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The Concept of Ownership of Fiduciary Security Objects in Banking Law Based on the Principle of Legal Certainty

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Abstract

This study examines the juridical implications of the inconsistency between the ownership data of fiduciary collateral objects as evidenced by material proof of ownership (sale and purchase receipt) and formal proof of ownership (Vehicle Ownership Certificate/Buku Pemilik Kendaraan Bermotor (BPKB)) on legal certainty within the electronic fiduciary registration system. Furthermore, this study formulates a reconstruction of the concept of ownership capable of harmonizing both forms of evidence to achieve balanced legal protection for the parties involved. This research is a normative legal study employing a prescriptive-analytical approach using statutory, conceptual, and case approaches. The legal materials consist of primary, secondary, and tertiary legal materials. The findings regarding the first research problem demonstrate that the AHU Online System, which operates under the principles of administrative passivity and self-assessment, verifies only formal validity without providing substantive verification of the chain of ownership. Consequently, the Fiduciary Security Certificate remains vulnerable to third-party disputes, double financing, and obstacles in enforcement. These conditions are aggravated by the failure of Notaries and Banks to jointly fulfill the prudential principle, resulting in legal certainty that remains formal and procedural rather than substantive (rechtszekerheid). Regarding the second research problem, the study concludes that reconstructing the concept of ownership requires a paradigm shift from a passive administrative system to an active verification system by requiring the submission of a validated Vehicle Ownership Certificate (BPKB), supported by verified ownership documents, data interoperability between the AHU Online System and the Korlantas Polri database, and the implementation of a Mandatory Attachment feature to strengthen evidentiary value, thereby synchronizing substantive and formal legal truth while providing preventive legal protection for creditors, debtors, and Notaries.

Keywords **:** *Fiduciary Collateral; Legal Certainty; Ownership Concept.*

I. Introduction

The banking sector serves as a financial intermediary institution that performs a fundamental role in the distribution of capital within the economy. In carrying out its operational functions, banks are required to comply with the Prudential Principle, which obliges them to consistently maintain their performance and liquidity through rigorous risk management, as stipulated in Article 2 of Law Number 10 of 1998 concerning Banking[1]. This principle requires that every extension of credit facilities be supported by high-quality collateral in order to ensure a fair equilibrium of interests between protecting the rights of banks as creditors and meeting the debtors' economic liquidity needs. Such collateral must provide legal certainty and possess executorial force, namely, the legal right to enforce the security directly without having to undergo lengthy ordinary court proceedings. In Indonesia, motor vehicles constitute the most commonly pledged collateral under the fiduciary security regime governed by Law Number 42 of 1999 concerning Fiduciary Security. Operationally, this security arrangement is based on the mechanism of constitutum possessorium, whereby ownership is transferred while the physical possession of the collateral remains with the debtor to support daily productive activities[2].

However, in contemporary financing practices, a legal condition has emerged that reflects a significant juridical inconsistency between formal legal truth and substantive legal truth[3]. Many transfers of motor vehicle ownership within the community are not followed by the registration of title transfer (overschrijving) in the Vehicle Ownership Certificate (Buku Pemilik Kendaraan Bermotor/BPKB).

This legal condition is reinforced by the views of Pardloni Akbar, Head of Marketing at Bank Kalsel Main Branch Banjarmasin, and Hafizh Athallariq, Legal Administration Officer at BPR Syariah Barkah Gemadana. They explain that inconsistencies between the name stated in the Vehicle Ownership Certificate (BPKB) and the actual owner are frequently encountered in fiduciary security transactions, particularly in government financing programs for Micro, Small, and Medium Enterprises (MSMEs), such as the People's Business Credit (Kredit Usaha Rakyat/KUR). These programs are intended for financially viable entrepreneurs who have not yet fulfilled formal banking requirements (*not bankable*). In practice, high transfer fees and complex administrative procedures often encourage debtors to rely on sale and purchase receipts as proof of ownership rather than formally transferring the vehicle title.

This practice is primarily attributable to the high cost of the Motor Vehicle Title Transfer Fee (Bea Balik Nama Kendaraan Bermotor/BBN-KB)

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[1] M. Djumhana, *Hukum Perbankan di Indonesia* (Citra Aditya Bakti, 2018).
[2] H. S. Salim, *Perkembangan Hukum Jaminan di Indonesia* (RajaGrafindo Persada, 2014).
[3] I. M. K. Arisanti, "Perlindungan Hukum Bagi Kreditur Terhadap Jaminan Fidusia yang Objeknya Bukan Atas Nama Debitur," *Jurnal Acta Comitas* 5, no. 1 (2020): 12.

and inefficient bureaucratic procedures. Consequently, a sale and purchase receipt accompanied by the original BPKB has become the primary evidence of ownership in practice. Juridically, this practice is rooted in the principle of *bezit* under Article 1977(1) of the Indonesian Civil Code and the doctrine *en fait de meubles, la possession vaut titre*, which recognizes physical possession of movable property as valid evidence of ownership for a good-faith possessor.

This situation creates a normative conflict between substantive and formal ownership. On the one hand, a sale and purchase receipt constitutes valid substantive evidence of ownership transfer through *levering* (delivery). On the other hand, state administrative authorities prioritize the formal identity recorded in the BPKB as an expression of the principle of publicity. Fundamental legal issues arise when a debtor grants fiduciary security over a vehicle while the BPKB remains registered in the name of a third party. This results in an administrative discontinuity between state records and the actual owner, raising questions regarding the grantor's *beschikkingsbevoegdheid* (legal authority to dispose of property). Consequently, banks as creditors face substantial legal risks because the collateral documents contain administrative defects.

