was already designated under the bequest grant. Plaintiff argued that the object of the sale and purchase agreement was no longer legally owned by Defendant I.

Therefore, the object requirement was not met, making the sale and purchase agreement legally flawed.[30] Bequest Grant Revoked – Since Defendant I transferred the property before their death, the bequest grant automatically ceased to be valid under Article 996 Civil Code. The Plaintiff contested the validity of the sale, arguing that the property was no longer Defendant I's to transfer. This led to legal disputes over ownership. If the court finds the sale unlawful, Defendant II may be required to return the property or seek compensation.

Based on the explanation above, the object of the bequest grant in this case legally remained the property of Defendant I, as the execution of a bequest grant only takes effect upon the death of the testator—in this case, Defendant I as the grantor.

In Indonesian legal practice, bequest grants are often associated with contract law. While the concept of a bequest grant remains intact, its contractual interpretation suggests that both the grantor and the beneficiary must adhere to the terms set forth in the will. However, Article 1338 of the Indonesian Civil Code on freedom of contract is deemed irrelevant to the concept of a bequest grant, as a bequest grant is not a contractual agreement but rather a unilateral expression of the testator's intent to transfer assets to a specific person upon their death. Thus, as long as the testator (Defendant I) is still alive, the bequeathed object cannot be transferred to another party.

This issue cannot be overlooked, as a bequest grant is a gratuitous transfer from the grantor to another person, with the assets specifically designated. A bequest grant is not a contractual agreement but rather the testator's unilateral intent. Therefore, confidentiality in a bequest grant is essential to prevent disputes, such as those seen in Decision No. 1270/Pdt.G/2021/PN.Sby.

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[29] Bella Adinda Purwasaputri, I Wayan Yasa, and Ajeng Pramesthy Hardiani Kusuma, "Tanggung Jawab Asuransi Astra Terhadap Tertanggung Atas Kehilangan Sepeda Motor Yang Masih Dalam Proses Kredit," *Acten Journal Law Review* 1, no. 3 (2024): 253–70.

[30] Vikriatuz Zahro, Iswi Hariyani, and Iwan Rachmad Soetijono, "Juridical Implications of the Issuance of Covernotes by A Notary as Basis of Disbursing Credit of Banking," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 102–18.

According to Gustav Radbruch's legal certainty theory, legal certainty consists of four key aspects:

1. Law is Positive
   Positive law refers to statutory regulations.
2. Law is Based on Facts and Must Be Certain
   Law must be grounded in reality, and judges cannot rely solely on their discretion, such as through general clauses on decency and good faith.
3. Facts Must Be Clearly Formulated
   Legal provisions must be clearly stated to avoid misinterpretation and ensure easy implementation.
4. Positive Law Should Not Be Easily Changed
   Statutory regulations cannot be arbitrarily altered by any party unless adjustments are necessary due to societal and legal developments.

Based on the legal certainty theory, there is an element of legal certainty that has not been fully met. This element pertains to positive law, as certain norms remain unclearly regulated in statutory provisions, particularly regarding the nature of grants given to minors. Such grants are often made by parents to their children or to other individuals, necessitating more specific, clear, and distinct regulations alongside other types of grants. This would ensure clarity in implementation and stability in legal concepts, preventing frequent changes.[31]

Regarding bequest grants and other forms of wills, regulations have only addressed electronic registration, while no definitive government regulation comprehensively governs their practical execution. This absence of regulation increases the risk of misconceptions surrounding bequest grants. According to a journal by Ikhwan Ashadi, bequest grant practices in Indonesia often incorporate contractual concepts, despite bequest grants not being contracts but rather the absolute right of the grantor.[32]

The revocation of Deed of Bequest Grant No. 119 represents an effort to uphold legal certainty for all parties involved. This revocation aligns with the legal validation of transactions conducted by Defendant I and Defendant II regarding the transfer of the contested property. Sudikno Mertokusumo defines legal certainty as a guarantee that the law must be implemented properly.[33] Legal certainty demands that legal regulations be established by competent authorities, ensuring that laws have a binding juridical aspect and function as mandatory legal provisions.[34]

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[31] Debby Flora Siahaan and Benny Djaja, "Kepastian Hukum Akta Hibah Wasiat Yang Objeknya Dijual Oleh Pemberi Hibah Wasiat Kepada Pihak Lain (Studi Kasus Putusan Nomor 1270/Pdt.G/2021/Pn.Sby)," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7, no. 3 (2023): 1894–1903.

[32] Ikhwan Ashadi, Putra Hutomo, and Amelia Nur Widyanti, "Kepastian Hukum Mengenai Hibah Wasiat Ditinjau Berdasarkan Undang-Undang Nomor 1 Tahun 2022 Tentang Hubungan Keuangan Antara Pemerintah Pusat Dan Pemerintah Daerah," *SENTRI: Jurnal Riset Ilmiah* 2, no. 9 (2023): 3647–55.

[33] Zulfahmi Nur, "Keadilan Dan Kepastian Hukum (Refleksi Kajian Filsafat Hukum Dalam Pemikiran Hukum Imam Syâtibî)," *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat* 6, no. 2 (2023): 247–72.

[34] Ardian Kurniawan, Rafikah, and Nuraida Fitrihabi, "Kepastian Hukum, Kemanfaatan Dan Keadilan Pemidanaan Kejahatan Asal Usul Perkawinan (Analisis Putusan No. 387/Pid.B/2021/PN.Jmb)," *Al-Jinayah : Jurnal Hukum Pidana Islam* 8, no. 1 (2022): 1–13.

V. CONCLUSION

The execution of a bequest grant must be pure and unconditional, taking effect only upon the death of the testator. This means that a bequest grant cannot be subjected to any conditions, except for the specification of the property being granted, and it may only be executed after the grantor's passing. Consequently, Deed of Bequest Grant No. 119, which states a conditional transfer of the granted property, contravenes statutory regulations. It can therefore be concluded that any transfer of the bequest grant's object may lead to its revocation. As a result, the legal actions taken by Defendant I and Defendant II remain valid under the law, as the property in question was still fully owned by Defendant I at the time. However, the judicial considerations in both decisions do not align with the applicable laws and regulations.

A bequest grant does not fall within the scope of contract law, as it constitutes a gratuitous gift from the grantor to the beneficiary. It is fundamentally confidential and should only be disclosed to the heirs after the grantor's death. Until that time, the contents of the bequest grant deed should remain undisclosed, except to the grantor, notary, and witnesses who signed the deed. Therefore, a government regulation is necessary to establish clear and detailed guidelines on the execution of bequest grants and other wills, preventing any misinterpretation or legal uncertainty.

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Jurnal Ilmu Kenotariatan
Volume 6 Issue 1 (2025), pp 43-55
doi: 10.19184/JIK.v6i1.51538
Published Online May 2025

Reforming of Related Instruments for Indonesia's Cyber Notary Concept Implementation

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ABSTRACT

The concept of a cyber notary or electronic notary, represents a significant shift in the progression of conventional notaries to more modern ones. However, Indonesia lacks regulation synchronization, making the concept difficult to apply. Therefore, the implementation of this concept in Indonesia requires the reform and harmonization of existing regulations, including Law No. 2 of 2014 on the Amendment to Law No. 30 of 2004 on the Position of Notary, Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions, and other regulations, such as those pertaining to the electronic creation of notarial deeds and the archiving of deed minutes. This study, using normative juridical methods or legal research, analyzes various current regulatory regulations to modify or align them with the concept of a cyber notary. The study's conclusion suggests that the adoption of this notion in Indonesia hinges on the reform and harmonization of numerous legislations related to the notary office and other pertinent regulations. These regulations establish the appropriate procedures and a thorough plan for positioning notaries in an optimal manner. In the future, the potential for electronic notarial deed creation exists.

KEYWORDS: *Cyber Notary, Reforming and Harmonization the Regulation, Notary*

HOW TO CITE:
Mumtazh, Dilla Naharul, and Rudy Haposan Siahaan. '*Reforming of Related Instruments for Indonesia's Cyber Notary Concept Implementation*' (2025) 6:1 Jurnal Ilmu Kenotariatan 43-55. DOI: ‹https://doi.org/10.19184/jik.v5i2.51538›

I. INTRODUCTION

Presently, the advancements and modifications in information technology have impacted all aspects of human existence. This indicates a transition in culture from traditional to modern. This encompasses advancements in legal technology that signify shifts in the legal industry. Regarding the sustainability of technology in the field of notaries, there is a significant shift towards cyber notaries or electronic notaries.[1]

[1] Edmon Makarim, *Notaris dan Transaksi Elektronik Kajian Hukum Tentang Cyber Notary atau Electronic Notary*, (Jakarta: Raja Grafindo, 2013). p.23

The term "cyber notary" is derived from the term "cybernetic," which is a scientific field that includes the fields of electro, mathematics, robotics, and psychology. The concept of cyber notary or electronic notaries for notaries in Indonesia is not a foreign concept; discussion regarding the development of cyber notaries in Indonesia has been ongoing since 1995. The concept is derived from the potential impact of new technologies on the work of notaries, particularly in terms of time efficiency. The technologies in dispute are digital signatures and video conferencing.[2]

In the world of cyber notary, the terminology in the presence should get an expansion because the word 'in the presence' is currently an initiative and innovative in terms of approval and recognition of the word in the presence. This is due to the rapid advancement of technology, which allows the word 'in the presence of' to be interpreted not only physically but also virtually.[3] Other than that, the term cyber notary refers to a notary who uses information technology to fulfil the responsibilities and authority, particularly when executing deeds.[4] The use of cyberspace, particularly in the context of cyber notary, has the potential to generate a new world. However, it can also present a number of challenges, particularly when creating an authentic document.[5]

The concept of cyber notary has been evolving in various nations, including the Netherlands, Italy, Japan, South Korea, and others. The global agreement at the United Nations Commission on International Trade Law (UNCITRAL) forum recognises the importance of legalising the legal worth of electronic documents and/or information.[6]

This transition involves the transformation of traditional notaries into modern ones, characterised not only by the use of computerisation and the internet in notary authority but also by the enhanced effectiveness and efficiency of notaries in delivering services.[7]

The current state of affairs in Indonesia regarding the concept of cyber notaries is characterized by a lack of synchronization between regulations. This presents a challenge for the development of this concept, as the absence of interconnected regulations can lead to numerous gaps that render it unimplementable. Notably, countries such as Japan, South Korea, and others have successfully implemented this concept by reforming their legal regulations and infrastructure.[8]

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2 Novan Dwi Kurnia, Muhammad Sood, and Hirsanuddin, "Juridical Study of Arrangements for Authentic Deeds through Cyber Notary: Comparative Study with Japan", *Path of Science* 9, no. 1, (2023): 2014-2022.

3 Dendik Surya Wardana, Iswi Hariyani, and Dodik Prihatin AN, "Pertanggung Jawaban Notaris Terhadap Keabsahan Akta Outentik Yang Dilakukan Secara Electronic Dalam Pembuktian Di Pengadilan," *Jurnal Ilmu Kenotariatan* 2, no. 2 (2021): 14–26.

4 Meilina Rosa, "Penyimpanan Protokol Notaris Dengan Konsep Elektronik Dengan Cyber Notary," *Recital Review* 6, no. 2 (July 21, 2024): 220–35.

5 Muhammad Farid Alwajdi, "Urgensi Pengaturan Cyber Notary Dalam Mendukung Kemudahan Berusaha di Indonesia." Jurnal RechtsVinding 9, no. 2 (2020): 257 - 274.

6 Iqbal Anshori, Elita Rahmi, and Syamsir,"Polemik Penerapan Tanda Tangan Elektronik Dalam Pembuatan Akta Otentik". *Recital Review* 4, no. 2 (2022): 357-358

7 Edmon Makarim, *Notaris dan Transaksi Elektronik Kajian Hukum Tentang Cyber Notary atau Electronic Notary*, (Jakarta: Raja Grafindo Persada, 2016). p.43

8 Sita Farahianie, "Kedudukan Hukum Akta Autentik Yang Dibuat Oleh Notaris Dalam Perspektif Cyber Notary," *Acten Journal Law Review* 1, no. 2 (October 30, 2024): 171–86.

It is important to change laws about notaries, like Law No. 2/2014 on the Amendment to Law No. 30/2004 on the Position of Notary (also known as UUJN), and other laws, because this idea will be hard to put into action without strong legal support.

Unfortunately, there has not been a comprehensive and coordinated reform in the field of regulation that aligns with societal developments and existing laws, such as UUJN. Consequently, Indonesia has not implemented the concept of cyber notary.[9] This is because the UUJN does not provide a detailed description of the regulations regarding the conversion of electronic deeds into authentic deeds. The UUJN's foundation is conventional, requiring physical presence and paper-based documents.[10]

The public and global community require the concept of a cyber notary due to its potential to enhance the effectiveness and efficiency of notary services.[11] This is because the concept of a cyber notary empowers notaries to authenticate the creation of agreements and contracts, recalling their current authority to quote deeds, provide copies of deeds, issue a grosse, store deeds, certify signatures, and record letters under signature.[12]

However, if the UUJN is not revised as soon as possible, it can contradict the position of law as 'a tool of social engineering' in other words, the law is required to be in front of development. In the application of the cyber notary concept, the duties and authority of notaries in making authentic deeds will experience several problems, especially regarding the physical presence of the confrontation, the obligation to sign the notarial deed, and so on.[13]

Therefore, it is necessary to implement regulatory reform through comprehensive harmonization in order to effectively apply the concept of cyber notary.[14] This will enable notaries, who possess legal authority in the domain of private law, particularly in serving the business sector, to provide services to the community with greater efficiency and relevance.[15]

Additionally, this reform will ensure legal certainty and guarantees for the community. The aim is to streamline and standardise various regulations pertaining to the role of notaries, along with other related regulations, in order to redefine the necessary procedures and establish an optimal framework for the position of notaries. This will be closely tied to the potential implementation of this concept.

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9 Damella Chandra Gayatri, "Penerapan Cyber Notary Dalam Meningkatkan Keamanan Dan Kepercayaan Transaksi Elektronik," *Acten Journal Law Review* 1, no. 2 (October 30, 2024): 144–56.

10 Dina Chamidah et al., "Authority and Power of the Law Relating to Cyber Deed Notary in Indonesia Era Industrial Revolution 4.0," *International Journal of Engineering and Advanced Technology* 9, no. 1 (2019): 947–52.

11 Nadia Pitra Kinasih, "Kepastian Hukum Notaris Menerapkan Cyber Notary Dalam Verlidjen Akta Notaris Secara Digital," *Acten Journal Law Review* 1, no. 3 (December 31, 2024): 231–52.

12 Marvel Romi Sutiono and Kenneth Bradley Sajogo, "Perlindungan Hukum Pemegang Saham Perseroan Terbatas Terbuka Pada Rapat Umum Pemegang Saham Secara Elektronik," *Acten Journal Law Review* 1, no. 1 (August 31, 2024): 85–101.

