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Fiduciary Regulation Updates to Accommodate Legal Certainty and Notary Authority in the Removal of Fiduciary Guarantees

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Abstract: This study examines the weaknesses in the regulations governing the removal of fiduciary guarantees. Although the obligation to remove is regulated in relevant laws and regulations, practice shows that thousands of fiduciary guarantees have not been removed even after being paid off, creating legal uncertainty and hindering debtors from reusing the collateral. This study aims to analyse the urgency of updating fiduciary guarantee regulations and to formulate a regulatory framework that can strengthen legal certainty, including proposals for special markings on evidence of fiduciary guarantee objects and confirmation of the authority of the parties entitled to carry out the removal. This study uses a normative-empirical research method, employing a legislative and conceptual approach, with primary legal sources (related legislation) and secondary legal sources in the form of literature and interviews. This study found a gap between regulation and practice. The results of the study indicate the need for regulatory updates, including special markings on fiduciary collateral objects, as is the practice for encumbrances, as well as the affirmation of authority to legal subjects for the removal process. Regulatory updates are expected to create a more accountable removal mechanism and increase legal certainty for all parties.
Keywords: Removal of fiduciary guarantees, Notary, Regulatory updates

1. Introduction

The existence of security law provides creditors with certainty that their rights will be enforced even if the debtor defaults or is unable to repay the debt.[1] In banking institutions, collateral is generally prioritised, and one form of collateral regulated in positive law is fiduciary collateral.[2] Fiduciary collateral differs from fiduciary guarantees in that the former involves the transfer of ownership rights, while the latter is a form of collateral provided through fiduciary mechanisms.[3] Fiduciary collateral is a security right over fiduciary objects, which include tangible movable objects, intangible movable objects, and immovable objects, particularly buildings that cannot be encumbered with liens as referred to in Law Number 4 of 1996 concerning Liens. In principle, a fiduciary takes movable objects as collateral, with a mechanism for transferring ownership rights from the debtor to the creditor.

[1] Achmad Fahrur Rozi and others, "Analisis Konsep, Prinsip, Dan Implemantasi Hukum Jaminan Dalam Menjamin Kepastian Dan Perlindungan Bagi Kreditur Dan Debitur Di Indonesia", *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial*, 1.3 (2023), 141–146, page 141. https://doi.org/10.5281/zenodo.14986182.
[2] Hidayat Andyanto, "Perlindungan Hukum Bagi Kreditur Yang Menggunakan Jaminan Fidusia", *Jendela Hukum*, 6.1 (2019), 15–22, page 16. https://doi.org/https://doi.org/10.24929/fh.v6i1.1548.
[3] Dwi Tatak Subagiyo, *Hukum Jaminan dalam Perspektif Undang-Undang Jaminan Fidusia (Suatu Pengantar)* (Surabaya: UWKS PRESS, 2018), page 339.

In contrast, the control and use of these objects remain with the debtor through a constitutum possessorium, a trust-based transfer of property.[4] The transfer of ownership rights is carried out while maintaining physical control over the objects for the benefit of the fiduciary recipient. Physically, the property remains in the fiduciary grantor's possession, while only the legal rights are transferred. In this situation, the fiduciary grantor retains the right to utilise the property.[5] Fiduciary guarantees have since become the primary instrument for financing motor vehicles, electronic equipment, and even corporate financing, as the encumbrance process is considered simple, quick, and straightforward, while still allowing the debtor to use the collateral.[6]

Normatively, Article 25 of Law No. 42 of 1999 concerning Fiduciary Guarantees explains that fiduciary guarantees are void due to the following reasons.

1. Removal of debts secured by fiduciary (debt repayment);
2. Release of rights to fiduciary guarantees by the fiduciary recipient; or;
3. Destruction of objects that are the subject of fiduciary guarantees.

Therefore, if the debtor has made repayment, the fiduciary recipient, proxy, or representative must notify the Fiduciary Registration Office regarding the removal of the fiduciary guarantee. The Fiduciary Registration Office will then remove the Fiduciary Security from the Fiduciary Register and issue a statement declaring that the relevant Fiduciary Security Certificate is no longer valid, as explained in Article 26 of Law Number 42 of 1999 concerning Fiduciary Security. The cancellation of the fiduciary guarantee has a specified time limit of no more than 14 (fourteen) days from the date of cancellation of the fiduciary guarantee. This provision is regulated in Article 16 paragraph (2) of Government Regulation No. 21 of 2015 concerning Procedures for the Registration of Fiduciary Guarantees and Fees for the Preparation of Fiduciary Guarantee Deeds and Article 19 paragraph (2) of Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 25 of 2021 concerning Procedures for the Registration, Amendment, and Cancellation of Fiduciary Guarantees.

However, field cases show that these provisions are not being implemented optimally. The Regional Office of the Ministry of Law of the Special Region of Yogyakarta found one case in 2024 that recorded around 13,000 fiduciary guarantees that had not been removed even though the debts had been paid off. This delay or negligence in removal kept the debtor listed as having an active guarantee, preventing them from reusing the guarantee's object as collateral for other financing. This case also emphasises that notaries play an important role in the cancellation of fiduciary guarantees, as banks or leasing companies usually grant notaries a power of attorney to register such guarantees. In this case, notaries, as the parties with access to fiduciary guarantee data, can encourage the acceleration of the cancellation of fiduciary guarantees.[7]

This case occurred because the existing legal mechanism does not provide a reminder instrument or special mark indicating the status of collateral on evidence of fiduciary collateral. Furthermore, notaries, who have played an important role in the creation and

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[4] Fristia Maulana Ayang, Rindy Dwi P, Zulfikar, Adinda Santi K, and Putri Fatma F "Pelaksanaan Eksekusi Jaminan Fidusia dalam Perjanjian Pembiayaan Konsumen di Tinjau dari Undang Undang Nomer 42 Tahun 1999 tentang Jaminan Fidusia", *Jurnal Kritis Studi Hukum*, 9.12 (2024), 1–10, page 1-2.

