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Legal Construction of the Encumbrance of Fiduciary Security on Collateral Located Outside the Notary's Area of Office

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ABSTRACT

Fiduciary security is a widely used in rem security interest in financing practices, as it allows the debtor to retain possession of the collateral. Under Law Number 42 of 1999 concerning Fiduciary Security, the encumbrance of fiduciary security must be drawn up in the form of a Fiduciary Security Deed by a notary and subsequently registered to ensure legal certainty. However, a legal issue arises regarding the notary's competence to execute the deed when the collateral is located outside their area of office. The Law on Notarial Office strictly regulates territorial boundaries, whereas the Fiduciary Security Law lacks restrictions based on the location of the collateral. This study aims to analyze the regulation of notarial authority in drafting Fiduciary Security Deeds under both statutes, as well as the legal consequences regarding the authenticity of the deed and the validity of the fiduciary security itself. This normative legal research employs statutory, conceptual, and analytical approaches, utilizing the theories of legal certainty, authority, and legal protection. The results indicate that a notary is authorized to draft a Fiduciary Security Deed as a public official, provided that their authority is exercised in compliance with statutory provisions concerning territorial jurisdiction, procedures, and the formal structure of the deed. The location of the collateral outside the notary’s area of office does not automatically nullify the authenticity of the deed or the validity of the fiduciary security, as long as the deed is executed by a competent notary within their designated jurisdiction and fulfills all formal requirements of an authentic deed.

Keywords: Legal Construction, Fiduciary Security Encumbrance, Notary's Area of Office, Legal Consequences.

INTRODUCTION

The development of modern economic activities marked by the increasing mobility of transactions, the digitalization of financial services, and the expansion of financing practices based on national networks has transformed the nature of legal relations between creditors and debtors. Financing transactions no longer occur strictly at the local level or within a single administrative region. Instead, they involve parties who may reside in different areas and establish legal relationships without any direct, face-to-face physical encounter. In this situation, the need for *in rem* security interest institutions (proprietary security) becomes increasingly critical. Creditors require certainty regarding debt repayment, while debtors still need the flexibility to utilize the assets serving as collateral. In other words, secured transactions law must maintain a balance between legal certainty and flexibility within the legal traffic of wealth.[1]

The Indonesian legal system recognizes several forms of *in rem* security interests, such as pledge (*gadai*), mortgage (*hipotek*), mortgage on land (*hak tanggungan*), and fiduciary security (*fidusia*), each possessing distinct characteristics and regulatory scopes.[2] In modern financing practices—particularly involving motor vehicles, machinery, and other movable assets—fiduciary security has become the most dominant instrument utilized because it does not require the physical transfer of the collateral to the creditor. The debtor retains

[1] Dwi Anggraini, “Peran Notaris dalam Pembebanan Jaminan Fidusia pada Perusahaan Pembiayaan” [The Role of Notaries in the Encumbrance of Fiduciary Security in Financing Companies], Jurnal Hukum dan Kenotariatan [Journal of Law and Notarial Studies] 8, no. 2 (2021): 112.

[2] M. Bahsan, Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia [Secured Transactions Law and Banking Credit Guarantees in Indonesia] (Jakarta: Rajagrafindo Persada, 2019), 15.

possession of the collateral to support their economic activities, while the creditor acquires a proprietary right that grants preferred status (*droit de preference*) and the right to pursue the asset into whosoever hands it may pass (*droit de suite*). These characteristics make fiduciary security highly adaptive to national economic developments that are no longer bound by geographical boundaries.

To provide legal certainty, the creation of a fiduciary security interest cannot rely solely on the mutual agreement of the parties; it must satisfy specific formalities mandated under Law Number 42 of 1999 concerning Fiduciary Security. This statute requires a notarial deed as the constituent element for the creation of the security interest, followed by registration to fulfill the publicity principle toward third parties.[3] Consequently, a notarial deed in a fiduciary security arrangement serves a constitutive function; without the deed, the proprietary right does not arise. This implies that the legal certainty and binding force of fiduciary security depend not only on the private agreement of the parties but also on the competence of the public official executing the deed.

On the other hand, a notary as a public official holds a vital position within the legal evidentiary system through their authority to draft authentic deeds. This authority is granted by the state and exercised pursuant to Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning Notarial Office, which stipulates that a notary is assigned to a specific area of office (*territorial jurisdiction*) as the boundary for exercising their authority. This territorial restriction is a consequence of the notary's status as a public official executing a portion of the state’s functions in the realm of civil law. Therefore, the authenticity of a deed is determined not only by the fulfillment of formal and material requirements but also by the competence of the official executing it. However, the regulations governing a notary’s area of office do not explicitly clarify whether this boundary only pertains to the physical place where the notary performs their duties or if it also extends to the legal subject matter (*collateral*) that forms the substance of the deed.