13 Esti Sugiyorini, "Letter Of Contract In Electronic Commerce (E-Commerce) Based On Civil Law," *Aloha International Journal of Multidisciplinary Advancement (AIJMU)* 1, no. 5 (2019): 114–17.

14 Linggar Ryanty Yogiatama, "Tinjauan Yuridis Konsep Cyber Notary Dalam Penyimpanan Protokol Notaris Ditinjau Dari UU No. 2 Tahun 2014 Atas Perubahan UU No. 30 Tahun 2004 Tentang Jabatan Notaris (UUJN)," *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 2, no. 8 (July 6, 2024): 258-263–258–263.

15 M Javana et al., "Urgensi Penyimpanan Protokol Notaris Secara Elektronik Dalam Kaitan Cyber Notary Di Indonesia," *UNES Law Review* 6, no. 3 (March 21, 2024): 8334–46.

II. METHODOLOGY

This research employs a juridical-normative method that involves the examination of library materials or secondary data, including legal documents, laws and regulations, legal principles, and legal doctrines that are pertinent to the issues at hand.[16] By looking at and figuring out rules, norms, principles, theories, and legal regulations, this juridical-normative research tries to find and fix problems that might come up, like when norms don't match up, when norms aren't clear, or when there are gaps in the law.

Secondary data cannot be directly obtained because it is already present in a variety of library materials. Data will be collected and subsequently analyzed normatively, resulting in a descriptive representation that addresses the issues and demonstrates the actual social reality.[17] Additionally, judicial-normative legal research provides a structured explanation of specific norms, enabling the resolution of legal issues and the prediction of future legal developments.

III. SCOPE OF CYBER NOTARY

The notion of a cyber notary in Indonesia is not unfamiliar, as it has gained attention due to the advent of new technologies that have the potential to enhance the efficiency and effectiveness of notarial work. The technology being mentioned here encompasses video conferencing and digital signatures.[18]

Within the context of cyber notary, it is necessary to have a more comprehensive grasp of the concept of "in presence," since the current definition of this phrase represents a novel approach to granting approval.[19] This phenomenon is a result of society's progress and technology's rapid advancement. As a result, the concept of "being present" is no longer limited to physical presence; it can also encompass virtual presence.[20]

The American Bar Association's (ABA) Information Security Committee initially derived the concept of cyber notary in 1994.[21] The aim was to establish legal recognition for electronic transactions, guaranteeing the legal bindingness of contracts made electronically, the preservation of transaction content, secure transmission, and the maintenance of trust when parties transact over the internet.[22]

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16 Peter Mahmud Marzuki, *Legal Research Revised Edition*, (Jakarta. Kencana, 2016), p. 83.

17 Susilo Pradoko AM, *Paradigma Metode Penelitian Kualitatif: Keilmuan Senin, Humaniora, dan Budaya*, (Yogyakarta: UNY press, 2017). p.iii.

18 Didik Mansur, Arif Mansur, dan Elisatris Gultom, *Cyber Law, Aspek Hukum Teknologi Informasi*, (Bandung: Refika Aditama, 2009). p.24

19 Yogiatama, "Tinjauan Yuridis Konsep Cyber Notary Dalam Penyimpanan Protokol Notaris Ditinjau Dari UU No. 2 Tahun 2014 Atas Perubahan UU No. 30 Tahun 2004 Tentang Jabatan Notaris (UUJN)."

20 Holla, Rafi Salhi, and Clarissa Oktaviriya Prakoso, "Legal Certainty Regarding the Conversion of Land Certificates To An Electronic System Based On Security Principles," *Jurnal Ilmu Kenotariatan* 5, no. 2 (2024): 88–101.

21 HS Salim, Djumardin & Aris Munandar, "Analisis Terhadap Substansi Kode Etik Notaris: Studi Komparatif Antara Kode Etik Notaris Indonesia dengan Georgia, Amerika Serikat, dan Quebec, Kanada", *Jurnal Risalah Kenotariatan Magister Kenotariatan Fakultas Hukum Universitas Mataram* 1, no. 2 (2020): 13-40

22 Edmon Makarim, *Notaris dan Transaksi Elektronik Kajian Hukum Tentang Cyber Notary atau Electronic Notary*, (Jakarta: Raja Grafindo Persada, 2020). p.40

Now, notaries can be classified into three distinct categories in the context of contemporary technological advancements. Among them are conventional notaries, who openly display their faces, write the deed on paper, and sign with a wet pen or fingerprint.[23]

Another option is remote notarization, which involves conducting the signing process using visual and audio apparatus.[24] In this scenario, the notary is not directly present, but the notary and the participants can see and hear each other. The last option is e-notarization, a form of electronic notarization where the parties remain physically present before the notary, but the notary creates the notarized documents digitally and uses a digital signature.[25] For instance, when employing a stylus or pad to sign or affix initials to the document.

The main difference between e-notarisation and remote notarisation is how the document is notarised and signed. In e-notarization, the notary uses a digital signature but it must occur in the physical presence of the notary, similar to traditional pen and paper notarisation.[26] In remote notarisation, the person is not in the physical presence of the notary but is present through audio and visual equipment such as a webcam. Electronic signatures are also used to complete this process.

Other international conventions, like the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents in 1961, have also come into effect. This convention promotes the use of notary services to streamline and verify public documents. Furthermore, during the 1989 Trade Electronic Data Interchange System Legal Workshop of the European Union in Brussels, the French delegation recommended that notaries can play a role in offering their services by creating an unbiased record of an agreement made through electronic means.[27]

Several countries that follow the Civil Law legal framework are also adopting Certified Service Provider (CSP) and Certification Authority (CA) technologies to promote the use of digital signatures or electronic signatures by notaries. Several nations, including Belgium, France, Germany, Spain, and others, have implemented this. The International Congress XXIV, held in 2004, emphasised the pressing significance of the function and responsibilities of electronic notaries.[28]

The International Congress XXIV emphasised the importance of notaries adapting to new developments and not underestimating the necessary requirements. The conference acknowledged the strong likelihood of electronic deed creation.

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[23] HS Salim, *Pengantar Hukum Notaris Online Jarak Jauh (Introduction to Remote Online Notary Law)*, (Bandung: Reka Cipta, 2023). p.32

[24] HS Salim, *Op.Cit.* 33

[25] Hs Salim, *Op.Cit.* 34

[26] Michigan Government, "General Information Guide Electronic Notary & Remote Notary," Website Resmi Pemerintah Negara Bagian Michigan, diakses 29 Juli 2024, https://www.michigan.gov/-/media/Project/Websites/sos/07delrio/ENotary_and_Remote_Notary_Guide_2019_eq051319.pdf?rev=61fa24f29a1144fda5ecf577443ac5c5

[27] Isro Vita Nugrahaningsih, "The Role of Regional Honor Council In Maintaining The Honor of Notary Position," *Jurnal Ilmu Kenotariatan* 4, no. 1 (2023): 1–13.

[28] Edmon Makarim, *Op.Cit.* 50

IV. EXPLORING THE POTENTIAL OF CYBER NOTARY TO ENHANCE THE FUNCTION OF NOTARY IN INDONESIA

In contemporary times, communication has advanced significantly in electronic media via cyberspace. This allows individuals to access a virtual realm that is conceptual, widespread, and independent of temporal and spatial constraints through electronic means[29]. The concept of cyber notary is deemed to be in conflict with several existing laws and regulations due to the lack of specific guidelines in UUJN regarding the recognition of electronic deeds as valid.

Despite the fact that notaries are integral members of a society that cannot escape the rapid progress of technology[30]. Indeed, the notion of cyber notary in Indonesia is now limited to regulatory and conceptual discussions. Traditional requirements like physical presence and paper-based documents, which are incompatible with the UUJN, have prevented its implementation.

The concept of a cyber notary involves the utilisation of notaries to verify the creation of contracts and agreements pertaining to notarial authority, such as extracts of deeds, deed copies, provision of official documents, storage of deeds, verification of signatures, and maintenance of records of handwritten letters. Notaries face a variety of challenges in the implementation of cyber notary services related to their authority and responsibilities in creating legally valid documents. These challenges include the absence of physical interaction with the notary, the requirement to sign notarial deeds, and the need for individuals who are unable to sign to provide a detailed explanation for their inability[31].

According to Article 15 Paragraph (3) of the UUJN, notaries have additional authorities that are defined by statutory rules, in addition to their regular tasks related to information technology. The authority of a notary refers to their ability to certify electronically created agreements or act as a cyber notary. In order to incorporate the certificate's outcomes into electronic documents that are necessary to meet the conditions specified in Article 1868 of Civil Code. This also encompasses the act of attaching signatures as a component of the formalisation of a legal document (*verlijden*). According to Article 44 Paragraph (1) of the UUJN, it is required that the confronters' signature be explicitly expressed at the end of the deed. This means that the confronter must submit a written declaration or information.

In Article 16 paragraph (7) UUJN, there is an opportunity for a cyber notary to apply to electronic documents and electronic deeds. This is due to the fact that the parties are not required to read the deed in front of a notary if they have already read the deed themselves, are familiar with it, and understand its contents. This must be stated and included in the closing of the deed and on each page of the deed minutes, initiated by the face, witnesses, and notary.

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[29] Rizka Nurliyantika, Ros Amir bt Mohd Ruslan, dkk, "Studi Komparasi Tugas dan Wewenang Notaris di Indonesia dan Malaysia", *Repertorium* 11, no. 2 (2022): 196-203.

[30] Litha Nabila Mallolangan and Hendry Julian Noor, "Peluang Penerapan Penyimpanan Minuta Akta Secara Elektronik Menuju Era E-Notary Berdasarkan Undang-Undang No. 2 Tahun 2014 tentang Jabatan Notaris", *Notary Law Journal Lambung Mangkurat University* 2, no. 1 (2023): 54-81

[31] Traouwelijk, Salsabila, and Mohamad Fajri Mekka Putra, "Efektivitas Peran Notaris Dalam Peninjauan Keabsahan Tanda Tangan Secara Elektronik." *Jurnal Ilmu Sosial dan Pendidikan (JISIP)* 6, no. 4 (2022): 2479 - 2487.

Furthermore, the wording of Article 15 Paragraph (3) of the UUJN conflicts with several articles outlined in Article 5 Paragraph (4) letter B of Law Number 19 of 2016 (referred to as ITE Law). The ITE Law encompasses regulations pertaining to electronically transacted information and documents. Nevertheless, this clause is not applicable to documents that are governed by legal regulations and/or deeds executed by authorised public officials. Article 18, in conjunction with Article 7 and Article 11 of the ITE Law, stipulates that digital signatures possess the equivalent legal weight as official documents created by authorised public officials.

Based on normative and empirical research on technology and information usage, it can be inferred that this is not a primary notary product, but rather serves as technological assistance in the implementation of notary services. Examples of such assistance include the Sistem Administrasi Badan Usaha (SABH) and the Sistem Administrasi Badan Usaha (SABU) organised by the Direktorat Jenderal Administrasi Hukum Umum (Ditjen AHU)[32].

Nevertheless, the implementation has not satisfactorily addressed the application of the cyber notary concept, as it exclusively addresses administrative cleanliness. Nevertheless, this is a positive step towards the integration of the cyber notary concept, which will be subsequently implemented in Indonesia.

IV. REVAMPING THE FRAMEWORK FOR CYBER NOTARY SUPPORTING INSTRUMENTS AND ALIGNING LEGISLATION

Reflections on The Netherlands and France, the original source of the Indonesian Civil Code, have updated various regulations, particularly in the area of the law of evidence. Specifically, they have revised the criteria for written evidence, stating that electronic proof holds the same weight as written evidence and functions similarly to a wet signature under established conditions.

The implementation of cyber notary and the enhancement of notary services in the Indonesian context must be reformed and harmonised in a manner that is congruent with the changing lifestyle of Indonesian society in order to develop suitable regulations.[33] Developing a formulation that is applicable, comprehensive, ensures legal certainty, and offers protection through a strategic update of regulations and culture is crucial, as it paves the way for the effective implementation of the regulations.[34]

There are several critical regulations that necessitate reform and harmonisation to facilitate the efficacy of notary services and the implementation of cyber notaries. According to legal system theory, the successful implementation of a law is contingent upon three primary factors: legal structure, legal substance, and legal culture. [35]

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[32] Rudi Haposan Siahaan and Ranti Fauza Mayana, *Hukum Kenotariatan Indonesia Jilid 1*, (Bandung: Media Sains Indonesia, 2020). p.23

[33] Fatrul Razi, Rembrandt, and Yussy Adelina Mannas, "Kepastian Hukum Prinsip Pemilik Manfaat (Beneficial Ownership) Serta Peranan Notaris Berdasarkan Permenkumham Nomor 15 Tahun 2019," *UNES Law Review* 5, no. 4 (2023): 4683–4703.

[34] Henry Donald Lbn Toruan, "The Importance of Using Electronic Deeds to Facilitate The Service and Storage of Notary Archives", *Jurnal Penelitian Hukum De Jure* 22, no. 4 (2022): 483 - 498

[35] Lawrence M Friedman, *Hukum Amerika: Sebuah Pengantar, Terjemahan dari American Law An Introduction, 2nd Edition, Alih Bahasa: Wisnu Basuki*, (Jakarta: Tatanusa, 2001), p.40

First and foremost, UUJN serves as the legal foundation for the establishment of the Indonesian notary. However, there are several articles that genuinely challenge the implementation of the cyber notary.[36] For instance, Article 15 Paragraph (1) stipulates that it is imperative to enhance the function and role in order to facilitate electronic work and to fulfil a role. Notaries are free to determine wish to become conventional or modern notaries.[37]

In addition, the ITE Law has elucidated the very strong foundation that is considered to be in place with respect to electronic information and documents. Specifically, the provisions of Article 5 Paragraphs (1) and (2) of the ITE Law state that information, documents, and printouts that are generated electronically are considered valid evidence due to their classification as valid evidence.

In order to ensure that the UUJN, ITE Law, and Article 1865 of KUHPerdata are in harmony, the delegation of regulatory provisions regarding electronic deeds and their devices should be delegated to the appropriate ministerial regulations. This will result in clear and equivalent electronic evidence. Also, there is the possibility of a harmonisation between the UUJN and ITE Law, which would establish specialised qualifications and education for cyber notaries in order to enhance service efficiency.