[5] Elis Herlina and Sri Santi, "Perlindungan Hukum Terhadap Konsumen Pada Perjanjian Pembiayaan Dengan Fidusia Tidak Terdaftar", *Jurnal Hukum Ius Quia Iustum*, 25.2 (2018), 277–299, page 283. https://doi.org/10.20885/iustum.vol25.iss2.art4.

[6] Tsuroyyaa Maitsaa' Jaudah, Puji Sulistyaningsih, and Dakum, "Konsekuensi atas Penghapusan Jaminan Fidusia yang Tidak Dilakukan", *Media of Law and Sharia*, 5.3 (2024), 282–292, page 284.

[7] https://www.antaranews.com/berita/4123563/kemenkumham-diy-minta-notaris-dukung-penghapusan-jaminan-fidusia, accessed on May, 24, 2025.

registration of fiduciary collateral deeds, have not been given apparent authority to remove fiduciary collateral. Notaries are only involved in the initial stage, while the final stage, namely removal, is entirely dependent on the actions of the fiduciary recipient (bank or financing company). As a result, the removal process is often neglected, leading to losses and disputes for debtors. This situation demonstrates a discrepancy between the applicable regulations and their implementation, whereby Law No. 42 of 1999 does not accommodate the need for a more accountable and integrated system, as well as a discrepancy regarding the authority of notaries, whereby notaries do not have explicit authority to cancel fiduciary guarantees, but in practice are expected to play a role in the process. This will certainly undermine legal certainty for debtors, especially when re-pledging fiduciary collateral.

Previous studies by Sang Ayu Made Ary Kusumawardhani et al. (2025)[8], Ni Putu Sawitri Nandari et al. (2023)[9], and Gede Aditya Saputra et al. (2021)[10] have discussed the legal aspects of fiduciary removal but are limited to the mechanisms and legal consequences of delays in removing fiduciary guarantees. These studies have not specifically examined the input for regulatory updates regarding the provision of special marks on evidence of fiduciary collateral, nor have they examined the potential authority of notaries to cancel evidence of fiduciary collateral as a solution to the large number of such items that have not been cancelled.

Therefore, given that several issues have not been discussed in previous studies, the objectives of this study are (1) to analyse the urgency of revising Law No. 42 of 1999 in order to ensure legal certainty in the process of removing fiduciary guarantees; and (2) to formulate proposals for regulations regarding the provision of special marks on evidence of fiduciary objects and the authority of notaries in the removal of fiduciary guarantees. This revision will likely create a more transparent and more accountable fiduciary mechanism.

2. Method

The research design used in this study is normative-empirical, focusing on how positive legal provisions, including legislation and written documents, are implemented in actual legal events in society. The aim is to assess whether the application of law in specific cases is in accordance with applicable norms. Thus, this study examines the extent to which legislation is implemented as intended and whether its implementation enables interested parties to achieve their legal objectives.[11] This research uses qualitative research methodology, relying on both primary and secondary legal materials. Findings are derived from non-statistical, non-numerical data, enabling a comprehensive understanding of the subject and supporting an in-depth exploration of the phenomenon's context and background.[12] The statute approach involves a detailed review of relevant laws and regulations governing the legal issues.[13] A conceptual approach draws on expert perspectives and doctrines to analyse key

[8] Sang Ayu Made Ary Kusumawardhani, Ni Putu Yunika Sulistyawati, and Sang Ketut Oka Yadnyana, "Pelaksanaan Penghapusan (Roya) Jaminan Fidusia Setelah Pemberlakuan Sistem Fidusia Online (Studi Kasus: Kantor Notaris I Gede Perdana Artha, SH., M. Kn)", *Kerta Dyatmika,* 22.1, (2025), 44-59, https://doi.org/10.46650/kd.v22i1.1648.

[9] Ni Putu Sawitri Nandari and others., "Akibat Hukum Terhadap Tidak Dilakukan Penghapusan (Roya) Jaminan Fidusia Setelah Kredit Lunas", *Jurnal Hukum Sasana*, 0.1, (2023), 57-68, doi/sasana.10.59999/v9i1.2249.

[10] Gede Aditya Saputra and Ida Ayu Sukihana, "Pengaturan Sanksi Terhadap Kelalaian Penerima Fidusia Dalam Hal Penghapusan Jaminan Fidusia", *Kertha Negara: Journal Ilmu Hukum,* 9.12, (2021), 1039-1049.

[11] Muhaimin, *Metode Penelitian Hukum,* (Mataram-NTB: Mataram University Press, 2020), page 115.

[12] Muhammad Rijal Fadli, "Memahami Desain Metode Penelitian Kualitatif", *Humanika*, 21.1 (2021), 33-54, https://doi.org/10.21831/hum.v21i1.38075.