The Online General Legal Administration System (AHU Online System), as the electronic fiduciary registration platform, has not yet resolved these complexities. The current system operates under the principle of Administrative Passivity[4], functioning merely as a recording system without verifying the chain of ownership. Furthermore, the absence of a Mandatory Attachment feature exposes the system to document forgery, potentially undermining the creditor's exclusive or indefeasible rights[5] Through systematic reconstruction, the role of Notaries as public officials can be optimized in validating the chain of ownership, thereby ensuring that Fiduciary Security Certificates possess perfect evidentiary value and that every fiduciary registration is based on a valid and legally accountable title.

The principal issue addressed in this study lies in the inconsistency between the material and formal ownership evidence of fiduciary collateral, which has not been adequately accommodated within the electronic fiduciary registration system, thereby undermining legal certainty. Accordingly, this study proposes a reconstruction of the concept of ownership of fiduciary collateral to harmonize material and formal proof of ownership and to strengthen legal certainty within the fiduciary registration system.

Based on the foregoing discussion, this study has the following objectives, to comprehensively analyze and describe the juridical implications of discrepancies in the ownership data of fiduciary collateral on legal certainty within the electronic fiduciary registration system. This

[4] H. R. Ridwan, *Hukum Administrasi Negara* (RajaGrafindo Persada, 2016).

[5] Darmanto, "Kepastian Hukum Pendaftaran Fidusia Secara Elektronik pada Direktorat Jenderal Administrasi Hukum Umum," *Jurnal Kenotariatan Indonesia* 4, no. 2 (2021): 15.

objective is intended to examine the extent to which a sale and purchase receipt, as material evidence of ownership, can be legally recognized when it conflicts with the formal ownership data contained in the Vehicle Ownership Certificate (BPKB) and to formulate and propose a reconstruction of the ideal concept of ownership in order to achieve harmonization between material and formal ownership data within the electronic fiduciary registration system. This reconstruction aims to provide substantive legal protection for banking creditors and balanced legal protection for all parties affected by discrepancies between the identity of the fiduciary grantor and the ownership data recorded in the Vehicle Ownership Certificate (BPKB).

II. Research Method

This study employs normative legal research, which is a method of identifying legal rules, legal principles, and legal doctrines to address the legal issues under examination[6]. It adopts a prescriptive-analytical approach by identifying legal issues, applying legal reasoning, analyzing the issues concerned, and subsequently formulating appropriate legal solutions[7] . The research is theoretical in nature and adopts a statutory approach (statute approach). The legal materials consist of primary legal materials, secondary legal materials, and tertiary legal materials. Legal materials were collected through library research. All collected legal materials were systematically inventoried and classified according to the formulated research problems. Subsequently, the inventoried legal materials were examined and analyzed using a qualitative and comprehensive method. The analysis was conducted based on relevant legal theories to produce meaningful findings that are systematically presented in the discussion.

III. Result & Discussion

A. Antinomy of Norms Between Material Truth and Formal Truth in Fiduciary Registration

1. Philosophical Review of Ownership Rights over Movable Property and the Principle of *Bezit*

The analysis of the dualism in ownership data concerning fiduciary collateral is grounded in the doctrine governing the possession of movable property under civil law. The legal system clearly distinguishes between movable and immovable property, particularly with respect to the acquisition of ownership rights and the mechanisms governing their transfer. This juridical distinction arises from the dynamic nature of movable property,

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[6] M. H. Muhjad and S. U. Dewi, *Penelitian Hukum Indonesia Kontemporer* (Genta Publishing, 2012).
[7] P. M. Marzuki, *Penelitian Hukum* (Kencana Prenada Media Group, 2005).

which is characterized by a high frequency of transactions within civil legal relations.

Property law fundamentally emphasizes efficiency, simplicity, and the smooth functioning of legal transactions. This approach establishes actual possession (bezit) as the primary indicator of ownership. Accordingly, physical possession of an object is not merely regarded as a social fact but also carries juridical significance in determining ownership status[8].

The principle of bezit, as stipulated in Article 1977(1) of the Indonesian Civil Code, constitutes the normative basis for such possession. This provision establishes that a person who exercises actual possession over movable property is presumed to be its lawful owner. Within the continental legal tradition, this principle is embodied in the maxim *en fait de meubles, la possession vaut titre*[9].

Under this legal construction, there exists a legal presumption (*presumptio iuris*) that a person who exercises physical possession of an object, accompanied by the intention to own it, is presumed to be its lawful owner. However, this presumption is rebuttable, meaning that it may be overturned upon the presentation of evidence to the contrary[10].

2. The Legal Status of the Sale and Purchase Receipt and the Administrative Position of the Vehicle Ownership Certificate (BPKB)

Under Indonesian security law, particularly with respect to movable property subject to a special registration system, there are circumstances in which the legal effect of a sale and purchase receipt precedes the fulfillment of the administrative requirement of transferring ownership in the Vehicle Ownership Certificate (BPKB). In practice, this phenomenon has become an increasingly prevalent socio-juridical reality in motor vehicle transactions in South Kalimantan. Both members of the public and business actors tend to postpone the transfer of title due to the high costs and burdensome administrative procedures involved[11]

As a consequence, a person may possess and use the collateral object as though he or she were the lawful owner based on a sale and purchase receipt, while administratively the ownership remains unregistered in the state registration system. This situation gives rise to a discrepancy between substantive ownership and formal ownership as recorded in official documents

The absence of synchronization between substantive truth and formal truth prevents fiduciary security from functioning effectively as a legal

[8] R. Syahrani, *Seluk-Beluk dan Asas-Asas Hukum Perdata* (Alumni, 2006).
[9] R. Subekti and Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek* (PT Balai Pustaka, 2013).
[10] Subekti, *Pokok-Pokok Hukum Perdata* (Intermasa, 2010).
[11] S. Soekanto, *Sosiologi Suatu Pengantar* (Rajawali Pers, 2012).

protection mechanism for creditors. At this point, the principle of legal certainty no longer operates as a juridical safeguard but merely as a procedural formality that fails to minimize the risk of proprietary disputes arising from inconsistencies between electronic records and the actual ownership of the collateral.