It is necessary for UUJN and UU ITE to be synchronised in terms of cyber notary. This includes ensuring that the definition of an electronic deed is equivalent to that of an authentic deed, clarifying the authority responsible for implementing cyber notary, outlining the mechanism and stages of cyber notary, and establishing qualifications and specialised education for cyber notaries or electronic notaries.[38]

Proficiency in special education and qualifications in cyber notary/electronic notary are essential for ensuring the efficiency of notary services. The implementation of the notary will be carried out in collaboration with the Electronic Certification Organiser. During its execution, the two regulations In order to ensure compatibility in their execution, the two regulations should not be in conflict with each other, but rather complement each other.[39]

The regulation of electronic authentic deeds in Indonesia should include the following: the addition of a definition of electronic deeds as authentic deeds in Article 1 of the UUJN, the detailed clarification of the authority of notaries related to cyber notaries in Article 15 Paragraph (3) of the UUJN, the revision and clarification of the word "facing" in Article 16 Paragraph (1) letter M, and the amendment of Article 5 Paragraph (4) of the ITE Law to exclude notarial deeds made electronically.

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[36] Nadia Pitra Kinasih and Azizahtul Himma, "Akibat Hukum Notaris Menggunakan Website Pribadi Dalam Memberikan Pelayanan Jasa Kepada Masyarakat," *Acten Journal Law Review* 1, no. 1 (2024): 38–63.

[37] Misbah Imam Subari and Justicia Firdaus Kurniawan, "Penggunaan Klausula Proteksi Diri Bagi Notaris Dalam Akta Partij Ditinjau Dari Undang-Undang Jabatan Notaris," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 144–60.

[38] Soraya Ulfa Latifani, Moh. Ali, and Dominikus Rato, "The Existence of Marriage Agreement Registration In Legal Protection Perspective," *Acten Journal Law Review* 1, no. 3 (2024): 188–202.

[39] Humas FHUI, "Layanan Notaris Secara Elektronik dalam Kedaruratan Kesehatan Masyarakat Oleh Dr. Edmon Makarim, S.Kom., S.H., LL.M" Fakultas Hukum Universitas Indonesia, diakses 29 Juli 2024. https://law.ui.ac.id/layanan-notaris-secara-elektronik-dalam-kedaruratan-kesehatan-masyarakat-oleh-dr-edmon-makarim-s-kom-s-h-ll-m/

Consequently, cyber notary can be implemented provided that the regulations are interconnected and do not conflict. However, in the event that the regulations remain contradictory, the notary is hesitant to take risks that could the career and life. This is due to the fact that the provisions of the UUJN are subject to sanctions if they are violated.

In the context of stamp duty, it is imperative to reform Law Number 10 of 2020 concerning Stamp Duty (Stamp Duty Law). This legislation dictates the non-applicability of the Stamp Duty Law and the necessity of a re-audit of the electronic system utilised for stamp duty settlement in order to ensure compliance with the ITE Law.

The developer or provider of the system is also responsible for the legal responsibility of cyber notary, in addition to the notary or organiser. This is in accordance with Article 15 and Article 16 of the ITE Law, Law Number 8 of 1999 on Consumer Protection (Consumer Protection Law), and Article 1365 of the Civil Code. It is imperative that these three regulations be properly harmonised.[40]

Secondly, in terms of legal structure, the digitalization of notary services necessitates the establishment of facilities and infrastructure for legal risk management. To identify and verify the perpetrators, a general procedure or method must be followed. This is critical to ensuring that the notary's authentic deed has evidentiary power.[41]

Therefore, it is of the utmost importance to have a technological infrastructure that is both reliable and has high security access. For example, integrating the land system, population, and various data from specific ministries can facilitate feature validation.[42]

Third, the legal culture aims to promote public trust and security by reforming and harmonizing the structure and substance, as well as extensive socialization, at every stage of the process, such as the initial meeting, information sharing, and signing.

Furthermore, Indonesia has the opportunity to replicate the actions of the Government of the Republic of South Korea, which has established a "Designated Notary Public" in accordance with the Korea Information Society Development Institute (KISDI). The Ministry of Justice appoints this notary to provide services for computerized and electronic documents[43]. This has significant potential for encouraging the readiness of cyber notary implementation in Indonesia through the implementation of policies and supporting infrastructure through collaboration and harmonisation between the Ministry of Law and Human Rights and the Ministry of Communication and Information.

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[40] Helen Fransisca and Mohamad Fajri Mekka Putra, "Perlindungan Hukum Notaris Penerima Protokol Dari Kelalaian Notaris Pemberi Protokol (Studi Putusan Nomor 52/Pdt.G/2020/Pn Mdn)," *Jurnal Justitia : Jurnal Ilmu Hukum Dan Humaniora* 5, no. 2 (January 12, 2022): 220–28.

[41] Endang Purwaningsih, "Penegakan Hukum Jabatan Notaris Dalam Pembuatan Perjanjian Berdasarkan Pancasila Dalam Rangka Kepastian Hukum," *ADIL: Jurnal Hukum* 2, no. 3 (2011): 323–36.

[42] Ranti Fauza Mayana and Tisni Santika, "Legalitas Tanda Tangan Elektronik: Posibilitas dan Tantangan Notary Digitalization di Indonesia", *Acta Diurnal Jurnal Hukum Kenotariatan Fakultas Hukum Unpad* 4, no. 2 (2022): 244-262

[43] Denny Fernaldi Chastra, "Kepastian Hukum Cyber Notary Dalam Kaidah Pembuatan Akta Autentik Oleh Notaris Berdasarkan Undang-Undang Jabatan Notaris", *Indonesian Notary* 3, no. 2 (2021): 248-249

V. CONCLUSION

The concept of a cyber notary is crucial because it simplifies the notary's responsibility to assure the identity of the parties. By utilising technology such as digital signatures and video conferencing when the parties appear, the notary can anticipate errors in identifying false or fabricated information or data. As a result, it becomes easier to establish the material truth of the deed's contents. Rules for electronic authentic deeds should include: adding a definition of "electronic deeds as authentic deeds" to Article 1 of the UUJN; making it clearer what powers notaries have when it comes to cyber notaries in Article 15 Paragraph (3) of the UUJN; changing and making it clearer what "facing" means in Article 16 Paragraph (1) letter M; and changing Article 5 Paragraph (4) of the ITE Law so that it doesn't cover notarial deeds made electronically.

UUJN should include more detailed or explicit definitions, particularly those of electronic authentic deeds, cyber notary, facing, and notaries who can exercise the authority of cyber notaries. These notaries are notaries who have special qualifications or education related to cyber notaries and register themselves with the Ministry of Law and Human Rights, as Japan does with its electronic notaries. cyber notary can be implemented provided that the regulations are interconnected and do not conflict. On the other hand, if the regulations remain contradictory, the notary may be reluctant to take risks that could jeopardize his career and life, as a violation of the UUJN's provisions could result in sanctions.

The goal of this support is to expedite the immediate implementation of the cyber notary system by revising the UUJN and ITE Law, a practice already adopted by South Korea. The government also aims to synchronise the Electronic Signature Law and Certification Business and clarify the authority of notaries in the UUJN, thereby eliminating any potential obstacles to the implementation of the cyber notary system. To improve its system, Indonesia should also learn from countries that have implemented the concept of cyber notary. This includes increasing the use of electronic personal authentication services, as well as forming a competent study group before implementing an electronic notary system.

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Jurnal Ilmu Kenotariatan
Volume 6 Issue 1 (2025), pp 56-76
doi: 10.19184/JIK.v6i1.53688
Published Online May 2025

Legal Certainty of Regulations on the Obligation to Notify the Minister Regarding Legal Status of Fiduciary Collateral

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ABSTRACT

The Fiduciary Guarantee aims to provide legal certainty for the parties involved; however, inconsistencies and ambiguities in its regulatory framework create contradictions regarding legal certainty. Law No. 42 of 1999, Government Regulation No. 21 of 2015, and Minister of Law and Human Rights Regulation No. 25 of 2021 fail to consistently regulate the obligation to remove fiduciary guarantees and do not provide legal certainty regarding the status of fiduciary objects if their removal is delayed beyond 14 days. This lack of clarity has the potential to harm the public, particularly fiduciary grantors who have fulfilled their obligations but face obstacles in the guarantee removal process. Furthermore, the incomplete regulation on fiduciary removal leads to legal uncertainty. This study examines the Juridical Implications of the Regulation on the "Obligation to Notify the Minister" concerning the validity of the legal status of fiduciary guarantee objects. Although the guarantee terminates upon full repayment of the debt in substance, the absence of an official notification results in the fiduciary object remaining an active guarantee in the system, creating legal uncertainty. This study employs the legal certainty theory and adopts a normative juridical approach combined with a statutory approach. The legal materials used include primary, secondary, and tertiary legal sources, collected through literature research and analyzed using grammatical, systematic, and extensive interpretation.

KEYWORDS: *Fiduciary Guarantee, Minister, Legal Certainty.*

HOW TO CITE:
Lestari, Meidiana Indah, et. al. '*Legal Certainty of Notary's Obligation to Notify the Minister Regarding Legal Status of Fiduciary Collateral*' (2025) 6:1 Jurnal Ilmu Kenotariatan 56-76. DOI: ‹https://doi.org/10.19184/jik.v6i1.53688›

I. INTRODUCTION

In today's business landscape, nearly all commercial activities rely on financial institution services. Etymologically, the term "fiducia" originates from the Latin word fiducie, meaning "trust." Additionally, the concept is adapted from the Dutch term *Fiduciare Eigendom Overdracht*,

which translates to "the transfer of ownership rights based on trust" or the transfer of ownership of an asset as collateral for debt repayment.[1] Under this mechanism, the fiduciary recipient holds a priority right over other parties. In the realm of secured transactions, fiduciary collateral is a contractual agreement in which the fiduciary grantor transfers ownership rights over an asset to the fiduciary recipient based on the principle of trust.[2]

However, the pledged asset remains in the possession of the fiduciary grantor and can continue to be used in its operations. In practice, fiduciary collateral has evolved into one of the most widely used forms of collateral, particularly in credit transactions. This is due to its flexibility, allowing the fiduciary grantor to utilize the secured asset while the agreement remains in effect.[3]

According to Law No. 42 of 1999 on Fiduciary Collateral , fiduciary collateral is defined as the transfer of ownership rights over an asset based on trust, with the provision that the asset remains in the possession of the fiduciary grantor as collateral for the repayment of a specific debt. Fiduciary collateral addresses the limitations of traditional pledge laws, as it allows movable assets to serve as collateral while remaining under the control and use of the fiduciary grantor without losing their functional utility.[4]

Rachmadi Usman explains that fiduciary collateral grants a preferential position to the fiduciary recipient over other creditors, particularly in debt settlement in the event of default. The fiduciary recipient has the right to execute the security object without requiring judicial proceedings, provided that all fiduciary registration procedures and requirements have been correctly fulfilled by both parties.[5]

Moreover, the introduction of the "electronic fiduciary guarantee removal system" reinforces the role of fiduciary collateral not only in ensuring legal certainty for the parties involved but also in strengthening legal mechanisms and reducing potential disputes. Through electronic registration, fiduciary collateral is expected to enhance transparency and accountability in credit transactions while ensuring administrative order within the secured transactions system.

Law No. 42 of 1999 on Fiduciary Collateral defines fiduciary collateral as follows in Article 1(1):

> *"Fiduciary collateral is the transfer of ownership rights over an asset based on trust, with the provision that the asset, whose ownership rights have been transferred, remains under the control of its original owner."*

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1 Dina Dayanti, Sufiarina, and Riana Wulandari Ananto, "Perlindungan Hukum Hak Kreditur Penerima Fidusia Akibat Peralihan Objek Jaminan Fidusia Oleh Debitur," *Causa: Jurnal Hukum Dan Kewarganegaraan* 2, no. 5 (2024): 61–73.

2 Rachmadi Usman, *Hukum Kebendaan* (Jakarta: Raja Grafindo, 2011).

3 Rania Jasmindhia, "Pembebanan Jaminan Fidusia Atas Hak Kekayaan Intelektual," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 5 (2024): 1419–27.

4 Ni Kadek Ratih Maheswari and Putu Aras Samsithawrati, "Pengaturan Kekayaan Intelektual Sebagai Jaminan Kredit Untuk Menunjang Ekonomi Kreatif: Perspektif Pendaftaran Karya Dan Valuasi," *Kertha Negara : Journal Ilmu Hukum* 12, no. 2 (2024): 144–58.

5 Usman, *Hukum Kebendaan*.

The aforementioned article also serves as the primary legal basis for regulating the procedures for fiduciary collateral implementation, covering aspects such as definition, object, registration obligations, and execution rights. Additionally, this law guarantees the fiduciary recipient's right to direct execution through a fiduciary certificate, which holds legal enforceability without requiring judicial proceedings.[6]

Furthermore, Government Regulation No. 21 of 2015 on the Procedures for Fiduciary Collateral Registration and the Costs of Fiduciary Deed Preparation introduced an electronic fiduciary registration system. This aims to enhance efficiency, transparency, and expedite the guarantee registration process. The regulation also mandates the notification and removal of fiduciary collateral upon debt repayment to maintain administrative order and prevent overlapping collateral claims.[7] Meanwhile, Constitutional Court Decision No. 18/PUU-XVII/2019 provides additional protection for fiduciary grantors by tightening the requirements for unilateral execution by fiduciary recipients, thereby ensuring greater protection of the grantor's rights in the execution process.[8]

The Fiduciary Agreement is governed by the Fiduciary Law, which serves as a strong legal foundation for all involved parties. It aims to clarify rights and obligations; however, the implementation of fiduciary collateral in Indonesia faces several legal issues.[9] One significant issue is the failure of fiduciary recipients to remove registered fiduciary objects upon debt settlement.[10] Banks are among the entities that often engage in such practices, which may financial harm to fiduciary grantors and lead to the occurrence of multiple fiduciary claims.[11]

According to Article 16 of Government Regulation No. 21 of 2015, every fiduciary recipient is required to remove fiduciary collateral by submitting a notification to the Minister within the stipulated period. This provision aims to ensure administrative order and prevent potential overlapping collateral claims following debt repayment.

Law No. 42 of 1999 also provides clarity regarding the rights and obligations of the parties involved, as well as a structured dispute resolution mechanism in the implementation of fiduciary collateral.[12] However, in practice, various legal issues arise. One such issue is the violation related to registered fiduciary objects that are not followed by a declaration of their removal by the fiduciary recipient, whether it be a bank, other financing institutions, or individuals.[13]

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6 Chintya Agnisya Putri, Farris Nur Sanjaya, and Gunarto, "Efektivitas Pengecekan Sertifikat Terhadap Pencegahan Sengketa Tanah Dalam Proses Peralihan Hak Atas Tanah," *Jurnal Akta* 5, no. 1 (2018): 267–74.

7 Shelly Asrika Fazlia, Dwi Suryahartati, and Lili Naili Hidayah, "Penjaminan Fidusia Dengan Objek Hak Cipta," *Zaaken: Journal of Civil and Business Law* 3, no. 3 (2022): 392–411.