[13] Wiwik Sri Widiarty, *Buku Ajar Metode Penelitian Hukum*, (Yogyakarta: Publika Global Media, 2024), 119.

legal concepts.[14] Interviews provide concrete information to reinforce collected data. Primary legal materials include laws and regulations about fiduciary guarantees and the notary's role, such as Law Number 30 of 2004 (as amended by Law Number 2 of 2014), Law No. 42 of 1999, Government Regulation No. 21 of 2015, Minister of Law and Human Rights Regulation Number 25 of 2021, and Minister of Agrarian Affairs and Spatial Planning/Head of BPN Regulation Number 5 of 2020. Secondary legal materials in the form of books, journals, previous research results, articles, and internet sources, all of which are related to the legal issues being examined, as well as interviews with relevant agencies to obtain concrete information related to this research, to strengthen the data that has been obtained.[15] Data collection relies on library research using manuscripts, books, magazines, newspapers, and other documents.[16] Content analysis techniques are applied to systematically identify and categorise elements within texts, such as words, themes, and symbols, aiding interpretation of meaning and structure in qualitative legal research.[17]

3. Results and Discussion

3.1. The necessity of revising Law No. 42 of 1999 on Fiduciary Guarantees to enhance legal certainty in the process of removing fiduciary guarantees

Legal protection in fiduciary guarantees has been normatively designed through a series of mechanisms, ranging from the creation of notarial deeds and registrations to the issuance of fiduciary certificates as a form of publicity principle. This series of procedures should guarantee legal certainty for creditors.[18] However, its effectiveness depends on the parties' compliance with the follow-up procedure, namely, the removal of the fiduciary after the debt is paid.

Although Law No. 42 of 1999 concerning Fiduciary Guarantees and its implementing regulations explicitly require the fiduciary recipient to apply for cancellation within a specified period, empirical data indicate that this provision is not being fully implemented. Thirteen thousand cases involving fiduciary rights remain unresolved, even though the debt has been repaid, according to data from the Regional Office of the Ministry of Law in the Special Region of Yogyakarta. This is a strong indicator that the regulation is not yet effective. This ineffectiveness shows a gap between written law (legislation) and its implementation.

Multiple factors contribute to the persistence of uncleared fiduciary guarantees, including:

1. Negligence of the fiduciary recipient
   The fiduciary recipient is obligated to provide comprehensive information to the fiduciary provider concerning the provider's right to remove the fiduciary guarantee, which is necessary to obtain a certificate of removal. Nevertheless, some fiduciary recipients continue to omit detailed explanations of the procedures for fiduciary guarantees, especially regarding their removal. [19]

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[14] Widiarty, 120.

[15] Manotar Tampubolon, *Metode Penelitian Metode Penelitian*, (Padang: PT GLOBAL EKSEKUTIF TEKNOLOGI, 2023), page 16.

[16] Amtai Alaslan and others, *Penelitian Metode Kualitatif*, (Tasikmalaya: Perkumpulan Rumah Cemerlang Indonesia, 2023), 99-100.

[17] Alaslan and others.

[18] Fathan Elan Yuukhaa Mukhtarudin and Budi Santoso, "Analysis of Fiduciary Guarantee Arrangements and Legal Protection of Creditors in Fiduciary Agreements in Indonesia", *International Journal of Social Science Research and Review*, 6.8 (2023), 183-190, page 183. http://dx.doi.org/10.47814/ijssrr.v6i11.642%0AAbstract.

[19] Interview with Mr. Deddhy Herianto Sihotang as the Analysis of Monitoring Report Results at the Legal Services Division of the Regional Office of the Ministry of Law of the Special Region of Yogyakarta, on September 22, 2025.

2. Lack of knowledge among the public (fiduciary providers)
   Individuals who lack knowledge about fiduciary guarantees and are not informed about the procedures for their removal may assume that the settlement of debt concludes all related obligations. Even when the fiduciary recipient provides the necessary information, the fiduciary provider may neglect to request the certificate of removal for the fiduciary guarantee. [20]
3. The absence of regulations regarding the marking of fiduciary collateral evidence
   The aforementioned issues can be addressed by marking the evidence of fiduciary collateral to indicate whether it remains under guarantee or has already been deleted. Such marking enables clear differentiation between active and deleted fiduciary collateral, and serves as a prompt to delete collateral that is no longer under guarantee. This approach helps prevent the accumulation of fiduciary guarantees that persist after the associated debt has been settled, as illustrated in the case described above.

The large number of undeleted fiduciary guarantees creates two main issues:

1. Administrative inconsistencies in fiduciary collateral
   Removing fiduciary collateral is necessary to fully restore the debtor's rights. Without this removal, the collateral remains listed as pledged, not released, until an official removal request is made.
2. The fiduciary grantor cannot re-pledge the fiduciary collateral object
   The fiduciary collateral system ensures that collateral objects cannot be repledged unless they are deleted from the record. As long as the object remains registered under its identity number, it is legally pledged, and re-pledging is not permitted.[21] Fiduciary guarantee objects that have not been deleted while the Fiduciary Guarantee certificate is still recorded, then legally the guarantee that is being guaranteed remains recorded or registered, so that it cannot be guaranteed again before it is deleted.