3. Philosophical Review of Ownership Rights over Movable Property and the Principle of *Bezit*

The inconsistency between substantive ownership data evidenced by a sale and purchase receipt and the formal ownership data recorded in the Vehicle Ownership Certificate (BPKB) during the electronic fiduciary registration process constitutes a normative antinomy. According to Gustav Radbruch's Theory of Legal Certainty, as discussed in the literature review, legal certainty (*Rechtssicherheit*) requires that the law be clear, unambiguous, and capable of producing predictable legal consequences[12].

Law Number 42 of 1999 concerning Fiduciary Security recognizes ownership based on civil legal relationships, as evidenced by physical possession of the collateral object and transactional documents such as a sale and purchase receipt (*Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia*, 1999). In contrast, Law Number 22 of 2009 concerning Road Traffic and Transportation requires the registration of motor vehicles as the legally recognized proof of ownership under administrative law.

This dualism undermines the executorial force of the Fiduciary Security Certificate. Although the certificate formally possesses executorial title, its enforceability may be challenged where inconsistencies exist in the ownership data. Such circumstances are detrimental to creditors and good-faith third parties because the legal protection afforded by the fiduciary security system becomes ineffective. Without accurate data synchronization, the statutory protection loses its substantive legal certainty and becomes vulnerable to legal challenges (*verzet*) before the courts.

The absence of data synchronization and policy coordination among government institutions causes the electronic fiduciary registration system to function merely as an administrative mechanism for satisfying formal bureaucratic requirements, thereby failing to realize legal certainty. This occurs because substantive truth and formal truth are not cumulatively fulfilled, preventing the system from providing effective legal protection. Consequently, harmonization is required between the civil law approach, which emphasizes substantive truth, and the public administrative system, which prioritizes formal legal order.

Accordingly, from the perspective of Gustav Radbruch's Theory of the Purpose of Law, the normative antinomy between the Fiduciary Security Law and the Road Traffic and Transportation Law demonstrates that *Rechtssicherheit* has not yet been achieved due to inconsistencies between

[12] S. Rahardjo, *Ilmu Hukum* (Citra Aditya Bakti, 2014).

the governing legal norms and the uncertainty surrounding ownership data of fiduciary collateral. Therefore, harmonization between these two statutes is imperative to ensure legal certainty, justice, and legal utility within the fiduciary security system.

B. The Validity and Evidentiary Value of Notarial Deeds Based on Evidence of Physical Possession of the Collateral Object

1. The Notary's Obligation to Conduct Formal and Substantive Verification

A Notary, as a public official, plays a central role in ensuring legal certainty through the execution of authentic deeds. In the electronic fiduciary registration system, the role of the Notary extends beyond merely recording the intentions of the parties in the form of an authentic deed. The Notary is also responsible for validating the formal legality of the underlying civil legal transaction.

Pursuant to Article 16(1)(a) of the Law on Notarial Office, a Notary is required to act with integrity, honesty, diligence, independence, impartiality, and to protect the interests of the parties. The emphasis on the *prudential principle* and due diligence implies that a Notary cannot remain passive in accepting information provided by the parties. Instead, the Notary must carefully examine the supporting documents underlying the execution of the deed in order to prevent the creation of legally defective authentic deeds resulting from inconsistencies in the ownership data of the collateral object.

In notarial practice, the verification process carried out by a Notary consists of several interrelated stages. First, outward verification refers to the examination of the physical integrity and authenticity of the submitted documents, including the sale and purchase receipt as evidence of the transaction. Second, formal verification involves examining the identities of the parties, their legal capacity and authority to act, and the consistency between the statements embodied in the notarial deed and the intentions expressed by the appearing parties[13].

The principal challenge in notarial practice concerns substantive verification. To a certain extent, a Notary is expected to be reasonably satisfied that the collateral object is genuinely under the control of the appearing party. Nevertheless, a Notary's authority does not extend to establishing the absolute substantive truth, as such authority belongs to law enforcement agencies. Within the context of notarial duties, substantive verification constitutes an exercise of due diligence aimed at assessing the

[13] G. H. S. Lumban Tobing, *Peraturan Jabatan Notaris* (Erlangga, 1999).

reasonableness, consistency, and credibility of the information and documents submitted by the parties[14].

The absence of an active verification mechanism within the electronic fiduciary registration system not only undermines the Notary's function as a legal gatekeeper but also contradicts Radbruch's concept of *Rechtssicherheit*, which requires the law to provide certainty, predictability, and reliability for parties engaged in legal relationships.

2. The Authenticity of Fiduciary Security Deeds Amid Ownership Data Inconsistencies

In fiduciary registration based solely on privately executed sale and purchase receipts, legal issues arise when the ownership data of the collateral object is inconsistent with the administrative records contained in the Vehicle Ownership Certificate (BPKB). From a formal legal perspective, the deed continues to qualify as an authentic deed because it is executed by a Notary within the scope of his or her statutory authority and in accordance with the procedures prescribed by the Law on Notarial Office. However, such inconsistencies create significant risks concerning the deed's substantive evidentiary value, particularly when disputes involve third parties.