8 Abram Shekar Perdana and Sri Mulyani, "Hak Cipta Sebagai Objek Jaminan Fidusia Dalam Perjanjian Kredit Bank," *Jurnal Akta Notaris* 2, no. 1 (2023): 01–20.

9 Damella Chandra Gayatri, "Penerapan Cyber Notary Dalam Meningkatkan Keamanan Dan Kepercayaan Transaksi Elektronik," *Acten Journal Law Review* 1, no. 2 (2024): 144–56.

10 Naufal Muhammad Faaza and Abdullah Kelib, "Akibat Hukum Atas Hilangnya Jaminan Fidusia Dalam Hukum Positif Dan Hukum Islam," *Notarius* 16, no. 1 (2023): 571–86.

11 Jasmindhia, "Pembebanan Jaminan Fidusia Atas Hak Kekayaan Intelektual."

12 Dayanti, Sufiarina, and Ananto, "Perlindungan Hukum Hak Kreditur Penerima Fidusia Akibat Peralihan Objek Jaminan Fidusia Oleh Debitur," 2024.

13 Arie S. Hutagalung, *Analisa Yuridis Mengenai Pemberian Dan Pendaftaran Jaminan Fidusia* (Jakarta: FH UI Press, 2003).

The provisions on the removal of fiduciary collateral aim to ensure legal certainty and prevent overlapping use of collateral that has been settled, thereby maintaining an orderly and transparent fiduciary administration. Based on Article 25 of Law No. 42 of 1999 on Fiduciary collateral and Article 16 of Government Regulation No. 21 of 2015, it can be concluded that every fiduciary recipient is obliged to remove fiduciary collateral by notifying the Minister within the prescribed period.

To prevent potential future disputes, fiduciary recipients are also required to cancel the fiduciary registration at the Fiduciary Registration Office after the security has been removed. This step is crucial to ensure that no future conflicts arise regarding the rights and obligations stemming from fiduciary agreements.[14]

According to data from the Ministry of Law and Human Rights related to the organization PERBARINDO, which serves as a platform for Rural Banks (*Bank Perkreditan Rakyat* or BPR) as one of the legal subjects of fiduciary recipients, a total of 27,484,060 Fiduciary collateral certificates were registered between 2013 and 2016. However, as of 2024, 20,360,111 fiduciary securities have yet to be removed. This indicates that the fiduciary collateral removal process, which should be carried out by fiduciary recipients, has not been effectively implemented. Fiduciary recipients, particularly banks, which play a significant role in the fiduciary collateral system, have not fully complied with their obligations under the prevailing regulations.[15]

Fiduciary collateral is frequently utilized by banks as collateral for loans granted to customers. Therefore, it is crucial for banks, other financing institutions, and individuals as fiduciary recipients to fulfill their obligations regarding the removal of fiduciary collateral properly.[16] They must also comprehend the regulations governing fiduciary collateral removal to prevent potential violations. The removal of fiduciary collateral is essential in ensuring legal certainty and avoiding legal consequences for fiduciary grantors.[17]

If a fiduciary collateral is not removed despite the full repayment of the debt, it may lead to disputes or administrative inconsistencies, such as overlapping collateral. A fiduciary grantor can only re-fiduciate an asset after the fiduciary collateral on that asset has been formally removed.[18] The removal process signifies that the asset is no longer subject to fiduciary collateral and may be used as collateral for a new fiduciary agreement. If the asset is re-registered without undergoing the proper removal process, such an act constitutes re-fiduciary collateral . In this case, the fiduciary grantor may be subject to criminal sanctions.[19]

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[14] M. Fadli Ramadani and Dyah Ochtorina Susanti, "Pembagian Hak Waris Pada Asuransi Prudential Syariah Dalam Perspektif Hukum Kewarisan Islam," *Acten Journal Law Review* 1, no. 3 (2024): 219–30.

[15] Made Bagus Satria Yudistira, "Pengaturan Hukum Sertifikat Hak Atas Merek Sebagai Jaminan Fidusia Dalam Proses Pengajuan Kredit Di Perbankan Berdasarkan Undang-Undang Nomor 20 Tahun 2016," *Udayana Master Law Journal* 6, no. 3 (2017): 310–22.

[16] Farah Diana, M. Nur Rasyid, and Azhari, "Kajian Yuridis Pelaksanaan Penghapusan Jaminan Fidusia Secara Elektronik," *Syiah Kuala Law Journal* 1, no. 2 (2017): 37–52.

[17] Teguh Rizkiawan, "Kekayaan Intelektual Sebagai Objek Jaminan Kredit Perbankan: Prospek Dan Kendala," *Lex Renaissance* 7, no. 4 (2022): 883–94.

[18] Ferdiansyah Putra Manggala, "Dinamika Pembebanan Jaminan Fidusia Terkait Dengan Prinsip Spesialitas," *Jurnal Ilmu Kenotariatan* 4, no. 1 (2023): 78–88.

[19] Alya Nuzulul Qurniasari and Budi Santoso, "Kekayaan Intelektual Sebagai Aset Bisnis Dan Jaminan Kredit Perbankan Di Era Ekonomi Kreatif," *Notarius* 16, no. 3 (2024): 1376–91.

Failure to fulfill this obligation prevents the fiduciary grantor from registering the asset again as fiduciary collateral . Thus, "fiduciary collateral removal" and the "obligation to notify the Minister" are crucial actions. This obligation is directly linked to the validity of the fiduciary collateral object, which should have legally ended but remains recorded due to the absence of a removal process.[20] The removal of fiduciary collateral , accompanied by the notification requirement to the Minister, should determine the validity of the fiduciary collateral object.[21] This process is essential and must be executed, considering that the object's fiduciary status has effectively ended but remains formally recorded due to the failure to remove the fiduciary collateral .[22]

Based on the aforementioned explanation, it can be concluded that fiduciary collateral should be deemed nullified when the debt is fully repaid, ownership rights are released, or the fiduciary collateral object is destroyed. However, additional regulations impose an obligation to notify the Minister regarding the removal of fiduciary collateral.[23] This requirement carries legal consequences if the notification is not made. It underscores the importance of complying with administrative procedures as stipulated by law to prevent potential disputes or legal issues in the future.

II. METHODOLOGY

This study falls within the category of normative juridical research, which essentially examines law as a system of norms or rules that apply within society. Juridical research involves studying legislation within an integrated legal system and analyzing unwritten legal values that develop in society.[24] The approaches used in this study include the statutory approach, which focuses on legal rules as the primary object of analysis, and the conceptual approach, which examines the meaning of terms used in legislation from a theoretical perspective.

The legal materials used in this research are classified into three categories. First, primary legal materials, which consist of newly established terminology related to relevant facts or legal concepts, such as statutory regulations. Second, secondary legal materials, including books written by legal scholars and academic journals. Third, tertiary legal materials, which support the explanation of both primary and secondary legal materials. These include dictionaries (such as Indonesian and English language dictionaries), legal dictionaries, and relevant internet sources related to the research topic.[25]

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[20] Komang Ari Febriani and I Made Sarjana, "Analisis Yuridis Kekayaan Intelektual Yang Dibebankan Sebagai Jaminan Fidusia Dari Perspektif Ekonomi Kreatif," *Ethics and Law Journal: Business and Notary* 2, no. 4 (2024): 2024–2988.

[21] Ali Masykur Fathurrahman and Muhammad Sopiyana, "Perbandingan Pemanfaatan Hak Cipta Sebagai Objek Jaminan Fidusia Di Negara Indonesia & Amerika Serikat," *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum Dan Keadilan* 13, no. 2 (2022): 107–18.

[22] Angelina Putri Suhartini and Dewa Gde Rudy, "Hak Cipta Sebagai Agunan Kredit Bank," *Udayana Master Law Journal* 10, no. 1 (2021): 91–103.

[23] Maheswari and Samsithawrati, "Pengaturan Kekayaan Intelektual Sebagai Jaminan Kredit Untuk Menunjang Ekonomi Kreatif: Perspektif Pendaftaran Karya Dan Valuasi."

[24] Aan Efendi and Dyah Octhorina Susanti, *Penelitian Hukum (Legal Research)* (Jakarta: Sinar Grafika, 2018).

[25] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2007).

The legal material analysis technique involves systematic interpretation, grammatical interpretation, and extensive interpretation. Systematic interpretation examines legal issues by interpreting statutory provisions and linking them with other articles within the same regulation or with other relevant laws. Grammatical interpretation assesses the meaning of words and terms that are not commonly used in daily language, ensuring they align with general linguistic rules. This study includes terms such as fiduciary collateral , fiduciary object, and termination of fiduciary collateral , which are technical legal terms primarily used within legal discourse.

III. FIDUCIARY REGISTRATION AS A GUARANTEE OF LEGAL CERTAINTY

Fiduciary collateral is an important instrument in financing that provides legal protection to the fiduciary recipient while also offering flexibility to the fiduciary grantor. However, the implementation of administrative obligations, particularly the obligation to notify the Minister, is crucial for maintaining the legal status of the fiduciary collateral, both before and after the settlement of the debt.[26] The provision of notification to the Minister becomes essential to ensure legal certainty, transparency, and the protection of rights for the parties involved. Failure or delay in this notification could lead to potential losses and legal uncertainty.[27]

The registration of Fiduciary collateral is conducted at the Directorate General of General Legal Administration (AHU), and several key documents must be submitted.[28] These documents include the Fiduciary Deed, which has been signed by both parties (the grantor and recipient of the security) in the presence of a notary, official identification of both parties (such as identity cards or other official identification), a description of the fiduciary collateral (including type, quantity, and condition of the asset being pledged), and any other documents supporting the fiduciary agreement, if necessary.[29]

This registration process ensures that the fiduciary collateral is legally recognized and that the rights of both the debtor and creditor are properly documented, preventing future disputes over ownership and collateral status. Registration can now be carried out online through the system provided by the Directorate General of AHU, in addition to being conducted in person at the registered Fiduciary Registration Office. This process simplifies the management and recording of fiduciary collateral, offering greater efficiency and transparency in the administration of such collateral.

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[26] Muhamad Rayza Aditya and Alisyahbana Saleh, "Perlindungan Hukum Bagi Kreditur Akibat Jaminan Fidusia Yang Dialihkan Oleh Debitur Kepada Pihak Lain Tanpa Sepengetahuan Kreditur," *Jurnal Pro Hukum* 12, no. 2 (2023): 458–69.

[27] Fanny Suryani and Paramita Prananingtyas, "Penerapan Pasal 613 Kitab Undang-Undang Hukum Perdata Dalam Akta Jaminan Fidusia," *Notarius* 16, no. 1 (2023): 516–28.

[28] Diva Safna Putri et al., "Fungsi Notaris Pada Jaminan Fidusia Online Dikaitkan Dengan Prespektif Hukum Di Indonesia," *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 1, no. 3 (2022): 131–41.

[29] Detra Kusma Atri, Supriyadi, and Dhian Indah Astanti, "Peran Notaris Terhadap Perjanjian Kredit Dalam Pembuatan Akta Jaminan Fidusia Yang Didaftarkan Secara Online," *Semarang Law Review (SLR)* 3, no. 1 (2022): 1–11.

Fiduciary collateral is frequently used in financing in Indonesia, where the fiduciary grantor delivers the collateral to the fiduciary recipient (usually the creditor), but the object remains under the control of the fiduciary grantor. Fiduciary collateral provides legal protection to the fiduciary recipient while offering flexibility to the fiduciary grantor to retain control over the object until the debt is fully settled.[30] One crucial obligation in the fiduciary collateral mechanism is the notification to the Minister of Law and Human Rights, which relates to the registration of the fiduciary collateral object in the state's administrative system.[31]

This notification ensures legal certainty regarding the status of the pledged object.[32] Registration of fiduciary collateral with the ministry serves as a valid legal basis that a particular object has been pledged as fiduciary collateral, thus preventing the risk of legal disputes regarding ownership and rights over the collateral object and ensuring that the object is not transferred without the knowledge of the fiduciary recipient.[33] The notification or registration process, officially recorded with the competent state authority, provides transparency and allows stakeholders to be aware of the legal status of the registered fiduciary collateral.[34]

Based on Government Regulation Number 21 of 2015 and Minister of Law and Human Rights Regulation Number 25 of 2021, there is an obligation to notify the Minister of Law and Human Rights regarding changes in the status or removal of fiduciary collateral. The purpose of this notification is to ensure that the status of the registered fiduciary collateral object is updated in accordance with changes or the removal of the collateral. After the debt secured by the fiduciary collateral is settled, the fiduciary grantor has the right to request the removal of the fiduciary collateral from the registration.[35]

To ensure the status of the fiduciary collateral object, it is important to carry out the registration and recording process of fiduciary collateral and its removal in accordance with applicable regulations. Proper registration and recording of fiduciary collateral will provide legal certainty for both the fiduciary grantor and the fiduciary recipient. This certainty is not only for these two parties but also for any third parties who might be involved in related transactions or agreements. Correctly documented and legally certain registration can provide strong protection for ownership rights and control over the fiduciary collateral object, as well as reduce the potential for violations or conflicts in the future.[36]

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30 Hadi Subekti and Nynda Fatmawati Octarina, "Implikasi Hukum Atas Kelalaian Notaris Terhadap Keterlambatan Pendaftaran Jaminan Fidusia," *UNES Law Review* 6, no. 3 (2024): 8870–77.

31 Ridwan Sidharta, I Wayan Putu Sucana Aryana Aryana, and Cokorde Istri Dian Laksmi Dewi, "Tanggung Jawab Notaris Dalam Pembuatan Pendaftaran Jaminan Fidusia Secara Elektronik," *Jurnal Aktual Justice* 8, no. 2 (2023): 91–107.

32 Meralda Amala Istighfarin, "Perlindungan Hukum Kreditur Dan Pemilik Jaminan Dalam Pelaksanaan Perjanjian Kredit Dengan Jaminan Tanah Milik Orang Lain," *Acten Journal Law Review* 1, no. 1 (2024): 64–84.

33 Abiandri Riani Talitha Naz Fikri Akbar and Riani Talitha Nazhlif Semadji, "Peran Notaris Pada Pembuatan Akta Jaminan Fidusia Dengan Objek Jaminan Berupa Hak Cipta," *Indonesian Notary* 3, no. 2 (2021): 1–20.

34 Andi Widjaja, Agus Salim, and Belly Isnaeni, "Pemenuhan Hak Kepemilikan Penerima Fidusia Terhadap Pemberi Fidusia Yang Melakukan Wanprestasi Berdasarkan Akta Jaminan Fidusia," *J-CEKI : Jurnal Cendekia Ilmiah* 3, no. 5 (2024): 4278–95.

35 Herliyani, "Implikasi Hukum Dan Kekuatan Pembuktian Akta Jaminan Fidusia Yang Penandatanganannya Tidak Dilakukan Di Hadapan Notaris," *Officium Notarium* 3, no. 2 (2023): 154–64.