From Gustav Radbruch's perspective in his book 'Einführung in die Rechtswissenschaften', law is based on three fundamental values: justice (gerechtigkeit), expediency (zweckmassigkeit), and legal certainty (rechtssicherheit)[22]. He emphasises that these three values can conflict, but if there is a conflict between justice and legal certainty, judges must give priority to legal certainty.[23] According to him, legal certainty is a basic function of law because it is only through certainty that social order can be maintained.[24] In this case, the suboptimal implementation of the abolition of fiduciary guarantees demonstrates that the law has failed in its primary function: providing legal certainty. When the rules governing the removal of fiduciary guarantees and the timeframe for their implementation are formally applicable but not effectively implemented in practice, the law loses its direction. It no longer provides clear guidance on the status of the parties' rights and obligations. Structural non-compliance with the obligation to remove fiduciary guarantees indicates that the regulations have not been designed to ensure effectiveness or certainty.

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[20] Interview with Mr. Deddhy Herianto Sihotang as the Analysis of Monitoring Report Results at the Legal Services Division of the Regional Office of the Ministry of Law of the Special Region of Yogyakarta, on September 22, 2025.

[21] Interview with Mr. Deddhy Herianto Sihotang as the Analysis of Monitoring Report Results at the Legal Services Division of the Regional Office of the Ministry of Law of the Special Region of Yogyakarta, on September 22, 2025.

[22] Mario Julyano and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum", *Jurnal Crepido*, 01.01 (2019), 13–22, page 14. <https://doi.org/https://doi.org/10.14710/crepido.1.1.13-22>.

[23] Torben Spaak, "Meta-Ethics and Legal Theory: The Case of Gustav Radbruch", *Law and Philosophy*, 28.3 (2009), 261–90, page. 269. <https://doi.org/10.1007/s10982-008-9036-8>.

[24] Spaak, page. 269.

In addition, Mochtar Kusumaatmadja provided ideas on legal certainty. He explained that the law is a tool for maintaining order in society. Given that law is essentially conservative, it serves to preserve and maintain what has already been achieved.[25] This theory emphasises that the creation of order and regularity is a necessary condition for development. That law acts as a guiding instrument that directs human activities in accordance with development objectives.[26] Mochtar Kusumaatmadja further expanded the meaning and function of law through the concept of "law as a means of development". This idea covers several important aspects, including:[27]

1. Encouraging society towards a just, prosperous, and orderly life;
2. Promoting a fair, prosperous, and orderly society;
3. Affirming that the primary sources of formal law are legislation, jurisprudence, and a combination of both;
4. Emphasising the role of law as a tool for social engineering (legal engineering and social engineering), namely as a means of guiding traditional societies towards modernisation in line with development needs

In relation to this case, the law must maintain stability. However, it must also be designed as a tool of legal engineering to encourage society to move towards order, progress, and prosperity. The provisions on the removal of fiduciary guarantees that are not functioning optimally show that the law is not yet functioning as an instrument for guiding development as intended. The rules regarding the removal of fiduciary guarantees and the time frame for their implementation are intended to create administrative order and provide legal certainty regarding the objects of fiduciary guarantees. However, due to inadequate implementation mechanisms, these provisions are not being optimally implemented by fiduciary recipients. Thus, the law is not only formally present, but also effectively directs behaviour and creates order in accordance with the development objectives emphasised by Mochtar Kusumaatmadja.

According to H.D. Stout, authority is the entirety of administrative powers exercised by subjects of public law in administrative legal transactions, meaning authority is the entirety of rules governing the acquisition and use of government authority by subjects of public law in public law.[28] Therefore, every official or institution can act only within the authority granted by legislation (the principle of legality of authority). In this case, the ambiguity of the notary's authority in the removal adds to the legal uncertainty. Statutory regulations only regulate notaries' role at the registration stage, but social practice shows that notaries are expected to facilitate cancellations. This discrepancy between norms and practice is a form of legal uncertainty because the law does not provide complete rules for situations that arise in society.

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[25] Lilik Mulyadi, 'Teori Hukum Pembangunan Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M.', *Jurnal Hukum Indonesia*, 8.2 (2009), 1–29, page 5-4. <https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/kajian_deskriptif_analitis_teori_hukum_pembangunan.pdf>.

[26] Fernando Manggala Yudha and others, "Kajian Deskriptif Analitis Tentang Teori Hukum Pembangunan Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M.", *Ensiklopedia of Journal*, 7.1 (2024), 362–368, page 362. <https://doi.org/https://doi.org/10.33559/eoj.v7i1.2627>.

[27] Muhammad Renal Anugrah Saputra, Dzaky Hanif, and Mohammad Alvi Pratama, "Pemikiran Mochtar Kusumaatmadja Tentang Hukum Sebagai Sarana Pembangunan : Kajian Filsafat Hukum Terhadap Konsep Dinamika Hukum", *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 4.1 (2025), 1–13, page 9. <https://doi.org/10.11111/dassollen.xxxxxxx>.

[28] H.D Stout and De Betekenissen van de Wet, dalam Muhram La Ode, *Pengantar Hukum Indonesia* (Bandung: Media Sains Indonesia, 2022), page 86.

An analysis of these three theories reveals that the current issue of fiduciary guarantee cancellation highlights fundamental weaknesses in the design of the regulations. According to Radbruch, the law should guarantee legal certainty. However, the rules on fiduciary cancellation and their time frame are ineffective, thereby failing to provide certainty for either debtors or creditors. From Mochtar Kusumaatmadja's perspective, the law should be a tool for creating order and supporting development. However, non-compliance with the cancellation provisions has instead led to administrative disorder and failed to guide the parties' behaviour. Meanwhile, H.D. Stout's theory of authority shows that the lack of clarity about notaries' authority to cancel fiduciary guarantees exacerbates the situation, as officials can act only if there is a clear legal basis. Overall, these three theories show that the current regulations on the cancellation of fiduciary guarantees are suboptimal due to weak legal certainty, a lack of effectiveness as an instrument of order, and an incomplete authority structure. Therefore, regulatory reform is urgent to ensure the law functions effectively, provides certainty, and aligns with evolving societal practices.