The authenticity of a fiduciary security deed depends not only on compliance with formal legal requirements but also on the accuracy and consistency of the underlying ownership data upon which the deed is based. Although discrepancies between substantive ownership data and administrative records do not automatically invalidate the deed's status as an authentic instrument, they may substantially weaken its evidentiary value and consequently undermine legal certainty for the parties concerned. This circumstance directly conflicts with Radbruch's principle of Rechtssicherheit, under which legal certainty requires that a formally valid legal document must also possess substantive reliability. An authentic deed founded upon inconsistent ownership data merely creates an illusion of legal certainty and is inconsistent with the fundamental objective of the principle of legal certainty itself.

3. Legal Risks and Notarial Malpractice in the Self-Assessment Fiduciary Registration System

Legal risks arise when a Notary processes the registration of fiduciary collateral based solely on a privately executed sale and purchase receipt that is subsequently found to contain legal defects. Such defects may include forged documents, inconsistencies in ownership identity, or claims by third parties who remain administratively registered as the lawful owners in the

[14] H. Adjie, *Hukum Notaris Indonesia: Tafsir Tematik terhadap Undang-Undang Jabatan Notaris* (Refika Aditama, 2015).

Vehicle Ownership Certificate (BPKB). Under such circumstances, the authentic deed may become the subject of legal disputes and litigation.

In practice, a Notary's position becomes particularly complex when dealing with debtors whose only evidence of ownership consists of a sale and purchase receipt unsupported by adequate administrative documentation. On the one hand, there is a legitimate need to facilitate access to financing for business actors. On the other hand, the Notary bears a statutory obligation to safeguard the legal validity of the authentic deed. This situation places the Notary in a high-risk position, making strict adherence to the prudential principle indispensable. Accordingly, a Notary cannot merely function as an administrative officer who enters information into the electronic system but must exercise reasonable professional judgment in assessing the authenticity, credibility, and consistency of the documents submitted by the parties.

C. Legal Consequences of Data Inconsistency for the Legal Certainty of the Executorial Force of Fiduciary Security Certificates

1. The Legal Status and Executorial Force of Fiduciary Security Certificates in Cases of Data Inconsistency

Under the Indonesian law of security interests, a Fiduciary Security Certificate occupies a privileged legal position because it is vested with executorial force. This privilege is reflected in the inscription *"For the Sake of Justice under the Almighty God"* appearing at the head of the certificate. Normatively, Article 15(2) of Law Number 42 of 1999 concerning Fiduciary Security provides that a Fiduciary Security Certificate possesses executorial force equivalent to a final and binding court judgment .

This legal construction authorizes creditors to directly execute the collateral object in the event of the debtor's default without first initiating ordinary court proceedings. This mechanism, commonly known as parate executie, is intended to ensure efficiency and legal certainty in the settlement of debt obligations. Nevertheless, such executorial force is not absolute. Its effectiveness depends significantly upon the clarity and consistency of the information contained in the certificate, particularly concerning the identity of the collateral object and the legality of its ownership.

In practice, legal issues arise when inconsistencies exist between the data recorded in the Fiduciary Security Certificate and the administrative records contained in the Vehicle Ownership Certificate (BPKB). Such discrepancies in ownership data are illustrated in the following examples:

Figure 1. Private Sale and Purchase Receipt for a Motor Vehicle

Figure 2. Motor Vehicle Ownership Book (BPKB) of the Fiduciary

Collateral Vehicle

These documents demonstrate that factual possession of the vehicle has been transferred through a privately executed sale and purchase receipt, whereas the administrative records in the BPKB continue to identify another person as the registered owner. Juridically, this situation evidences a discrepancy between factual possession and the official administrative ownership records.

These concerns have been confirmed in practice at Bank Kalsel Main Branch Banjarmasin. Based on the findings of this study, uncertainty regarding the identity of both the legal subject and the collateral object arises from several technical and juridical issues, namely[15] :

a) Risk of Document Manipulation

The absence of valid documentary evidence of ownership transfer when possession of the vehicle is transferred from the registered owner in the BPKB to the debtor creates opportunities for the falsification of sale and purchase receipts. Such document manipulation is often undertaken to satisfy the administrative requirements for obtaining bank financing.

b) Indications of Nominee Arrangements

[15] Lembaga Pembiayaan Kota Banjarmasin, "Hasil Wawancara terkait Praktik Pendaftaran dan Pengikatan Jaminan Fidusia," 2025.

There are indications of nominee practices involving the use of another person's identity who possesses a favorable credit history. This practice generally involves the preparation of a formal sale and purchase receipt between the registered owner named in the BPKB and a third party in order to circumvent the original owner's poor credit record. This juridical loophole exists because the fiduciary registration system still permits loan applications despite discrepancies between the registered BPKB owner and the actual debtor

c) Inheritance Issues and the Legal Status of the Registered Owner

In certain cases, the individual whose name is recorded in the BPKB has passed away, making it impossible to complete the transfer of title. Such circumstances create both administrative and legal obstacles, resulting in a permanent inconsistency between the vehicle registration records and the fiduciary registration data.

In contemporary legal scholarship, Rahmida Erliyani emphasizes that the effectiveness of cyber notary services and electronic registration systems depends fundamentally upon the integrity of the underlying data[16]. The inconsistencies identified at Bank Kalsel demonstrate that, without comprehensive validation of both substantive and formal ownership data, legal certainty within the electronic fiduciary registration system remains merely illusory. From this perspective, Notaries are required to perform rigorous verification to ensure that digital records accurately correspond with the legal facts, thereby minimizing the risk of unsuccessful execution.