36 Diana, Rasyid, and Azhari, "Kajian Yuridis Pelaksanaan Penghapusan Jaminan Fidusia Secara Elektronik."

This process is carried out by notifying the Minister of Law and Human Rights so that the status of the fiduciary collateral object can be updated in the fiduciary registration system. The regulations regarding the removal of fiduciary collateral are already outlined in the aforementioned government regulation and ministerial regulation.[37] Before the debt is settled, the fiduciary collateral object remains under the control of the fiduciary grantor, although legally, the object has been pledged as collateral for the fiduciary recipient. The fiduciary grantor retains ownership of the object, while the fiduciary recipient has the right to take over the object if the debt is not settled.[38] Once the fiduciary grantor has paid off the debt, the status of the fiduciary collateral object will fully return to the fiduciary grantor. The process of removal or status update requires notification to the Minister to update the status of the object in the fiduciary registration system, in order to maintain legal certainty and ensure that the status of the fiduciary collateral object reflects its actual condition.[39]

Fiduciary collateral is a legal instrument used to ensure the fulfillment of an obligation or debt by granting rights over an object, where the object remains in the hands of the fiduciary grantor or debtor, even though the ownership status is transferred to the fiduciary recipient or creditor.[40] Property rights recognize the right of preference, which means that someone with a property right is entitled to have their right fulfilled before others, while the fulfillment for individuals is done proportionally.

The right of preference plays an important role in providing priority to the fiduciary recipient in situations where there is competition for the rights over the fiduciary collateral object, such as in the case of asset distribution during bankruptcy or the sale of the collateral object. This right in fiduciary collateral is a priority right granted in the event of a conflict of rights between the parties interested in the collateral object. In this case, the fiduciary recipient is granted priority in the distribution of the proceeds from the sale of the fiduciary collateral object, particularly when the fiduciary grantor is declared bankrupt or defaults on payment.[41]

The right of preference can attach to the collateral object if executed effectively and fairly, to ensure that all parties involved in the fiduciary agreement follow the applicable legal procedures, especially the registration of the fiduciary collateral. Proper registration of fiduciary collateral will provide clear legal certainty for its object. The status of the fiduciary collateral object with the right of preference will provide certainty and stronger legal protection for the fiduciary recipient.

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[37] Ketut Septian Dripananda, Lastuti Abubakar, and Nanda Annisa Lubis, "Keabsahan Akta Jaminan Fidusia Yang Tidak Ditandatangani Dihadapan Notaris Dalam Perspektif Undang-Undang Jabatan Notaris Dan Undang-Undang Jaminan Fidusia," *Al Qodiri : Jurnal Pendidikan, Sosial Dan Keagamaan* 22, no. 2 (2024): 188–200.

[38] Roma Borunami Olivia, "Eksekusi Jaminan Fidusia Berdasarkan Putusan Mahkamah Konstitusi Nomor 2/PUU-XIX/2021," *Jurnal Darma Agung* 31, no. 4 (2023): 1027–35.

[39] Ni Wayan Nilandari and Putu Aras Samsithawrati, "Kekayaan Intelektual Sebagai Objek Jaminan Fidusia: Perspektif Keabsahan Hukum Dan Mekanisme Penilaian," *Acta Comitas : Jurnal Hukum Kenotariatan* 8, no. 02 (2023): 324–39.

[40] Nishka Sylviana Hartoyo and Teddy Anggoro, "Permohonan Pendaftaran Jaminan Fidusia Secara Elektronik Oleh Notaris Pasca Dikeluarkannya PERMENKUMHAM Nomor 25 Tahun 2021," *Jurnal Mercatoria* 15, no. 1 (2022): 35–42.

[41] Ana Wahyu Wijayanti, "Batalnya Sertifikat Merek Yang Dijadikan Agunan Kredit Dalam Bentuk Jaminan Fidusia," *Sang Pencerah* 9, no. 3 (2023): 624–32.

The fiduciary recipient has priority rights over objects that have been registered as fiduciary collateral to ensure debt repayment before other creditors. The fiduciary recipient has the right to execute the fiduciary collateral object if the obligation is not fulfilled, prioritizing their rights over the object. Therefore, it is important to register fiduciary collateral and remove this right of preference.

IV. THE REMOVAL OF FIDUCIARY COLLATERAL WITH NOTIFICATION TO THE MINISTER

The removal of fiduciary collateral is a legal process undertaken to terminate the legal status of an object that has been pledged as fiduciary collateral. This process typically occurs after the debt secured by the fiduciary collateral has been fully paid by the grantor to the recipient of the fiduciary collateral. While the removal is carried out administratively, it has significant legal consequences for the status of the fiduciary collateral object.[42] Once the recipient of the fiduciary collateral notifies the relevant authorities about the removal, the fiduciary collateral registration office will make a notation of the removal in the national registration system.[43]

In the Fiduciary Collateral Regulation, in addition to the obligation to register fiduciary collateral, provisions regarding the removal of fiduciary collateral are also regulated, which takes place after the debt secured by the fiduciary collateral has been settled.[44] According to Article 16, Paragraph (1) of the Fiduciary Collateral Regulation, the removal of fiduciary collateral can be carried out under the following circumstances:

a. The debt secured by the fiduciary collateral has been paid off;
b. The rights to the fiduciary collateral are released by the recipient of the fiduciary collateral; and
c. The object of the fiduciary collateral has been damaged or destroyed.

The purpose of removing fiduciary collateral is to ensure administrative order in determining the legal status of the previously registered fiduciary collateral object. Once the removal is carried out, the object no longer serves as collateral for the debt, and the related fiduciary collateral certificate is considered invalid or no longer applicable. The recipient of the fiduciary collateral is required to send an electronic notification to the Minister of Law and Human Rights to have the fiduciary collateral removed from the list of registered collateral. After the notification is received, a certificate of removal will be issued, confirming that the collateral is no longer valid, thus ensuring that the object is free from any fiduciary encumbrance.[45]

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[42] Tajuddin Noor and Suhaila Zulkifli, "Pembiayaan Berbasis Kekayaan Intelektual Dengan Jaminan Fidusia Bagi Pelaku Ekonomi Kreatif," *Jurnal Rectum* 5, no. 1 (2023): 665–82.

[43] Yoga Muslim Irmanda and Yunanto, "Eksekusi Jaminan Fidusia Setelah Adanya Keputusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 Dan Nomor 2/PUU-XIX/2021," *Jurnal Ilmiah Universitas Batanghari Jambi* 23, no. 2 (2023): 1444–50.

[44] Bella Anggraini and Bambang Eko Turisno, "Jaminan Fidusia Secara Online Dengan Objek Hak Cipta Dalam Perjanjian Kredit," *Notarius* 16, no. 1 (2023): 83–93.

[45] Henrico Valentino Nainggolan et al., "Penerapan Putusan Mahkamah Konstitusi No.18/PUU-XVII/2019 Dalam Putusan Pengadilan Terkait Eksekusi Jaminan Fidusia," *Locus Journal of Academic Literature Review* 2, no. 4 (2023): 365–72.

The removal of fiduciary collateral can only be carried out after the grantor has fully repaid the debt to the recipient of the fiduciary collateral. The obligation to remove fiduciary collateral is crucial because failure to do so by the recipient may disadvantage the grantor.[46] If the grantor has repaid the debt, they cannot use the collateralized object as fiduciary collateral in a new credit agreement with another party, as the object remains registered as active fiduciary collateral.[47] Failure to remove the fiduciary collateral also introduces legal uncertainty, which may lead to disputes between the grantor and the recipient of the fiduciary collateral, and harm other parties involved in the fiduciary agreement. Therefore, the removal of fiduciary collateral must be carried out promptly to ensure legal certainty and the protection of the grantor's rights.[48]

Article 25, Paragraph (3) of Law No. 42 of 1999 stipulates that the grantor must notify the Minister when the fiduciary collateral has been removed. This provision is reinforced by Government Regulation No. 21 of 2015 on the Procedure for Registration and Fees for Fiduciary Collateral Deeds and Minister of Law and Human Rights Regulation No. 25 of 2021, which provides more detailed guidelines regarding the notification procedure and the administrative consequences of the removal of fiduciary collateral.[49]

The primary goal of these regulations is to establish legal certainty, terminating the legal relationship between the grantor and the recipient of the fiduciary collateral concerning the collateral object.[50] Additionally, these regulations aim to ensure the accuracy of fiduciary data so that third parties can be informed about the legal status of the collateral object and facilitate the efficient use of the collateral object. As a result, the grantor can reuse the fiduciary collateral after the debt is paid off. However, legal uncertainty can arise due to delays in notifying the Minister. One of the issues is the lack of a clear sanction for delayed notification beyond the 14-day deadline.[51] In practice, despite late notification, the Fiduciary Collateral Registration Office still accepts the notification, but this creates room for interpretation that could be misused.[52] This ambiguity may result in the collateral object remaining registered as active collateral, even though the debt has been repaid. The consequence of this is that a new recipient of fiduciary collateral cannot accept the object as valid collateral, and the grantor cannot use the object for other purposes or pledge it again.

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46 Dina Dayanti, Sufiarina Sufiarina, and Riana Wulandari Ananto, "Perlindungan Hukum Hak Kreditur Penerima Fidusia Akibat Peralihan Objek Jaminan Fidusia Oleh Debitur," *Causa: Jurnal Hukum Dan Kewarganegaraan* 2, no. 5 (2024): 61–73.

47 Diva Paris Alfitra, "Kepastian Hukum Penghapusan Objek Jaminan Fidusia Secara Elektronik," *Recital Review* 3, no. 1 (2021): 122–49.

48 Agustina Purwasih and I Gusti Agung Wisudawan, "Pelaksanaan Lelang Jaminan Fidusia Sebagai Jaminan Kredit Dalam Perbankan," *Commerce Law* 3, no. 1 (2023): 145–56.

49 Vikriatuz Zahro, Iswi Hariyani, and Iwan Rachmad Soetijono, "Juridical Implications of the Issuance of Covernotes by A Notary as Basis of Disbursing Credit of Banking," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 102–18.

50 Putri Wahyu Maulana, "Perjanjian Lisensi Berupa Konten Youtube Pada Jaminan Fidusia Menurut Peraturan Pemerintah Nomor 24 Tahun 2022 Tentang Ekonomi Kreatif," *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance* 3, no. 1 (2023): 529–39.

51 Dicky Bagus Sanjaya and Tamsil Tamsil, "Analisis Yuridis Terhadap Putusan Mahkamah Konstitusi 2/PUU-XIX/2021 Bagi Penerima Jaminan Fidusia (Kreditur)," *Novum : Jurnal Hukum* 10, no. 1 (2023): 107–21.

52 Novia Betsy Clarissa and Siti Malikhatun Badriyah, "Efektivitas Pendaftaran Jaminan Fidusia Secara Online Oleh Notaris," *Notarius* 16, no. 1 (2023): 426–38.

Furthermore, delays in notification or failure to notify the removal of fiduciary collateral can be considered negligence on the part of the recipient of the fiduciary collateral, while the grantor suffers because the object, which is no longer tied to the debt, is still considered "encumbered." The legal implication of such delays or failure to notify is that the fiduciary collateral status does not automatically cease. Article 25, Paragraph (2) of the Fiduciary Collateral Law states that fiduciary collateral shall be removed upon repayment of the debt, but Paragraph (3) emphasizes that notification to the Minister is a necessary administrative condition for formal removal. Without this notification, the fiduciary right remains administratively active and cannot be re-pledged.

The collateral object still registered under the old fiduciary recipient cannot be re-pledged, thus hindering the flexibility of the grantor in utilizing the asset.[53] To address the issues related to the obligation to notify the Minister, several steps can be taken. First, a revision of the Fiduciary Law and its regulations is necessary, particularly to clarify the notification deadline and to impose strict administrative sanctions for delays in notification. Additionally, the legal status of the collateral object during the delay period should be clearly stated, so as to avoid any uncertainty regarding the status of the object.

Moreover, awareness campaigns targeting relevant parties, such as fiduciary recipients, grantors, and notaries, are also essential to provide a deeper understanding of the notification obligation and its consequences. Finally, regulations ensuring legal certainty should be reinforced, ensuring that even in the case of delayed notification, objects for which the fiduciary collateral has been repaid are no longer considered active collateral and can be reused by the grantor for other purposes. By taking these steps, transparency and efficiency in the management of fiduciary collateral can be improved.[54]

The obligation to notify the Minister is an essential administrative requirement for terminating the legal relationship concerning fiduciary collateral objects. However, the current regulations still have gaps, namely the lack of clarity about the legal status in cases of delays or even non-notification. Therefore, revising existing regulations is necessary to provide further clarity regarding the legal status of the collateral object in such circumstances.[55]

The implementation of a more efficient digital system for the notification and removal process of fiduciary collateral should also be considered to expedite administrative procedures. Public awareness campaigns for relevant parties, such as fiduciary grantors, fiduciary recipients, and notaries, are crucial to ensure a good understanding of this obligation and to enhance legal certainty and administrative efficiency in the implementation of fiduciary collateral. Increasing transparency in this process will also reduce the potential for legal disputes in the future, as the involved parties can more easily access the current status of the fiduciary collateral objects through a more open and integrated system.

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[53] Zidna Aufima, "Akibat Hukum Bagi Notaris Dalam Pembuatan Akta Jaminan Fidusia Pasca Terbitnya Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 Tentang Eksekusi Jaminan Fidusia," *Journal of Judicial Review* 22, no. 1 (2020): 70–88.

[54] Hasanuddin Muhammadin and M. Yasin Al Arif, "Reformulasi Ketentuan Eksekusi Jaminan Fidusia Dan Relevansinya Dengan Pemenuhan Prinsip Keadilan, Kemanfaatan Dan Kepastian Hukum," *Udayana Master Law Journal* 12, no. 3 (2023): 726–41.

[55] Clarissa and Badriyah, "Efektivitas Pendaftaran Jaminan Fidusia Secara Online Oleh Notaris."