3.2. Regulatory measures to enhance legal certainty in the removal of fiduciary guarantees

The need to amend Law No. 42 of 1999 on Fiduciary Guarantees has become increasingly apparent as the provisions on the cancellation of fiduciary guarantees have not been effectively implemented. This situation is evident from the large number of fiduciary guarantees that have not been cancelled even though the debts have been paid off. Data showing an accumulation of more than 13,000 fiduciary guarantees that have never been cancelled indicates that the time limit norm has no coercive power. This fact not only indicates administrative negligence but also regulatory dysfunction: the law is unable to guide creditors' behaviour, maintain administrative order, and provide legal certainty for debtors.

This revision will certainly provide legal certainty for debtors and prevent the accumulation of fiduciary guarantees that have not been cancelled, even though they have been paid off. The regulatory update can be carried out by establishing rules for the issuance of special marks on evidence of fiduciary collateral and by expanding notaries' authority to participate actively in the removal process. Thus, legal updates can increase legal certainty for debtors and also strengthen the credibility of the fiduciary collateral system as a financing instrument. The following section outlines potential updates to ensure legal certainty for debtors and to address the issue of unremoved fiduciary guarantees after repayment:

1. Special marking on fiduciary collateral evidence

   The deletion or cancellation of collateral is not exclusive to the fiduciary collateral system. In the context of security rights, this process is also implemented and is commonly referred to as roya. While fiduciary and lien rights both function as collateral institutions, each operates under distinct regulatory frameworks. [29]

   Fiduciary services are now administered electronically. According to the official website *https://ahu.go.id/* , several services are available, including the following:[30]

   a. Fiduciary registration;
   b. Changes;
   c. Deletion (roya);
   d. Fiduciary corrections;
   e. Corporations;

[29] Debora K.A. Toreh, Hendrik Pondaag and Susan Lawotjo, "Tunjauan Yuridis Atas Kekuatan Eksekutorial Hak Tanggunagn Dan Fidusia (Studi Kasus: Putusan Mahkamah Konstitusi No.18/PUU-XVII/2019 Dan Putusan Mahkamah Konstitusi No.21/PUU-XVIII/2020)", *Lex Privatum*, IX.10 (2021), 55–63.

[30] *https://panduan.ahu.go.id/doku.php*, accessed on November 18, 2025.

f. Retail.

Mortgage rights share several service features with fiduciary rights. Currently, mortgage rights services are administered electronically. Article 6 paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020 on Electronically Integrated Mortgage Rights Services specifies the types of HT-*el* services that may be submitted through the HT-*el* System, including the following:

a. Registration of charges;
b. Transfer of charges;
c. Change of creditor name;
d. Removal of charges;
e. Data correction.

Both fiduciary and lien rights include services related to deletion. However, a key distinction exists in the treatment of deletion. Fiduciary arrangements do not contain provisions for special marks on evidence of fiduciary collateral. In contrast, lien rights require the provision of special marks on evidence of lien rights. Article 17 paragraph (3) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020 concerning Electronically Integrated Mortgage Rights Services stipulates that, upon deletion of the entire Mortgage Right (full royalty), the previous HT-*el* Certificate must be given a special mark indicating that the certificate is no longer valid.

This difference can certainly be used as a basis for comparison in its implementation relative to removal. In fiduciary arrangements where there are no rules regarding the provision of special marks on fiduciary collateral evidence, there is certainly a weakness in optimizing the removal of fiduciary collateral. In the case of unmarked fiduciary collateral, there will be an administrative inconsistency: the debtor has already paid off their debt, but in the administrative system, it is still considered overdue because the removal has not been carried out. Then, there is also the potential for the object to be pledged again, even though the creditor has not yet carried out the removal.

In the context of lien rights, regulations requiring special marks on HT-*el* certificates provide significant benefits to both parties. These special marks function as reminders when an object has not yet been removed, thereby facilitating prompt removal. The presence of a clear special mark on the relevant evidence also supports the efficient cancellation process in cases of negligence.

This is related to Gustav Radbruch's Theory of Legal Certainty. Provisions regarding the removal of fiduciary guarantees and the time frame for their implementation in relevant regulations still cause uncertainty in practice. Although the rules require creditors to submit a request for removal after the debt is paid off, implementation has not been optimal, leading to the accumulation of fiduciary guarantees that remain outstanding even after they are paid off. The law should provide clarity and predictability to maintain social order. When norms do not provide concrete indicators of changes in legal status, legal certainty is not achieved. The proposal to provide a special mark on fiduciary collateral objects is in line with Gustav Radbruch's idea that the law must provide clear, measurable, and predictable rules, especially when other legal values have the potential to confuse. Special marks provide normative and factual certainty so that there is no room for excessive interpretation in determining the status of fiduciary cancellation.