2. Obstacles to Execution Following Constitutional Court Decision Number 18/PUU-XVII/2019 in Cases of Inconsistent Ownership Data

In practice, discrepancies between the ownership data contained in the Fiduciary Security Certificate and the official administrative records in the Vehicle Ownership Certificate (BPKB) may be exploited by debtors or third parties to challenge the legitimacy of the collateral object. Consequently, what initially appears to be an administrative deficiency during the registration process may develop into a substantive legal dispute that obstructs the execution of the fiduciary security[17] . This demonstrates that the effectiveness of executorial rights depends not only upon the formal

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[16] R. Erliyani and R. Hamdan, *Cyber Notary: Peluang dan Tantangan dalam Pendaftaran Jaminan Fidusia Elektronik* (Pustaka Pelajar, 2022).

[17] H. Poesoko, *Parate Executie Objek Hak Tanggungan: Inkonsistensi, Konflik Norma dan Kesesatan Penalaran dalam UUHT* (LaksBang Pressindo, 2008).

existence of a Fiduciary Security Certificate but also upon the validity and consistency of the ownership data underlying its issuance[18] .

The practical implication of this situation is the diminished effectiveness of fiduciary security as a mechanism for protecting creditors. Although the Fiduciary Security Certificate is normatively endowed with executorial force, its enforcement often becomes difficult in practice. Accordingly, the legislative objective of fiduciary security to provide legal certainty and facilitate the enforcement of creditors' rights is not fully achieved.

3. The Risk of Losing Preferential Rights and Obstacles to Execution by Public Auction Due to Data Inconsistencies

One of the most significant consequences arising from inconsistencies in the ownership data of fiduciary collateral is the potential reduction or even loss of the creditor's preferential rights. Under the law of secured transactions, preferential rights constitute a statutory privilege granted to secured creditors, entitling them to priority in the satisfaction of their claims over other creditors. Such rights arise only where the security interest has been validly registered and fulfills both the formal and substantive legal requirements.

This condition demonstrates that inconsistencies in ownership data affect not only the juridical validity of fiduciary security but also hinder the practical enforcement of creditors' rights. Although a Fiduciary Security Certificate is intended to provide legal certainty, in practice it may no longer function effectively as a legal basis for recovering outstanding debts through the public auction process.

D. Reconstruction of the Concept of Ownership of Fiduciary Collateral to Achieve Balanced Legal Protection

The current fiduciary security registration system demonstrates inconsistencies between the ownership data of fiduciary collateral recorded in the electronic registration system and the actual possession of the collateral in practice. Normatively, the fiduciary registration system is intended to ensure the validity of ownership data and provide legal certainty for the parties, particularly creditors and debtors[19]. However, in practice, discrepancies continue to exist between the administrative data recorded in the system and the substantive condition of the collateral object. This indicates that electronic records do not always reflect the actual legal status of the collateral, thereby creating potential legal uncertainty in the implementation of fiduciary security.

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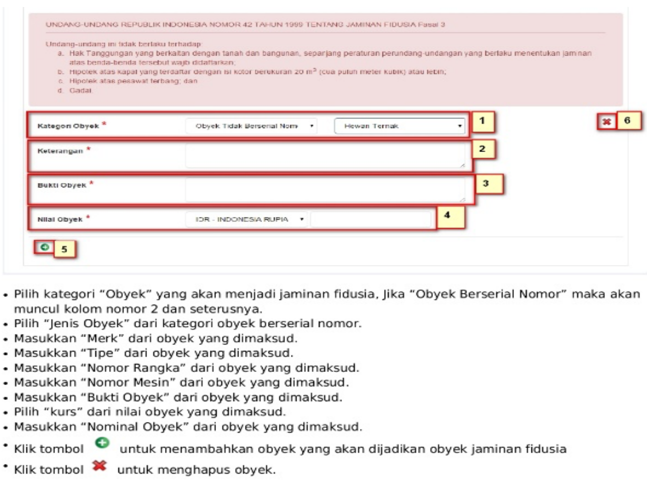
[18] N. F. Octarina, "Asas Publisitas dan Kepastian Hukum dalam Jaminan Fidusia Elektronik," *Media Iuris* 5, no. 1 (2022): 84–90.
[19] H. Salim, *Perkembangan Hukum Jaminan di Indonesia* (RajaGrafindo Persada, 2016).

A Fiduciary Security Certificate formally possesses executorial force; however, such force cannot operate effectively unless it is supported by substantively valid ownership. According to Satjipto Rahardjo's Progressive Legal Theory, the law should not be viewed as a rigid and closed system. Rather, it should be understood as a dynamic process that serves human interests and promotes substantive justice[20].

The digitalization of fiduciary registration through the AHU Online System administered by the Directorate General of General Legal Administration represents an important step toward administrative modernization. Nevertheless, the system continues to rely on the principles of self-assessment and administrative passivity. Under this approach, the state merely functions as a recorder of information (an entry point) without providing any mechanism to verify the substantive validity of the collateral object. Consequently, the legal function of the system is confined to administrative formalities while overlooking the actual legal circumstances existing in society.

The absence of a cross-verification mechanism and the lack of data integration among relevant government institutions create the possibility of inconsistencies between the information recorded in the system and the factual circumstances of the collateral. In this regard, the implementation of the self-assessment principle in fiduciary registration has the potential to undermine legal certainty in practice[21]. As an illustration, the following figure presents the data entry process for fiduciary collateral in the AHU Online System.