Currently, fiduciary recipients who are late in providing notification for the removal of fiduciary collateral are still accepted by the fiduciary registration system. This indicates that the 14-day notification deadline is not legally binding. This situation contradicts the principle of legal certainty because the existing rules lack clarity. When notification is delayed, the legal status of the fiduciary collateral object remains registered with the Fiduciary Registration Office, even though the debt has been settled. The impact is that the previous fiduciary recipient is still considered to have fiduciary rights over the object, despite the grantor's obligations being completed. This situation prevents the fiduciary grantor from using the collateral object for other purposes, such as re-pledging it, and could potentially harm the grantor who wishes to immediately use the object for other productive activities. It also creates the potential for disputes between the grantor and the fiduciary recipient, leading to differing legal interpretations.[56]

Current practice shows that delayed notifications are still accepted by the system, but there is no mechanism that automatically ensures legal certainty that the fiduciary collateral has been removed after the debt is settled. The absence of clear regulations causes the legal status of the object to remain "in limbo" until official notification is made. Therefore, existing regulations need to be clarified by adding provisions that address the legal consequences of delayed notifications after the 14-day period or by implementing an automatic fiduciary removal mechanism in the administrative system once the debt has been settled, even if the notification is delayed. Furthermore, strict administrative sanctions, such as fines, should be imposed on either the fiduciary recipient or grantor who fails to notify the removal within the prescribed time.[57]

This regulation must affirm that fiduciary collateral is automatically considered legally removed once the debt is settled, even if the administrative notification has not been made. However, the notification remains necessary to provide clarity on the administrative status. To this end, fiduciary grantors, fiduciary recipients, notaries, and other relevant parties should be educated on the importance of the obligation to notify the removal of fiduciary collateral and the implications of any delay.[58]

The provision regarding the 14-day period for notifying the removal of fiduciary collateral should be considered administrative; however, the lack of clarity regarding the consequences of delay creates legal uncertainty. Therefore, regulatory revision, the reinforcement of penalties, the digitization of the system, and education for all involved parties are crucial to address this issue. These measures will ensure that the rights of fiduciary recipients, fiduciary grantors, and third parties are protected, while also creating legal certainty in the removal of fiduciary collateral.[59]

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[56] Aura Mayshinta and Muh. Jufri Ahmad, "Perlindungan Terhadap Kreditur Pemegang Jaminan Fidusia Atas Hak Cipta Konten Youtube," *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance* 3, no. 1 (2023): 51–63.

[57] Yehezkiel William Franklin Ukus, "Eksistensi Lembaga Jaminan Fidusia Dalam Kaitannya Dengan Pemberian Kredit Perbankan," *Jurnal Lex Privatum* 11, no. 2 (2023): 134–48.

[58] Mohammad Reynaldy Adam and Wiwik Wulandari, "Kepastian Hukum Akta Perubahan Badan Kredit Desa Menjadi PT. Lembaga Keuangan Mikro," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 162–72.

[59] Henny Saida Flora, "Fungsi Akta Notaris Dalam Pembuatan Akta Jaminan Fidusia Menurut Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia," *Jurnal Justiqa* 3, no. 2 (2021): 77–91.

V. LEGAL IMPLICATIONS OF THE VALIDITY OF THE LEGAL STATUS OF FIDUCIARY COLLATERAL

In the Principle of Legal Certainty, the implementation of the online removal of Fiduciary Collateral should provide administrative convenience that strengthens legal certainty. The digitization of the fiduciary removal process aims to enhance efficiency and transparency in administration. However, this mechanism must be accompanied by clear regulations to avoid creating legal uncertainty for the parties involved.

One aspect that needs to be clarified is the synchronization between the material legal status, such as the settlement of the debt, and the administrative status of the fiduciary collateral in the system. Currently, the absence of clear regulations regarding the consequences of delayed notification for the removal of fiduciary collateral creates a legal gap that can disadvantage the fiduciary recipient, the fiduciary grantor, and third parties. While the removal of fiduciary collateral can be done online, the legal status of the fiduciary object during the delay in notification remains unclear, which could potentially lead to disputes and obstacles in utilizing the collateral.[60]

Therefore, a revision of the regulations governing online fiduciary removal is necessary, which should include provisions regarding binding deadlines, administrative sanctions for delayed notifications, and an automatic removal mechanism after the debt is settled.[61] This would ensure that the online fiduciary removal system genuinely provides legal certainty, protects the rights of the parties, and creates transparency and efficiency in fiduciary administration.[62]

Digitalization in the Removal of Fiduciary Collateral has not yet fully ensured substantive legal certainty. Although the online system allows for a more practical removal of fiduciary collateral, legal issues still arise due to the lack of clear regulations regarding the legal status of the fiduciary object when the removal notification exceeds the 14-day deadline set forth in Article 25 paragraph (3) of the Fiduciary Collateral Law.[63]

In practice, the fiduciary recipient or the authorized party can still remove the fiduciary collateral after the 14-day deadline. However, there is no legal certainty regarding the status of the fiduciary object during this delay period, whether it is still considered a valid collateral or not.[64] The fiduciary recipient should have an obligation to promptly remove the fiduciary collateral administratively through the online system after the debt has been settled and to notify the removal within the specified timeframe.

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60 Dianita Halim and Gunardi, "Studi Perbandingan Penggunaan Hak Cipta Film Sebagai Objek Jaminan Fidusia Di Indonesia Dan Amerika Serikat," *UNES Law Review* 5, no. 4 (2023): 3302–24.

61 Rifandika Naufal Afif, Andi Muh Ihsan, and Dita Elvia Kusuma Putri, "Akibat Hukum Bagi Notaris Terhadap Penyalahgunaan Keadaan Dalam Pembuatan Akta Autentik," *Jurnal Ilmu Kenotariatan* 5, no. 1 (2024): 45–61.

62 Rizky Andaru Setiawan and Joko Ismono, "Kepastian Hukum Kreditur Preferen Dalam Upaya Parate Executie Perjanjian Fidusia Menurut Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia," *Law and Humanity* 1, no. 3 (2023): 302–23.

63 Febriansyah Ramadhan Sunarya, "Tinjauan Yuridis Praktik Fidusia Ulang Terhadap Objek Jaminan Fidusia Terdaftar," *Jurnal Pro Hukum* 12, no. 2 (2023): 368–77.

64 Fernando Paulus Manafe, Agustinus Hadewata, and Orpa J. Nubatonis, "Pelaksanaan Eksekusi Sertifikat Jaminan Fidusia Terhadap Kreditor Berdasarkan Ketentuan Undang Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia," *Comserva : Jurnal Penelitian Dan Pengabdian Masyarakat* 3, no. 07 (2023): 2662–76.

The absence of clear regulations regarding the delay in the removal of fiduciary collateral can disadvantage the fiduciary grantor, who has settled the debt but remains hindered in the utilization of the collateral object. The unclear status of the fiduciary object, if not immediately removed, remains recorded in the system as an active collateral. This affects the fiduciary grantor's inability to reuse the object, either to pledge it again to another party or to transfer it in other transactions.

This legal uncertainty is further exacerbated by the lack of an automated mechanism in the fiduciary collateral removal system. Although online removal of fiduciary collateral has facilitated administrative processes, the system does not automatically remove the fiduciary status after the debt is settled, but rather relies on notification from the fiduciary recipient. In practice, fiduciary recipients often neglect their responsibilities, causing the fiduciary object to remain recorded as active collateral despite the debt being paid off.

To address this issue, it is necessary to revise the regulations governing the automatic removal of fiduciary collateral after the debt has been settled, without waiting for a notification from the fiduciary recipient. Additionally, administrative sanctions should be implemented for parties who fail to provide the removal notification within the stipulated timeframe. This would ensure legal certainty for all parties involved, better protecting the rights and interests of the fiduciary grantor, fiduciary recipient, and third parties.

The removal of fiduciary collateral, which can now be conducted online through the General Directorate of General Legal Administration, has made administrative processes easier. However, this mechanism still does not fully guarantee legal certainty without clear regulations on the consequences of delayed removal notifications. To ensure fairness and legal protection for all parties, it is necessary to revise the regulations to close the legal gaps concerning the fiduciary status during delays. Additionally, an automatic removal mechanism should be implemented immediately after the debt is settled, without relying on the fiduciary recipient's notification. Strict administrative sanctions for those who fail to fulfill their notification obligations are also crucial.[65] Legal certainty in fiduciary collateral can only be achieved if the legal system eliminates ambiguities that could potentially harm the rights and interests of the parties involved.

Procedurally, the registration and notification of the legal status of the fiduciary collateral object only take effect after the object is registered in the fiduciary collateral registration system. This registration grants fiduciary rights to the fiduciary recipient, including preference rights over the collateral object. The obligation to notify the Minister of Law and Human Rights about the removal of fiduciary collateral aims to ensure that the collateral object is free from fiduciary encumbrances. However, delays in notification or administrative removal can obscure the legal status of the collateral object and potentially harm the involved parties, particularly the fiduciary grantor.[66]

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[65] Reodha Noer Ishak Tuanaya, Bambang Eko Turisno, and Novira Maharani Sukma, "Akibat Hukum Dan Penyelesaian Atas Objek Fidusia Yang Di Fidusia Ulang Apabila Debitur Wanprestasi," *Notarius* 13, no. 2 (2020): 629–41.

[66] Tsuroyyaa Maitsaa' Jaudah, Puji Sulistyaningsih, and Dakum, "Konsekuensi Atas Penghapusan Jaminan Fidusia Yang Tidak Dilakukan," *Media of Law and Sharia* 5, no. 4 (2024): 282–92.

In practice, fiduciary recipients who have the obligation to remove fiduciary collateral often do not fulfill their duties optimally.[67] Typically, the fiduciary recipient only returns proof of ownership of the collateral object along with a debt settlement certificate as proof that the fiduciary grantor has repaid their debt, but does not issue a certificate for the removal of the fiduciary collateral.[68] As a result, the fiduciary grantor is the party that suffers harm. This is in line with Article 17 paragraph (2) of Government Regulation No. 21 of 2015 on the Procedures for Registration and Fiduciary Deeds, which states that if the fiduciary recipient or their representative fails to notify the removal of fiduciary collateral as regulated in Article 16 of the same regulation, the fiduciary collateral cannot be re-registered. Therefore, a stricter legal mechanism is needed to ensure the fiduciary recipient's compliance with their obligations in the fiduciary collateral removal process.[69]

Although fiduciary collateral removal can now be done online, its implementation still causes legal uncertainty, especially regarding the obligation to notify the Minister as an administrative requirement for fiduciary removal. This uncertainty is further compounded by the inconsistency between the Fiduciary Security Law, Government Regulation, and Ministerial Regulations, which regulate the 14-day notification period for the removal of fiduciary collateral. Article 25 paragraph (2) of Law No. 42 of 1999 on Fiduciary Security states that fiduciary collateral is removed after the debt is settled, but Article 25 paragraph (3) requires notification to the Minister for administrative removal. Government Regulation No. 21 of 2015 and Minister of Law and Human Rights Regulation No. 25 of 2021 further regulate this mechanism but do not provide firm sanctions for delayed notifications. As a result, the 14-day notification period lacks strong binding force and instead creates ambiguity regarding the legal status of the fiduciary collateral during the delay period.

This inconsistency has the potential to contradict the principle of legal certainty (rechtssicherheit), which requires that legal rules be clear, firm, and consistently enforceable. In practice, delayed notifications are still accepted by the system, but without an automatic mechanism that removes fiduciary collateral after the debt is settled, the fiduciary collateral remains recorded as active collateral.[70] This can harm the fiduciary grantor who cannot reuse the object, as well as create a legal loophole for the fiduciary recipient to delay or even neglect their duty in the removal process. Therefore, regulatory revisions that align better with the principle of legal certainty are necessary, both by imposing administrative sanctions for delayed notifications and by implementing an automatic mechanism that removes fiduciary collateral immediately after the debt is settled, to avoid legal uncertainty that harms the parties involved.

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[67] Sita Farahianie, "Kedudukan Hukum Akta Autentik Yang Dibuat Oleh Notaris Dalam Perspektif Cyber Notary," *Acten Journal Law Review* 1, no. 2 (2024): 171–86.

[68] Maheswari and Samsithawrati, "Pengaturan Kekayaan Intelektual Sebagai Jaminan Kredit Untuk Menunjang Ekonomi Kreatif: Perspektif Pendaftaran Karya Dan Valuasi."

[69] Tiyas Putri Megawati, Aulia Dwi Ramadhanti, and Faizah Nur Fahmida, "Akibat Hukum Penandatanganan Surat Kuasa Jual Mutlak Sebelum Debitor Mengalami Kredit Macet," *Jurnal Ilmu Kenotariatan* 5, no. 1 (2024): 76–87.

[70] Bella Adinda Purwasaputri, I Wayan Yasa, and Ajeng Pramesthy Hardiani Kusuma, "Tanggung Jawab Asuransi Astra Terhadap Tertanggung Atas Kehilangan Sepeda Motor Yang Masih Dalam Proses Kredit," *Acten Journal Law Review* 1, no. 3 (2024): 253–70.

VI. CONCLUSION

Fiduciary security ends with the substantive repayment of debt, but without an official notification, the status of the fiduciary object remains recorded as an active collateral in the system. The absence of clear regulations regarding the removal after 14 days and the lack of an automatic mechanism to provide legal certainty about the termination of fiduciary security, this creating uncertainty for the parties involved. This is problematic because the status of the fiduciary object that has not been removed may create legal risks, such as the potential for overlapping collateral or disputes regarding ownership of the collateral object.

The legal validity of fiduciary collateral can be analyzed from two perspectives: substantive and procedural. From a substantive perspective, the provision of fiduciary security binds both parties—the fiduciary grantor and the fiduciary recipient—to fulfill their respective obligations and rights, with the collateral object being part of a valid agreement. The validity of this agreement depends on the mutual consent of both parties regarding the collateral object used as security for the debt. On the procedural side, the registration and notification regarding the validity of the fiduciary collateral object only apply once the object is registered in the fiduciary collateral registration system. This process provides the legal basis for the fiduciary recipient to have rights over the collateral object and enforce those rights if the fiduciary grantor defaults.

However, if the fiduciary removal is not carried out after the debt is settled, the collateral object remains recorded in the system as an active security, even though the debt has been substantively repaid. In this case, the fiduciary recipient still holds preferential rights over the fiduciary object, even if the debt has been settled. Therefore, it is crucial for both parties to ensure that the fiduciary collateral removal is carried out promptly in accordance with the applicable provisions to avoid legal disputes and ensure legal certainty for the fiduciary grantor, fiduciary recipient, and any third parties involved.

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Jurnal Ilmu Kenotariatan
Volume 6 Issue 1 (2025), pp 77-90
doi: 10.19184/JIK.v6i1.53686
Published Online May 2025

Urgency of Regulating the Registration of Land Rights For Former Foreign/Chinese Assets

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ABSTRACT

The issue of legal certainty of land rights can be traced back to the history of the birth of the Indonesian nation, which is known to have had several periods of population settlement in its development. One of these issues is the Assets of Chinese Foreigners. It is known that the government has determined that Former Foreign/Chinese Assets has existed since 1957 and is a reaction to the emergency situation at that time. Normatively, the regulation of Former Foreign/Chinese Assets settlement refers to the Regulation of the Minister of Finance Number 62/PMK.06/2020 concerning the Settlement of Former Foreign/Chinese Assets. In this legal principle, there are four methods of settling Former Foreign/Chinese Assets, including being determined as assets of government agencies, being released with payment of compensation to the state, being returned to the legitimate party, and being declared completed under certain circumstances. In fact, the continuation of Former Foreign/Chinese Assets to this day is still a polemic in society. Moreover, it is known that in the settlement of Former Foreign/Chinese Assets assets there is a phenomenon of lawsuits between the state and its people. Of course, this is something strange, especially since the object of the lawsuit is a land title certificate which is in fact the result of a legal product from the state itself. So it requires further study regarding the obstacles and obstacles to completing Former Foreign/Chinese Assets.