This is further reinforced by Mochtar Kusumaatmadja's Theory of Development Law, which states that law has a conservative nature, namely to maintain existing order while also functioning as a tool for social engineering to encourage the achievement of

order in the development process. This special mark serves as an instrument that enables the law to function as a tool of social engineering, encouraging behavioural change through simple yet effective administrative mechanisms. Thus, the application of special marks is not only a technical solution but also a concrete implementation of Mochtar Kusumaatmadja's theory that law must function effectively to create order and serve as a tool of social engineering that supports development. This update helps improve the design of fiduciary guarantee regulations so they can adapt to evolving practical needs, while ensuring legal certainty as a fundamental requirement for development.

The provision of special markings on fiduciary guarantee evidence plays an important role in creating a more orderly, transparent, and easily verifiable cancellation process. These special markings serve as official indicators that a fiduciary guarantee object has been released because the debt has been paid off or not. With a clear marker, any party viewing the document, such as the debtor, creditor, notary, or third party, can immediately ascertain the status of the release without accessing the system or performing additional checks. This not only improves administrative efficiency but also strengthens legal certainty, as the status of the security is no longer ambiguous. The special mark also prevents errors, such as objects that have been paid off but are still considered bound by fiduciary, or objects that are re-pledged even though they have not been removed from the system. Therefore, the provision of a special mark is not only administrative in nature but also an important instrument for ensuring order and accuracy in the management of fiduciary collateral data.

2. Confirmation of the authority of notaries to remove fiduciary guarantees

In the case described above, there is a contradiction between the normative and the practical. In practice, the Head of the Regional Office of the Ministry of Law of the Special Region of Yogyakarta emphasises that notaries play an important role in the removal of fiduciary guarantees, as banks or leasing companies usually grant notaries a power of attorney to register fiduciary guarantees. In this case, notaries, as parties with access to fiduciary guarantee data, will encourage the acceleration of the removal of fiduciary guarantees.[31] However, normatively, there is no explicit regulation that grants notaries the authority to cancel fiduciary guarantees.

Normatively, Article 15 paragraph (1) of Law Number 30 of 2004 concerning the Position of Notary, as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, explains that the authority to make authentic deeds concerning all deeds, agreements, and determinations required by laws and regulations and/or desired by interested parties to be stated in authentic deeds, guaranteeing the certainty of the date of the deed's creation, storing deeds, providing gross copies, copies and excerpts of deeds, all of which are not also assigned or exempted to other officials or persons designated by law.

Authority is valid only if it is derived from explicitly stipulated regulations. In the Notary Profession Act, the scope of a notary's authority is limited and can only be exercised to the extent explicitly stipulated therein. In addition, a notary may obtain other authorities based on laws and regulations outside the Notary Profession Act, as long as such authorities are directly granted through provisions in the relevant laws and regulations.[32] The Notary Profession Act does grant broad authority regarding the

[31] https://www.antaranews.com/berita/4123563/kemenkumham-diy-minta-notaris-dukung-penghapusan-jaminan-fidusia, accessed on May, 24, 2025.

[32] Annisa Septia Puspareni and Fifiana Wisnaeni, "Relevansi Penerapan Prinsip Mengenali Pengguna Jasa terhadap Kewenangan Notaris", *Notarius*, 16.2 (2023), 753–763, page 759. https://doi.org/10.14710/nts.v16i2.41360.

creation of deeds and access to fiduciary registration, but it does not regulate the authority to remove fiduciary guarantees. Thus, the authority of notaries does not derive from unilateral interpretation, informal negotiations, or legislative opinion, but rather directly from the regulations governing their position.[33] The statement that notaries play an important role in removing fiduciary guarantees creates a contradiction: on the one hand, notaries are functionally capable of bridging legal gaps. However, this authority is not explicitly regulated by law or regulation. This contradiction indicates the weakness of the current fiduciary regulatory design.

From the perspective of H.D. Stout's Theory of Authority, authority must derive from explicit legal norms. The absence of norms governing notaries' authority in cancellation indicates a flaw in regulatory design that ultimately leads to ineffective implementation. Based on this theory, the absence of explicit regulations regarding notaries' authority to cancel fiduciary guarantees indicates a dysfunction in the authority structure. Although notaries have access to the fiduciary registration system, they have essentially no normative basis for performing legal actions, such as cancelling fiduciary guarantees. In relation to this theory, a legal basis can be provided by explicitly regulating notaries to cancel fiduciary guarantees through revisions to the Fiduciary Guarantee Law or related legislation. This amendment would ensure that notaries no longer act solely on the basis of four administrative rules, but rather under positive law. With clear regulations in place, the process of removing fiduciary guarantees could be more structured, reducing ambiguity of authority and strengthening legal certainty for all parties involved, including creditors, debtors, and notaries as public officials.

In addition, another solution is to grant the fiduciary, their proxy, or representative the authority to notify the Fiduciary Registration Office of the cancellation. Currently, only the fiduciary, their proxy, or representative can notify the Fiduciary Registration Office of the cancellation of fiduciary guarantees. However, to improve effectiveness and legal certainty, the fiduciary grantor (debtor) and their proxy or representative should also be given normative authority to notify the Fiduciary Registration Office of the cancellation of fiduciary collateral upon repayment of the debt. This is undoubtedly important to implement, as the fiduciary grantor has a direct interest in ensuring that the collateral can be cancelled immediately to avoid problems when it is to be pledged again. Then, both the fiduciary recipient and the fiduciary provider can authorise a notary to remove the fiduciary guarantee. In this construction, the notary does not act under official authority but rather on a private mandate given through a power of attorney, so that the notary's actions remain within the bounds of legality without expanding their public authority. This model allows notaries to perform administrative functions effectively while upholding the principle that public authority can only arise from legislation. Thus, granting the fiduciary grantor access to reporting can enhance the certainty and effectiveness of fiduciary removal.