Figure 3. Data Entry Interface for Fiduciary Collateral in the AHU Online System



Source*: Panduan AHU Online Ditjen AHU*

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[20] Rahardjo, *Ilmu Hukum*.
[21] E. Makarim, *Pengantar Hukum Telematika* (RajaGrafindo Persada, 2005).

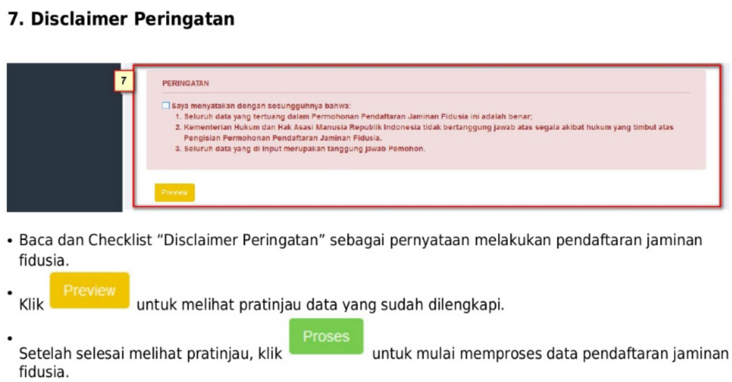
Based on the foregoing illustration, the fiduciary registration system remains primarily oriented toward the administrative entry of data by the Notary without incorporating a cross-verification mechanism with ownership records maintained by the relevant government authorities. The system merely requires the input of the collateral's identifying information, such as the chassis number, engine number, and proof of ownership. Consequently, the substantive validity of the registered data depends largely on the accuracy and truthfulness of the information provided by the parties. This condition demonstrates that the current electronic registration system continues to reflect the principles of administrative passivity and the self-assessment system in the registration of fiduciary security[22].

1. Reconstructing the Verification System from Administrative Passivity to Active Validation Based on Progressive Legal Theory

The fundamental problem within the current fiduciary registration system lies in its administrative passivity, whereby the system merely functions as a medium for receiving and recording data submitted by applicants through a Notary without incorporating any mechanism to verify the substantive validity of the collateral object. The implementation of the self-assessment principle within the system results in the absence of substantive examination of the accuracy and legality of the registered information.

The self-assessment nature of the electronic fiduciary registration system is further reflected in the existence of a disclaimer that applicants must acknowledge and accept before the registration process can proceed. Through this mechanism, responsibility for the accuracy and validity of the submitted data is effectively shifted to the party entering the information. The disclaimer displayed in the AHU Online System is presented as follows:

Figure 4. Disclaimer for Fiduciary Security Registration in the AHU Online System



Source: Panduan AHU Online Ditjen AHU

[22] Octarina, "Asas Publisitas dan Kepastian Hukum dalam Jaminan Fidusia Elektronik."

As illustrated in Figure 4, the system merely provides a field labeled "Proof of Object" in the form of textual data entry without requiring the upload of original ownership documents, such as the Vehicle Ownership Certificate (BPKB). Furthermore, information concerning the vehicle category, brand, model, chassis number, and engine number is entered independently by the applicant through the Notary without any automated verification against the official motor vehicle registration database. This condition demonstrates that the registration process continues to rely upon the self-assessment model, allowing fiduciary registration to proceed even where the ownership basis consists solely of a privately executed sale and purchase receipt without a formal transfer of title.

From the perspective of progressive law, this condition underscores the need to restructure the registration system from a passive administrative model to an active validation model, namely a mechanism that not only receives data but also conducts a preliminary verification of its accuracy and legal validity before the registration process is deemed legally valid[23] .

The reconstruction of the electronic fiduciary registration system may be analyzed from the perspective of Satjipto Rahardjo's Progressive Legal Theory. This theory views law as an instrument for achieving justice and emphasizes that law should not be understood as a static system, but rather as a dynamic and responsive institution capable of adapting to the evolving needs of society[24] .

2. Cross-Sectoral Database Interoperability between the Directorate General of General Legal Administration (Ditjen AHU) and the National Police Traffic Corps (Korlantas Polri)

A registration system that merely functions as a data recorder without material verification has the potential to cause discrepancies between the registered data and the factual condition of the collateral object. As long as the inputted data meets the formal requirements within the system, registration can still be processed without any cross-validation mechanism against other data sources. This indicates that the procedural efficiency achieved through the electronic system has not yet been balanced with a guarantee of material truth[25].

If the data recorded in the registration system does not reflect the actual ownership condition, the publicity function becomes suboptimal. Discrepancies between the data in the fiduciary registration system and the administrative data of other agencies, such as motor vehicle registration, imply a decrease in the level of legal certainty for third parties. Under such conditions, the available information can no longer serve as a reliable basis for entering into legal relations.

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[23] Z. Aulia, "Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi," *Undang: Jurnal Hukum* 1, no. 1 (2018): 159–85.
[24] S. Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Genta Publishing, 2009).
[25] Adjie, *Hukum Notaris Indonesia: Tafsir Tematik terhadap Undang-Undang Jabatan Notaris*.

In this regard, efforts to reconstruct the fiduciary guarantee registration system cannot be separated from the need to address data fragmentation among government agencies. Thus far, the electronic fiduciary registration system managed by the Directorate General of General Legal Administration still operates separately from the motor vehicle registration system under the authority of the Indonesian National Police. This condition results in a lack of adequate data connectivity between the administrative aspects of fiduciary registration and the official ownership data of the collateral object[26].

The lack of synchronization between these systems implies weak validation of the data used in the registration process. The ownership data submitted by the applicant cannot be directly verified against the databases of other agencies, thereby potentially creating discrepancies between the registered data and the actual conditions. This shows that the electronic registration system is not yet fully capable of ensuring data accuracy as the foundation for establishing a fiduciary guarantee.