KEYWORDS: *Legal Certainty, Lamd Rights, Former Foreign/Chinese, Assets.*

HOW TO CITE:
Erdika, Lucy, et. al. *'Urgency of Regulating the Registration of Land Rights For Former Foreign/Chinese Assets'* (2025) 6:1 Jurnal Ilmu Kenotariatan 77-90. DOI: ‹https://doi.org/10.19184/jik.v6i1.53686›

I. INTRODUCTION

Historical events certainly influenced the birth and development of Land Law in Indonesia. History records several times that land law in Indonesia experienced changes that occurred

due to historical events. In the colonial era, various land rights were in effect with different laws, namely: [1]

1. Land rights subject to western agrarian law in the Civil Code, such as Eigendom Rights, Opstal Rights, Erfpact Rights, and so on;
2. Land rights subject to the customary agrarian law of each region, referred to as customary land, namely yasan land, bengkok land, village treasury land, grazing land, and so on;
3. Land rights created by the Swapraja government, such as grant sultan (customary ownership rights granted by the Swapraja government specifically for Swapraja communities registered at the Swapraja Office). All Swapraja agrarian law rules are based on regulations on Swapraja regional land, such as Aceh and Yogyakarta, which are regulations for land in the relevant region.[2]
4. Land rights are the creation of the Dutch East Indies government, such as *Agrarisce Eigendom* (land owned by customary law but subject to western); *lander-injen bezitrecht* (land whose legal subject is limited to the Chinese).

Nowadays, the government in the field of development is quite rapid, this can be seen from all forms of policies from various sectors becoming one of the national priority work plan programs of each ministry and institution, including the land sector.[3] As a sector that controls the livelihoods of many people, in fact it cannot be separated from issues that still occur and have not been resolved completely.[4] The land aspect has strategic issues, including aspects of spatial planning, legal certainty of land rights, electronic services, control and law enforcement.[5] Some of these issues have arisen over time, but there are also those that are historical legacies and have developed as this country has aged.[6]

The colonial era ended along with the beginning of the independence era, and continued with the reform era until now, land issues seem inseparable from historical legacies.[7] One of these legal phenomena is the Assets of Foreign-Owned Chinese (hereinafter referred to as Former Foreign/Chinese Assets). In the Provisions of Article 2 of the Regulation of the Minister of Finance Number 62/PMK.06/2020 concerning the Settlement of Former Foreign/Chinese-Owned Assets, it is explained regarding the scope of Former Foreign/Chinese Assets which includes land and/or buildings formerly owned by:

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1 Sigit Sapto Nugroho, *Hukum Agraria Indonesia*, (Solo: Pustaka Iltiizam, 2017), p.36.

2 *Ibid*, p. 16.

3 Elzha Putri Widya Yurisa, "Pendaftaran Tanah Sistematis Lengkap (PTSL) Terhadap Tanah Registrasi Desa (Letter C) Di Desa Mangli Wetan, Kecamatan Tapen, Kabupaten Bondowoso," *Jurnal Ilmu Kenotariatan* 3, no. 2 (2022): 66–75.

4 Natasya Aulia Putri et al., "Bridging the Gap by Exploring Inequalities in Access to Land and Disparities in Agrarian Law in Indonesia," *Jurnal Ilmu Kenotariatan* 5, no. 1 (2024): 1–16.

5 Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 27 of 2020 concerning the Strategic Plan of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency for 2020-2024.

6 Hilbertus Sumplisius M. Wau and T. Keizerina Devi Azwar, "Intercept the Land Mafia: An Analysis of the Role of PPAT as a Shield in Illegal Property Transactions," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 88–101.

7 Restu Adi Putra, Dominikus Rato, and Dyah Octhorina Susanti, "Kepastian Hukum Pengaturan Publisitas Pada Program Pendaftaran Tanah Sistematis Lengkap (PTSL)," *Jurnal Ilmu Kenotariatan* 2, no. 2 (2021): 1–13.

1. Chinese associations that are declared prohibited and disbanded by the Central Warlord Regulation;
2. Foreign religious movements that are contrary to the characteristics of the Indonesian nation and have been declared illegal and then disbanded;
3. Groups that were the target of mass action in 1965 to 1966, due to the involvement of the People's Republic of China (PRC) in the G30SPKI incident which was regulated by the Regional Dwikora Executive Authority;
4. Bodies formed by Chinese people, migrants (Hoa Kiauw) who are not Foreign Citizens who have diplomatic relations with the Republic of Indonesia and/or have received recognition from the Republic of Indonesia, including their branches and members.

Furthermore, it can be seen that based on the provisions of Article 10 Paragraph (1) of the Minister of Finance Regulation Number 129 of 2020 concerning the Second Amendment to the Minister of Finance Regulation Number 62/PMK.06/2020 concerning the Settlement of Formerly Foreign/Chinese-Owned Assets, it states that the Settlement of Former Foreign/Chinese Assets is carried out in the following manner[8]:

1. its legal status is confirmed as State/Regional/Village Property;
2. its control is released from the State to a Third Party or Other Party by way of payment of compensation to the Government;
3. returned to a legitimate Third Party; and/or
4. declared complete due to certain circumstances;

In fact, the sustainability of Former Foreign/Chinese Assets until now is still a polemic in society. Moreover, it is known that in the settlement of Former Foreign/Chinese Assets assets there is a phenomenon of lawsuits between the state and its people.[9] Of course, this is something strange, especially since the object of the lawsuit is a land title certificate which is in fact the result of a legal product from the state itself.[10] This problem is especially related to the obligation to settle Former Foreign/Chinese Assets through payment of compensation to the state even though the land has been certified.[11]

One example of a case that occurred is the Decision of the Central Jakarta District Court Number. 272 / Pdt.G / 2017 / PN.Jkt.Pst Juncto. Number: 517 / PDT / 2018 / PT.DKI Juncto 1935 / K / Pdt / 2019. which is known to be a dispute between Zheng Zhi Yu as the Plaintiff against the Government of the Republic of Indonesia, the Ministry of Finance of the Republic of Indonesia with the case being an objection from the Plaintiff to the Letter from the Defendant

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8 Regulation of the Minister of Finance of the Republic of Indonesia Number 129 of 2024 concerning the Second Amendment to the Regulation of the Minister of Finance Number 62/PMK.06/2020 concerning the Settlement of Former Foreign/Chinese Assets

9 Dony Sasmita et al., "Optimalisasi Penyelesaian Aset: Tinjauan Kritis Kebijakan Penyelesaian Aset Bekas Milik Asing/Tionghoa," *Amanna Gappa* 33, no. 1 (January 17, 2025): 18–42.

10 Holla, Rafi Salhi, and Clarissa Oktaviriya Prakoso, "Legal Certainty Regarding the Conversion of Land Certificates To An Electronic System Based On Security Principles," *Jurnal Ilmu Kenotariatan* 5, no. 2 (2024): 88–101.

11 Bayu Praditya Herusantoso, "The Antinomy of Agrarian Reform Regulations After the Establishment of the Land Bank Authority," *Jurnal Ilmu Kenotariatan* 5, no. 1 (2024): 17–27.

which in essence stated that the land and buildings were assets originating from Former Foreign/Chinese Assets and requested compensation payments to the state. The existence of the facts of the case in the court institution is certainly a legal issue that requires further study.

Based on this background, the author requires further study of the Obstacles and Constraints in Settlement of Former Foreign/Chinese Assets Based on the Provisions of Article 10 Paragraph (1) of the Regulation of the Minister of Finance Number 129 of 2020 concerning the Second Amendment to the Regulation of the Minister of Finance Number 62/PMK.06/2020 concerning Settlement of Formerly Foreign/Chinese-Owned Assets.

II. METHODOLOGY

This study uses a normative-empirical legal research. According to Abdulkadir Muhammad, applied law research is a study that uses normative-empirical legal case studies in the form of legal behavior products.[12] Normative-empirical legal research begins with written positive legal provisions that apply to in concreto legal events in society, so that in its research there is always a combination of two stages of study, namely:

1. The first stage is a study of applicable normative law;
2. The second stage is the application to in concreto events in order to achieve the established legal objectives. This application can be realized through real actions and legal documents. The results of the application will create an understanding of the realization of the implementation of the normative legal provisions that are studied have been carried out properly or not.

The problem approach according to Peter Mahmud Marzuki can be divided into several parts, including Case Approach, Statute Approach, Historical Approach, and Conceptual Approach.[13] The sources of legal materials for this research include primary legal materials, secondary legal materials, and tertiary legal materials. To complete the primary, secondary, and tertiary legal materials, it is also equipped with other legal materials through discussions and interviews between several parties who have roles in the settlement of former foreign/chinese assets. This research was conducted by emphasizing the analysis of existing legal materials.[14]

III. FACTORS CAUSING LEGAL PROBLEMS IN THE SETTLEMENT OF FORMERLY FOREIGN/CHINESE-OWNED ASSETS

To analyze the causes of the Legal Problems of Former Foreign/Chinese Assets Object Settlement, the author conducted an analysis through several case positions, legal considerations, and court decisions. Before determining the case to be used as analysis material, the author conducted a search related to the number of cases in the Court that had been registered and had court decisions online through the official website page of the Supreme Court Decision Directory and the Case Tracking Information System with the following results:

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[12] Abdul Kadir Muhammad, Hukum dan Penelitian Hukum, (Bandung: Citra Aditya Bakti, 2004), p.20.

[13] Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2011), p.93.

[14] Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2005), p.46.

Table 1.1
Number of Decisions Related to Former Foreign/Chinese Assets

Number	Year	Number of Verdicts	Classification of Decisions
1	2015	3 Decision	2 Civil Case Decision, 1 Administrative Court Case Decision
2	2016	2 Decision	1 Administrative Court Case Decision, 1 Civil Case Decision
3	2017	3 Decision	2 Administrative matters, 1 Civil Cases
4	2018	3 Decision	3 Civil Cases
5	2019	4 Decision	1 Special Criminal Cases, 2 Civil Cases, 1 Administrative matters
6	2020	1 Decision	1 Civil Cases
7	2021- to date	3 Decision	2 Civil Cases, 1 Administrative matters
Total		**19 Decisions**	

Source: Supreme Court Decisions Directory, accessed 2025

Based on the following data grouping, the author can describe that when this research was conducted, there were 19 court decisions related to Former Foreign/Chinese Assets. Of the 19 decisions, the author can describe that there are 12 decisions classified as Civil cases, 6 decisions classified as State Administrative cases, and 1 decision classified as a Special Criminal case.[15] Based on the legal facts above, the author can analyze that the existence of unresolved Former Foreign/Chinese Assets has caused legal problems in society.[16] Of course, based on several types of decision classifications above, the author took several examples of decisions with the classification of State Administrative and Civil cases that have characteristics that are in accordance with the formulation of the existing problem. These considerations are based on analyzing the causes of legal ambiguity through case positions, legal considerations, and court decisions.

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[15] Dimas Yudha Permana, Moh. Sigit Gunawan, and Sutiyono Suwondo, "Tinjauan Yuridis Status Hukum Keberadaan 'Aset Bekas Milik Asing/Tionghoa' Terkait Dengan 'Peraturan Menteri Keuangan Nomor 31/PMK.06/2015' (Studi Kasus Di Kantor Pelayanan Kekayaan Negara Dan Lelang Cirebon)," *Hukum Responsif* 11, no. 2 (2020): 93–100.

[16] Sasmita et al., "Optimalisasi Penyelesaian Aset: Tinjauan Kritis Kebijakan Penyelesaian Aset Bekas Milik Asing/Tionghoa."

Table 1.2
The Parties in the Former Foreign/Chinese Assets Case

No	Case Number	Plaintiff	Defendant
1.	272/Pdt.G/2017/PN.Jkt.Pst *Jucto* 517/PDT/2018/PT.DKI *Jucto* 1935/K/Pdt/2019 juncto 3008/K/PDT/2022 Juncto 867 PK/Pdt/2023	Zheng Zhi Yu, Indonesian citizens	• Ministry of Finance of the Republic of Indonesia cq. Directorate General of State Assets cq. Regional Office of DJKN DKI Jakarta (Defendant) • Central Jakarta City Land Office (Co-Defendant)
2	104/Pdt.G/2019/N.Smr *juncto* 32/PDT/2021/PT.SMR *Juncto* 3008/K/PDT/2022	PT.Sakalo, domiciled in samarinda	• Ministry of Finance of the Republic of Indonesia cq. Directorate General of State Assets • Head of the National Land Agency Office of Samarinda City
3	107/G/2016/PTUN.SBY *Juncto* 44/B/2017/PT.TUN.SBY *Juncto* 429 K/TUN/2017	Hokiman Tjahajo, Indonesian citizens	• Head of the Regional Office of the Directorate General of State Assets of East Java

Source: Supreme Court Decisions Directory, accessed 2025

Based on the summary of the table above, the author can explain that the three cases as a whole were filed by legal subjects, Indonesian citizens or legal entities domiciled in Indonesia, to the Indonesian government represented by the Ministry of Finance or organizations under it. The author can analyze this phenomenon as a legal demand from the people to their country regarding existing legal problems.

Based on the results of the summary of the case, the author can explain several points that cause Former Foreign/Chinese Assets cases to arise in judicial institutions, as follows:

1. **The object of the Former Foreign/Chinese Assets case is a plot of land that has been certified but is designated as Former Foreign/Chinese Assets**

   As the summary of the case, it can be seen that the object of the case that is the problem is a land area that has been certified. The issuance of the certificate has certainly gone through the stages of land administration law.[17] In addition to the issuance of a land title certificate, the land area that is the subject of the problem has also been controlled by the relevant rights holder and has even been transferred to another party.[18]

   Through this fact, the author can explain that the Former Foreign/Chinese Assets problem recorded in the Court occurred because the Former Foreign/Chinese Assets had not been resolved as per the settlement guidelines before the land area recorded as Former Foreign/Chinese Assets was issued a certificate of rights. So that when the state

[17] Rita Martini, Dayat Limbong, and Isnaini, "Kedudukan Hukum Aset Bekas Milik Asing/ Tionghoa Menurut Peraturan Menteri Keuangan Nomor: 62/PMK.06/2020 Di Kementerian Keuangan Cq. Direktorat Jenderal Kekayaan Negara Cq. Kantor Wilayah Direktorat Jenderal Kekayaan Negara Sumatera Utara," *Journal of Education, Humaniora and Social Sciences (JEHSS)* 5, no. 3 (2023): 2029–43.