4. Conclusion

This study shows that the provisions on the removal of fiduciary guarantees in Law No. 42 of 1999 on Fiduciary Guarantees and its implementing regulations have not ensured legal certainty for debtors or stability in guarantee administration. The obligation of cancellation by the fiduciary recipient, although regulated normatively, is not effective due to the absence of special marks on the evidence of collateral and the lack of clarity regarding the authority

[33] Cica Vadilla, Nabilla Alya Rahmah, and Baidhowi, S.Ag., M.Ag, "Pelanggaran Kode Etik Profesi Terhadap Kewenangan Notaris Dalam Pembuatan Akta", 12.1 (2023), 1-20, page 10. https://doi.org/10.51226/assalam.v12i1.495.

of notaries in the final stage of cancellation. This condition creates a gap between the norm and its implementation, as reflected in the accumulation of thousands of fiduciary rights that have not been cancelled even though the debts have been paid off. Based on this analysis, the urgency of revising Law No. 42 of 1999 on Fiduciary Security is apparent, namely the need for more accountable, integrated, and adaptive regulations to meet practical needs. The revision includes applying a special mark to evidence of fiduciary collateral as an indicator of definite legal status, and granting explicit authority in the regulation to one of the legal subjects (notary/fiduciary provider, proxy, or representative) to remove fiduciary collateral. Several of these proposed updates could strengthen the principle of legal certainty, prevent the accumulation of unreleased guarantees, and ensure debtors' rights to reuse their collateral.

In practical terms, these proposed regulatory updates can be implemented through revisions to the Fiduciary Security Act and its implementing regulations. In addition, granting authority to one of the legal subjects (notary/fiduciary provider, proxy, or representative) will support process efficiency, reduce creditor negligence, and increase the accountability of the parties. Thus, regulatory reform is an important prerequisite for establishing a fiduciary guarantee system that is administratively orderly, transparent, and in line with the demands of legal certainty in financing practices, particularly in the fiduciary guarantee mechanism

References

Alaslan, Amtai, Bangun Suharti, Laxmi, Nanang Rustandi, Eko Sutrisno, and Siti Rahmi. *Penelitian Metode Kualitatif*. Tasikmalaya: Perkumpulan Rumah Cemerlang Indonesia, 2023. https://osf.io/preprints/thesiscommons/smrbh.

Andyanto, Hidayat. "Perlindungan Hukum Bagi Kreditur Yang Menggunakan Jaminan Fidusia." *Jendela Hukum* 6, no. 1 (2019): 15–22. https://doi.org/https://doi.org/10.24929/fh.v6i1.1548.

Fadli, Muhammad Rijal. "Memahami Desain Metode Penelitian Kualitatif." *Humanika* 21, no. 1 (2021): 33–54. https://doi.org/10.21831/hum.v21i1.38075.

H.D Stout, and De Betekenissen van de Wet. *Theoretisch-Kritische Beschouwingen over Het Principe van Wetmatigheid van Bestuur*. Zwolle: W.E.J Tjeenk Willink, 1994. https://doi.org/10.21143/jhp.vol6.no6.716.

Herlina, Elis, and Sri Santi. "Perlindungan Hukum Terhadap Konsumen Pada Perjanjian Pembiayaan Dengan Fidusia Tidak Terdaftar." *Jurnal Hukum Ius Quia Iustum* 25, no. 2 (2018): 277–99. https://doi.org/10.20885/iustum.vol25.iss2.art4.

Jaudah, Tsuroyyaa Maitsaa', Puji Sulistyaningsih, and Dakum. "Konsekuensi Atas Penghapusan Jaminan Fidusia Yang Tidak Dilakukan." *Media of Law and Sharia* 5, no. 3 (2024): 282–92. https://doi.org/10.18196/mls.v5i4.148.

Julyano, Mario, and Aditya Yuli Sulistyawan. "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum." *Jurnal Crepido* 01, no. 01 (2019): 13–22. https://doi.org/https://doi.org/10.14710/crepido.1.1.13-22.

Kusumawardhani, Sang Ayu Made Ary, Ni Putu Yunika Sulistyawati, and Sang Ketut Oka Giri Yadnyana. "Pelaksanaan Penghapusan (Roya) Jaminan Fidusia Setelah Pemberlakuan Sistem Fidusia Online (Studi Kasus: Kantor Notaris I Gede Perdana Artha, SH., M. Kn)." *Kerta Dyatmika* 22, no. 1 (2025): 44–59.

http://ejournal.undwi.ac.id/index.php/kertadyatmika.

Maulana, Ayang Fristia, Rindy Dwi P, Zulfikar, Adinda Santi K, and Putri Fatma F. "Pelaksanaan Eksekusi Jaminan Fidusia Dalam Perjanjian Pembiayaan Konsumen Di Tinjau Dari Undang Undang Nomer 42 Tahun 1999 Tentang Jaminan Fidusia." *Jurnal Kritis Studi Hukum* 9, no. 12 (2024): 1–10.

Muhaimin. *Metode Penelitian Hukum*. *Mataram University Press*. Mataram-NTB: Mataram University Press, 2020.