The implementation of interoperability can be achieved through developing system connectivity between the AHU Online System and the motor vehicle registration database at the Korlantas Polri. With this mechanism in place, data such as chassis and engine numbers can be automatically verified against the data recorded in the police system, ensuring that the ownership and legal status of the collateral object are determined more accurately.

Technically, such interoperability may be designed through a real-time electronic validation mechanism between the AHU Online System and the motor vehicle registration database maintained by the Traffic Corps of the Indonesian National Police (Korlantas Polri). Under this mechanism, the collateral data entered by the Notary, including the vehicle identification number (VIN), engine number, and the registered owner's identity, would be automatically cross-checked against the data stored in the motor vehicle registration system. If any discrepancy is detected between the identity of the fiduciary grantor and the name recorded in the Vehicle Ownership Certificate (BPKB), the system may automatically generate a notification or warning before the registration process proceeds[27] .

Furthermore, the interoperability system may be enhanced by incorporating a digital cross-check feature to verify the legal status of the collateral object and detect the possibility of multiple fiduciary encumbrances over the same vehicle. Consequently, the fiduciary registration system would no longer function merely as a passive

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[26] R. Usman, *Hukum Jaminan Keperdataan* (Sinar Grafika, 2016).
[27] Y. A. Mannas, "Perlindungan Hukum dalam Sistem Administrasi Elektronik pada Layanan Publik," *Jurnal Legislasi Indonesia* 18, no. 3 (2021): 327.

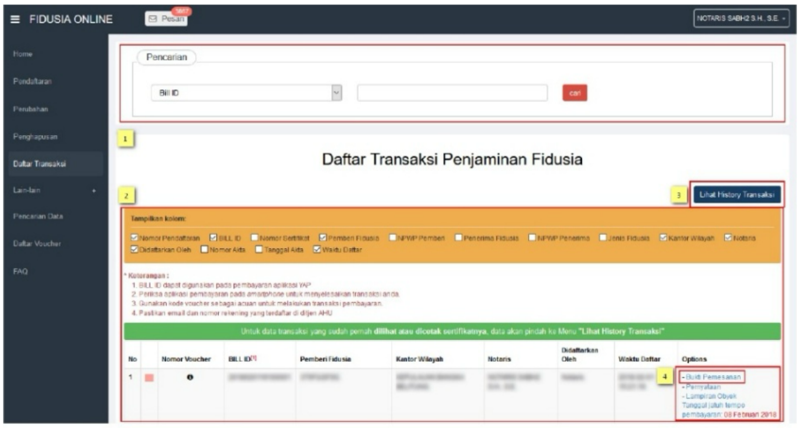
administrative recording mechanism but would evolve into a preventive verification system capable of improving data accuracy, safeguarding legal certainty, and minimizing the potential for future legal disputes[28].

This synchronization yields several important implications. First, the system can detect data discrepancies from the initial stage of registration, thereby preventing the use of invalid data. Second, interoperability helps avoid the double encumbrance of the same object because the system can comprehensively identify the object's status. Third, this step strengthens legal protection for creditors by ensuring that the accepted collateral object has a clear ownership status[29].

3. Formulation of the Mandatory Attachment Feature as a Means to Strengthen the Evidentiary Power of Fiduciary Guarantee Certificates

The AHU Online system actually already provides an object attachment feature within the fiduciary guarantee registration process. However, this feature has not been fully utilized as a means of active validation regarding the validity of the collateral object's data. As an illustration, the following is the layout of the object attachment feature in the AHU Online System:

Figure 5. Collateral Attachment Feature in the AHU Online System



Source: Panduan AHU Online Ditjen AHU)

The existence of this attachment feature indicates that the fiduciary registration system technically has room to strengthen the aspect of digital documentation. However, in practice, this feature remains merely administrative, as it does not yet entail a mandatory upload of specific documents or a verification mechanism for the authenticity and conformity of the attached documents. Consequently, the attachment feature in the current system is not yet fully capable of guaranteeing the material validity of the collateral object.

A mandatory attachment functions not only as a means of digital administration but also as a preventive tool to improve data accuracy,

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[28] Octarina, "Asas Publisitas dan Kepastian Hukum dalam Jaminan Fidusia Elektronik."
[29] H. Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan* (Citra Aditya Bakti, 2010).

reinforce the evidentiary power of Fiduciary Guarantee Certificates, and minimize potential legal disputes in the future[30].

From the perspective of the law of evidence, the existence of supporting documents stored electronically strengthens the evidentiary value of the Fiduciary Guarantee Certificate. The information contained in the certificate is not merely administrative; it is also interconnected with verifiable evidence, thereby increasing its accuracy and reliability in legal proof. The implementation of this feature is also in line with the prudential principle in the office of a Notary. Notaries, as public officials, are obligated to ensure that the documents underlying the drafting of a deed have been meticulously examined and comply with applicable legal provisions. With a mandatory document upload, the verification process becomes more systematic and documented within the electronic system.

In terms of legal protection, the mandatory attachment feature provides tangible benefits for creditors. In the event of a dispute or enforcement, the documents stored in the system can be used as supplementary evidence to ensure the validity of the collateral object. This simultaneously minimizes the risk of discrepancies between the certificate data and the factual condition of the collateral object in the field[31].