[18] Permana, Gunawan, and Suwondo, "Tinjauan Yuridis Status Hukum Keberadaan 'Aset Bekas Milik Asing/Tionghoa' Terkait Dengan 'Peraturan Menteri Keuangan Nomor 31/PMK.06/2015' (Studi Kasus Di Kantor Pelayanan Kekayaan Negara Dan Lelang Cirebon)."

wants to implement the Former Foreign/Chinese Assets settlement rules, it will tend to cause a conflict of interest, especially if the land rights holder already feels that he has a certificate. This is also supported by several considerations from the panel of judges in their decision which stated that issued by the Samarinda City Office, the panel of judges is of the opinion that the certificate is strong evidence that is fulfilled and perfect as long as it is not proven otherwise.[19]

So it can be clearly considered that the judge's attitude in dealing with Former Foreign/Chinese Assets cases will adhere to the principles of land law as regulated in the provisions of Article 32 of Government Regulation Number 24 of 1997 concerning Land Registration which states,

> *"In the event that a land plot has been legally issued a certificate in the name of a person or legal entity that obtained the land in good faith and actually controls it, then other parties who feel they have rights to the land can no longer demand the implementation of these rights if within a period of 5 (five) years since the issuance of the certificate they do not submit a written objection to the certificate holder and the Head of the Land Office concerned or do not file a lawsuit with the Court regarding control of the land or the issuance of the certificate."* [20]

Thus, the author can describe that the cause of the legal problems in this writing is the failure to implement the Former Foreign/Chinese Assets settlement until the issuance of a land rights certificate as strong evidence of ownership and the existence of a conflict of interest between the state and the land rights holder.

2. Lack of Former Foreign/Chinese Assets Information in General

Quoting from the case summary, it can be seen that the Former Foreign/Chinese Assets issue also occurred due to the lack of information regarding the existence of Former Foreign/Chinese Assets. This can be seen from the three case summaries that as a whole, the plaintiffs or parties who have certificates of rights do not know that the land they own or control is an Former Foreign/Chinese Assets object. This can be seen from the position of the case as 272/Pdt.G/2017/PN.Jkt.Pst Jucto 517/PDT/2018/PT.DKI Jucto 1935/K/Pdt/2019 where Mr. Zheng Zhi Yu bought a plot of land from the Foundation for Advancing Science and Culture with Building Use Rights Certificate Number 480/Senen, covering an area of 1,086 M² based on Deed of Sale and Purchase Number 100/2011, Dated 13-10-2011 made before Tintin Surtini, S.H. and just received a letter notification from the Directorate General of State Assets cq. DJKN DKI Jakarta Regional Office with Number: S-235/WKN.07/2017 stating that the land owned is an Former Foreign/Chinese Assets object.

This means that since the transfer of land rights in 2011 until 2017 there has been no notification, information, or legal procedure for examining data on objects indicated as Former Foreign/Chinese Assets. In a similar case with registration number 107/G/2016/PTUN.SBY Juncto 44/B/2017/PT.TUN.SBY Juncto 429 K/TUN/2017 with the case position that began with an application for land rights ex HGB No. 438/Darmo

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[19] Semarang District Court Decision Number 104/Pdt.G/2019/PN.Smr.

[20] Article 32 of Government Regulation Number 24 of 1997 concerning Land Registration.

submitted to the Surabaya City Land Office I could not be processed due to letter No. S-487/WKN.10/2016, dated April 20, 2016 concerning the Settlement of Former Foreign/Chinese Assets. In fact, in his argument, the plaintiff has paid off the object of the case since 1994. Based on the example case above, the author can analyze one of the causes of the Former Foreign/Chinese Assets dispute because the functions of socialization, identification, coordination, supervision by the Settlement Team and the regional assistance team were not carried out properly. This causes a lack of general Former Foreign/Chinese Assets information.

3. Judge's legal considerations

After studying several existing case summaries and identifying various legal considerations of judges, the author can describe that in civil and administrative cases there are similarities in the judge's considerations in deciding on Former Foreign/Chinese Assets objects, namely the existence of legal considerations from the judge by considering the facts of physical control of the land area, history of ownership, and status of land rights registration. If the requested land area has been certified and controlled continuously without any history of disputes, seizures, or conflicts, the panel of judges will tend to reject the arguments of the Defendant/Ministry of Finance of the Republic of Indonesia.

The legal consideration factor of the judge according to the author's analysis also assesses the element of good faith from the land rights holder. As in several summaries of the cases above, if the land area has been issued a certificate of rights through statutory regulatory procedures and before an authorized official, the judge will tend to reject the argument of the Defendant/Ministry of Finance of the Republic of Indonesia which states that the object of the land rights is included in Former Foreign/Chinese Assets.[21] Thus, it can be described that one of the causes of the Former Foreign/Chinese Assets case not being resolved is because the judge's legal considerations prioritize the last proof of ownership and the good faith of the land rights holder.

In addition to tracing and analyzing court decisions, to sharpen the causal factors for the occurrence of legal problems in resolving Former Foreign/Chinese Assets objects, the author quotes one of the theories of legal certainty according to Jan Michiel Otto, which details legal certainty in a material sense, including the governing institutions (government) implement legal regulations consistently and also submit and obey them. In relation to the implementation of Former Foreign/Chinese Assets as is known to involve elements of the regional assistance team consisting of cross-sector government institutions. In relation to the focus of this research, the author collects legal materials from institutions that are relevant to the formulation of the problem, including Malang City Land Office and Malang State Asset and Auction Service Office.

From both institutions, the author conducted interviews and identified the problems as follows:

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[21] Kurnia Rheza Randy Adinegoro, "Tantangan Implementasi Sertipikat Tanah Elektronik Di Kementerian Agraria Dan Tata Ruang/Badan Pertanahan Nasional Republik Indonesia," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 129–42.

1. Malang City Land Office

   The interview with Taris An Nafi Arafat as Land Law Analyst in Malang City Land Office, the result is:

   a. factor causing the Former Foreign/Chinese Assets problem is that there is no concrete and clear regulation of land registration law for objects indicated as Former Foreign/Chinese Assets
   b. The Land Office does not have a database of objects indicated as Former Foreign/Chinese Assets
   c. The Land Office does not yet have a mechanism for controlling Former Foreign/Chinese Assets.
   d. There is no legal procedure for the requirement of a certificate from the KPKNL in the land rights certification procedure so that the land office cannot require requirements outside the provisions.

2. Malang State Asset and Auction Service Office.

   The interview with Agus Budi as Head of State Asset Management Section in Malang State Asset and Auction Service Office, the result of factor causing legal problem settlement of former foreign/chinese assets contains:

   a. The Former Foreign/Chinese Assets issue is a sensitive issue and cannot be disseminated to the public so that understanding of Former Foreign/Chinese Assets is also limited. In addition, there is an assumption that Former Foreign/Chinese Assets is an asset that is excluded from public information and is prone to polemics and commotion in the community
   b. The attitude of the community or Former Foreign/Chinese Assets residents to protect their land, especially those that have certificates because they feel they have strong proof of ownership
   c. Due to limited Former Foreign/Chinese Assets information, the Ministry of ATR/BPN often issues land title certificates that are indicated as Former Foreign/Chinese Assets
   d. The tendency of the community to not care because there are no sanctions for violations if the party occupying Former Foreign/Chinese Assets does not want to carry out the settlement procedure according to the provisions of applicable regulations
   e. There is an understanding of the community regarding land law that the highest law is the Certificate of Ownership, whereas according to the Ministry of Finance, the lex specialis principle should apply to the settlement of Former Foreign/Chinese Assets

Based on the interview above, the author can identify the factors causing the Legal Problems of Former Foreign/Chinese Assets Settlement from the aspect of government agencies dominated by the following factors:

1. Restrictions on Former Foreign/Chinese Assets socialization to the public because it is an asset that is excluded from Public Information as a form of mitigating the risk of unrest in the community;
2. Public understanding of certificate ownership as strong evidence of land rights so that they tend to ignore the legal rules for Former Foreign/Chinese Assets settlement;
3. There are no legal sanctions for refusing to implement Former Foreign/Chinese Assets settlement;

There are no concrete and clear regulations regarding land registration laws for objects indicated as Former Foreign/Chinese Assets.

IV. URGENCY OF LEGAL REGULATION OF FORMER FOREIGN/ CHINESE ASSETS LAND REGISTRATION OBJECTS

Based on the results of the identification of Former Foreign/Chinese Assets settlement problems as summarized in the various decisions of the cases above and the results of interviews with sources, it can be seen that one of the factors causing the occurrence of Former Foreign/Chinese Assets settlement problems is the unavailability of legal regulations for Former Foreign/Chinese Assets Land Registration Objects in the land registration legal system.[22] For this reason, further study is needed regarding the urgency of regulating the law on Former Foreign/Chinese Assets land registration objects using several legal theories, including Jan Michiel Otto's legal certainty theory, Thomas Hobbes' Theory of Justice, Steven J. Heymen's Legal Protection Theory, which the author can summarize as follows:

1. Jan Michiel Otto's Legal Certainty Theory

   Based on Jan Michiel Otto's Legal Certainty Theory, the urgency of regulating the legal registration of Former Foreign/Chinese Assets land objects can be seen:[23]

   a. Legal certainty for government agencies in organizing Former Foreign/Chinese Assets settlement;
   b. Guarantee of legal certainty for the government in implementing land registration;
   c. Guarantee of Legal Certainty for Judges to consistently apply the rules for Former Foreign/Chinese Assets settlement if a case occurs in a judicial institution;
   d. Guarantee of Legal Certainty for the Community Holding Land Rights Certificates;
   e. Guarantee of legal certainty for the implementation of court decisions if a case occurs in court.

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[22] Misbah Imam Subari and Justicia Firdaus Kurniawan, "Penggunaan Klausula Proteksi Diri Bagi Notaris Dalam Akta Partij Ditinjau Dari Undang-Undang Jabatan Notaris," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 144–60.

[23] Yovita A. Mangesti and Bernard L. Tanya, *Moralitas Hukum* (Yogyakarta: Genta Publishing, 2014).

2. According to Thomas Hobbes, justice is that an action can be said to be fair if it is based on an agreed agreement

   From the statement it can be concluded that justice or a sense of justice can only be achieved when there is an agreement between two parties who have promised. The agreement here is interpreted in a broad form, not only limited to an agreement between two parties who are holding a business contract, renting, and so on.[24] But the agreement here is also an agreement on the verdict between the judge and the defendant, laws and regulations that do not side with one party but prioritize the interests and welfare of the public.[25] Based on the concept of justice, it is known that at the time of this writing, there were 19 legal cases in court related to Former Foreign/Chinese Assets. Of course, this case arose from a disagreement between the government as the organizer of Former Foreign/Chinese Assets and the community as the owner of the land rights certificate.[26] So the intent or sense of justice put forward by Thomas Hobbes according to the author's analysis has not been achieved.

3. Steven J. Heymen's Legal Protection Theory

   Continuing with the theory of legal protection according to Steven J. Heymen, legal protection has three main elements, namely: [27]

   a. Legal protection is related to the status or justice of an individual, which means the status as a free person and citizen;
   b. Legal protection is related to substantive rights, which means the law guarantees the individual's right to life, liberty, and property; and
   c. The most basic understanding of legal protection is related to the enforcement of rights, namely the government's special way of preventing acts of violation of substantive rights, correcting, and providing laws for such violations.[28]

So if referring to the theory above, the concept of legal protection can be formulated by prioritizing preventive measures against violations of basic rights including ownership, freedom, and law enforcement. Based on this concept, according to the author's analysis, the urgency of regulating the law on land registration for Former Foreign/Chinese Assets objects is to provide more guarantees of ownership, freedom, and law enforcement of land title certificates issued by the State. Thus, the doctrine of land title certificates as strong evidence of ownership can be realized.[29]

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[24] Mega Purnamasari, Fendi Setyawan, and Jayus, "Prinsip Keadilan Pengenaan Pajak Terhadap Perseroan Terbatas Yang Dinyatakan Pailit," *Jurnal Ilmu Kenotariatan* 2, no. 2 (2021): 27–42.

[25] Muhammad Syukri Albani Nasution, *Hukum dalam Pendekatan Filsafat*, (Jakarta: Kencana, 2017), p.217-218.

[26] Bhim Prakoso, "Pendaftaran Tanah Sistematis Lengkap Sebagai Dasar Perubahan Sistem Publikasi Pendaftaran Tanah," *Journal of Private and Economic Law* 1, no. 1 (2021): 63–82.

[27] Andi Tira, "Perlindungan Pemegang Sertifikat Hak Milik Atas Tanah Melalui Keputusan Tata Usaha Negara," *Clavia: Jurnal of Law* 17, no. 2 (2019): 15–30.

[28] Meralda Amala Istighfarin, "Perlindungan Hukum Kreditur Dan Pemilik Jaminan Dalam Pelaksanaan Perjanjian Kredit Dengan Jaminan Tanah Milik Orang Lain," *Acten Journal Law Review* 1, no. 1 (2024): 64–84.

[29] Rahadiyan Veda Mahardika and Gatot Suyanto, "Kedudukan Hukum Badan Bank Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum," *Jurnal Ilmu Kenotariatan* 3, no. 2 (2022): 58–65.

V. CONCLUSION

Factors Causing Legal Problems in the Settlement of Former Foreign/Chinese Assets Objects include: The Object of the Former Foreign/Chinese Assets Case is a Land Plot That Has Been Certified But Determined as Former Foreign/Chinese Assets; Lack of General Former Foreign/Chinese Assets Information; Judge's Legal Considerations; Restrictions on Former Foreign/Chinese Assets socialization to the public because it is an asset that is excluded from Public Information as a form of mitigating the risk of unrest in the Community; Public understanding of certificate ownership as strong evidence of land rights so that they tend to ignore the legal principles of Former Foreign/Chinese Assets settlement; There are no legal sanctions for refusing to implement Former Foreign/Chinese Assets settlement; There are no concrete and clear regulations regarding land registration laws for objects indicated as Former Foreign/Chinese Assets.

Guarantee of Legal Protection for the Community includes, Guarantee of legal protection for the interests of the state in order to create a safe and conducive community situation, Guarantee of legal protection for the community before a violation of the Former Foreign/Chinese Assets object settlement mechanism occurs, Guarantee of protection to prevent cases in court involving the process of suing between the state and its own citizens, Guarantee of legal protection for the government to implement control mechanisms and law enforcement if there is a certificate issuance procedure that occurs outside the provisions of applicable law, Guarantee of Legal protection for the community for ownership, freedom, and law enforcement of land certificates that have been issued.

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ISSN 2723-1011