Muhram, La Ode. *Pengantar Hukum Indonesia*. Bandung: Media Sains Indonesia, 2022.

Mukhtarudin, Fathan Elan Yuukhaa, and Budi Santoso. "Analysis of Fiduciary Guarantee Arrangements and Legal Protection of Creditors in Fiduciary Agreements in Indonesia." *International Journal of Social Science Research and Review* 6, no. 8 (2023): 183–90. http://dx.doi.org/10.47814/ijssrr.v6i11.642%0AAbstract.

Mulyadi, Lilik. "Teori Hukum Pembangunan Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M." *Jurnal Hukum Indonesia* 8, no. 2 (2009): 1–29. https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/kajian_deskriptif_analitis_teori_hukum_pembangunan.pdf.

Nandari, Ni Putu Sawitri, Dewa Krisna Prasada, Kadek Julia Mahadewi, Tania Novelin, and Dewa Ayu Putri Sukadana. "Akibat Hukum Terhadap Tidak Dilakukan Penghapusan (Roya) Jaminan Fidusia Setelah Kredit Lunas." *Jurnal Hukum Sasana* 9, no. 1 (2023): 57–68. https://doi.org/10.31599/sasana.v9i1.2249.

Puspareni, Annisa Septia, and Fifiana Wisnaeni. "Relevansi Penerapan Prinsip Mengenali Pengguna Jasa Terhadap Kewenangan Notaris." *Notarius* 16, no. 2 (2023): 753–63. https://doi.org/10.14710/nts.v16i2.41360.

Rozi, Achmad Fahrur, Siti Qomariyah, Lintang Iliyan Albatul, and Laily Fitroh Nur Aini. "Analisis Konsep, Prinsip, Dan Implemantasi Hukum Jaminan Dalam Menjamin Kepastian Dan Perlindungan Bagi Kreditur Dan Debitur Di Indonesia." *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 3 (2023): 141–46. https://doi.org/https://doi.org/10.5281/zenodo.14986182.

Saputra, Gede Aditya, and Ida Ayu Sukihana. "Pengaturan Sanksi Terhadap Kelalaian Penerima Fidusia Dalam Hal Penghapusan Jaminan Fidusia." *Kertha Negara : Journal Ilmu Hukum* 9, no. 12 (2021): 1039–49. https://jurnal.harianregional.com/index.php/Kerthanegara/article/view/74407.

Saputra, Muhammad Renal Anugrah, Dzaky Hanif, and Mohammad Alvi Pratama. "Pemikiran Mochtar Kusumaatmadja Tentang Hukum Sebagai Sarana Pembangunan : Kajian Filsafat Hukum Terhadap Konsep Dinamika Hukum." *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 4, no. 1 (2025): 1–13. https://doi.org/10.11111/dassollen.xxxxxxx.

Spaak, Torben. "Meta-Ethics and Legal Theory: The Case of Gustav Radbruch." *Law and Philosophy* 28, no. 3 (2009): 261–90. https://doi.org/10.1007/s10982-008-9036-8.

Subagiyo, Dwi Tatak. *Hukum Jaminan Dalam Perspektif Undang-Undang Jaminan Fidusia (Suatu*

Pengantar). Surabaya: UWKS PRESS, 2018.

Tampubolon, Manotar. *Metode Penelitian Metode Penelitian*. Vol. 3. Padang: PT GLOBAL EKSEKUTIF TEKNOLOGI, 2023. http://repository.unpas.ac.id/30547/5/BAB III.pdf.

Toreh, Debora K. A., Hendrik Pondaag, and Susan Lawotjo. "Tunjauan Yuridis Atas Kekuatan Eksekutorial Hak Tanggunagn Dan Fidusia (Studi Kasus: Putusan Mahkamah Konstitusi No.18/PUU-XVII/2019 Dan Putusan Mahkamah Konstitusi No.21/PUU-XVIII/2020)." *Lex Privatum* IX, no. 10 (2021): 55–63.

Vadilla, Cica, Nabilla Alya Rahmah, and Baidhowi Baidhowi. "Pelanggaran Kode Etik Profesi Terhadap Kewenangan Notaris Dalam Pembuatan Akta." *As-Salam: Jurnal Studi Hukum Islam & Pendidikan* 12, no. 1 (2023): 1–20. https://doi.org/10.51226/assalam.v12i1.495.

Widiarty, Wiwik Sri. *Buku Ajar Metode Penelitian Hukum*. Yogyakarta: Publika Global Media, 2024.

Yudha, Fernando Manggala, Candra Mahardika Efendi, Syaefa Wahyuni, Roy Andika Stevanus Sembiring, Dekrit Dirga Saputra, Arya Ahmad Bangsa Diria, and Elli Ruslina. "Kajian Deskriptif Analitis Tentang Teori Hukum Pembangunan Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M." *Ensiklopedia of Journal* 7, no. 1 (2024): 362–68. https://doi.org/https://doi.org/10.33559/eoj.v7i1.2627.

Interview with Mr. Deddhy Herianto Sihotang as the Analysis of Monitoring Report Results at the Legal Services Division of the Regional Office of the Ministry of Law of the Special Region of Yogyakarta, on September 22, 2025.

https://www.antaranews.com/berita/4123563/kemenkumham-diy-minta-notaris-dukung-penghapusan-jaminan-fidusia, accessed on May 24, 2025.

https://panduan.ahu.go.id/doku.php, accessed on November 18, 2025.