The implementation of the mandatory attachment feature is a vital step in strengthening the fiduciary guarantee registration system. Digitalization should focus not only on administrative efficiency but also on reinforcing the aspect of evidence, thereby supporting the establishment of more effective and substantive legal certainty. The formulation of a mandatory attachment is a concrete manifestation of applying the principles of progressive law, which does not limit itself to formal legality. Satjipto Rahardjo emphasized that progressive law demands the courage to transcend administrative boundaries to achieve material truth. This feature simultaneously serves as a legal response to the failure of Rechtssicherheit (legal certainty) and proves that the reconstruction proposed in Chapter III directly closes the gaps in legal certainty that the current system fails to resolve.

IV. Conclusion

The inconsistency between the owner's identity as stated in the sale and purchase receipt and the Vehicle Ownership Certificate (BPKB) in fiduciary security registration reveals a structural weakness in the AHU Online System. The system continues to operate under the principles of administrative passivity and self-assessment, focusing solely on the formal

[30] P. M. Hadjon, *Perlindungan Hukum bagi Rakyat Indonesia* (Bina Ilmu, 1987).
[31] A. G. Anshori, *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika* (UII Press, 2009).

examination of documents without conducting substantive verification of motor vehicle ownership data. Consequently, Fiduciary Security Certificates are vulnerable to third-party disputes, double financing, and obstacles in the execution of fiduciary security. Therefore, discrepancies in the ownership data of fiduciary collateral have significant juridical implications for the realization of substantive legal certainty within the electronic fiduciary registration system. As a result, the legal certainty provided by the system remains merely formal and procedural rather than substantively ensuring legal protection for the parties involved. The reconstruction of the concept of ownership of fiduciary collateral should be carried out through a paradigm shift from a passive administrative system to an active verification system. This reconstruction requires the mandatory submission of a validated Vehicle Ownership Certificate (BPKB) as the principal ownership document within the AHU Online System as a substantive requirement for registration, supported by the original sale and purchase receipt, the Vehicle Registration Certificate (STNK), the identities of the parties, and physical documentation of the collateral object. Furthermore, the transfer of title in the BPKB should become a mandatory prerequisite before the collateral may be accepted by Banks and Notaries, thereby ensuring that only a juridical transfer of ownership (*juridische levering*) constitutes a valid basis for the creation of fiduciary security. Through this reconstruction, harmonization between material and formal evidence of ownership can be achieved, the principles of speciality and publicity can be effectively fulfilled, and balanced legal protection for both creditors and debtors can be realized.

References

Adjie, H. *Hukum Notaris Indonesia: Tafsir Tematik terhadap Undang-Undang Jabatan Notaris*. Refika Aditama, 2015.

Anshori, A. G. *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika*. UII Press, 2009.

Arisanti, I. M. K. "Perlindungan Hukum Bagi Kreditur Terhadap Jaminan Fidusia yang Objeknya Bukan Atas Nama Debitur." *Jurnal Acta Comitas* 5, no. 1 (2020): 12.

Aulia, Z. "Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi." *Undang: Jurnal Hukum* 1, no. 1 (2018): 159–85.

Budiono, H. *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*. Citra Aditya Bakti, 2010.

Darmanto. "Kepastian Hukum Pendaftaran Fidusia Secara Elektronik pada Direktorat Jenderal Administrasi Hukum Umum." *Jurnal Kenotariatan Indonesia* 4, no. 2 (2021): 15.

Djumhana, M. *Hukum Perbankan di Indonesia*. Citra Aditya Bakti, 2018.

Erliyani, R., and R. Hamdan. *Cyber Notary: Peluang dan Tantangan dalam Pendaftaran Jaminan Fidusia Elektronik*. Pustaka Pelajar, 2022.

Hadjon, P. M. *Perlindungan Hukum bagi Rakyat Indonesia*. Bina Ilmu, 1987.

Lumban Tobing, G. H. S. *Peraturan Jabatan Notaris*. Erlangga, 1999.

Makarim, E. *Pengantar Hukum Telematika*. RajaGrafindo Persada, 2005.

Mannas, Y. A. "Perlindungan Hukum dalam Sistem Administrasi Elektronik pada Layanan Publik." *Jurnal Legislasi Indonesia* 18, no. 3 (2021): 327.

Marzuki, P. M. *Penelitian Hukum*. Kencana Prenada Media Group, 2005.

Muhjad, M. H., and S. U. Dewi. *Penelitian Hukum Indonesia Kontemporer*. Genta Publishing, 2012.

Octarina, N. F. "Asas Publisitas dan Kepastian Hukum dalam Jaminan Fidusia Elektronik." *Media Iuris* 5, no. 1 (2022): 84–90.

Poesoko, H. *Parate Executie Objek Hak Tanggungan: Inkonsistensi, Konflik Norma dan Kesesatan Penalaran dalam UUHT*. LaksBang Pressindo, 2008.

Rahardjo, S. *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*. Genta Publishing, 2009.

Rahardjo, S. *Ilmu Hukum*. Citra Aditya Bakti, 2014.

Ridwan, H. R. *Hukum Administrasi Negara*. RajaGrafindo Persada, 2016.

Salim, H. *Perkembangan Hukum Jaminan di Indonesia*. RajaGrafindo Persada, 2016.

Salim, H. S. *Perkembangan Hukum Jaminan di Indonesia*. RajaGrafindo Persada, 2014.

Soekanto, S. *Sosiologi Suatu Pengantar*. Rajawali Pers, 2012.

Subekti. *Pokok-Pokok Hukum Perdata*. Intermasa, 2010.

Subekti, R. and Tjitrosudibio. *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek*. PT Balai Pustaka, 2013.

Syahrani, R. *Seluk-Beluk dan Asas-Asas Hukum Perdata*. Alumni, 2006.

Usman, R. *Hukum Jaminan Keperdataan*. Sinar Grafika, 2016.

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