The significance of a Fiduciary Security Deed lies not only in its function as written evidence but also as a constitutive requirement for the birth of the fiduciary right itself. Unlike the underlying principal agreement which arises out of mutual consent, the fiduciary proprietary right only gains legal existence once it is incorporated into a notarial deed and registered in accordance with statutory provisions. Thus, the involvement of a notary in creating fiduciary security is not merely an administrative formality, but a decisive element determining the validity of the encumbrance. This creates a legal issue regarding whether a notary executing a Fiduciary Security Deed for collateral located outside their area of office will potentially trigger extensive legal consequences affecting the status of the deed, the creditor's position as a secured holder, and legal certainty within financial transactions.

This problem becomes increasingly relevant in modern financing practices where the parties, the financing office, and the collateral may all be situated in different regions. Within the legal regime of fiduciary security, Law Number 42 of 1999 mandates that the encumbrance must be executed via a Fiduciary Security Deed drawn up by a notary, yet it contains no restrictions based on the physical location of the collateral. Conceptually, therefore, fiduciary collateral can be located anywhere as long as its encumbrance is established through a notarial deed and registered under prevailing laws. However, this statute fails to clarify the relationship between the location of the collateral and the territorial jurisdiction of the executing notary. Conversely, the Law on Notarial Office regulates the territorial boundaries of a notary’s office but leaves vague whether this restriction applies strictly to the venue where the duties are performed and where the parties appear, or if it also encompasses the physical objects underlying the legal acts recorded in the deed.

This situation results in a vagueness of norms (*kekaburan norma*), particularly regarding the meaning and scope of a notary’s area of office in executing Fiduciary Security Deeds. Prevailing laws offer no clear boundaries as to whether a notary remains competent to draft a Fiduciary Security Deed when the collateral is situated outside their territorial jurisdiction. In other words, there is ambiguity regarding whether a notary's territorial jurisdiction is measured solely by the place where the notary runs their office or if it must also be linked to the physical location of the fiduciary object. This normative ambiguity opens room for divergent interpretations in both

[3] Mulyoto, Hukum Fidusia di Indonesia: Konsep dan Implementasinya [Fiduciary Law in Indonesia: Concepts and Implementations] (Yogyakarta: Deepublish, 2020), 37.

notarial and financing practices, leading to legal uncertainty regarding the limits of notarial authority in executing Fiduciary Security Deeds.

In practice, this vagueness of norms has become more pronounced due to the development of the electronic fiduciary registration system on a national scale. This system enables a notary residing in one region to execute a Fiduciary Security Deed over an object physically located in another region, or even in a different province. This condition demonstrates that legal practices and business necessities are evolving at a faster pace than the regulations governing the limits of notarial territorial jurisdiction. Consequently, a fundamental question emerges as to whether the concept of a notary's area of office, traditionally understood in an administrative sense, remains relevant when linked to collateral that can legally change locations and is not tied to a single specific territory.

This ambiguity carries significant implications for the validity and evidentiary strength of a Fiduciary Security Deed. If the location of the fiduciary object is interpreted as part of the boundaries of a notary's territorial jurisdiction, a deed executed for an object outside their area of office faces potential challenges to its authenticity. Conversely, if notarial authority is understood to relate solely to the place where office duties are performed and is detached from the location of the object described in the deed, then the presence of the fiduciary object outside the notary's jurisdiction does not affect the validity of the deed or the creation of the fiduciary security right. These conflicting interpretations reveal that existing legislation does not yet provide adequate legal certainty regarding the limits of notarial authority over collateral located outside their area of office.

Based on the dynamic described above, the emerging legal issue does not stem from an express prohibition or a direct contradiction between statutes, but rather from the ambiguity of the norm concerning the relationship between a notary's territorial jurisdiction and the physical location of the fiduciary collateral. In other words, there is a lack of clarity as to whether a notary's area of office solely concerns the place where the notary exercises their authority or if it also encompasses the objects of the legal actions recorded in the deed. This normative vagueness generates legal uncertainty regarding the validity of the Fiduciary Security Deed, its evidentiary strength as an authentic deed, and the enforceability of the fiduciary proprietary rights arising from it. Therefore, normative legal research is required to formulate an appropriate legal construction regarding the limits of notarial authority in executing Fiduciary Security Deeds for objects located outside their area of office, thereby providing legal certainty, justice, and legal protection for all parties in modern financing practices.

Based on this background, the research problems can be formulated as follows: How is the notary's authority regulated in the execution of fiduciary security deeds under Law Number 42 of 1999 concerning Fiduciary Security and the Law on Notarial Office? And what are the legal consequences regarding the deed's authenticity and the validity of the fiduciary security if the collateral is located outside the notary's office area?

RESEARCH METHOD

The type of research employed in this study is normative legal research, wherein law is conceptualized as it is written in statutory regulations (law in books) or as a set of rules and norms that serve as benchmarks for appropriate human behavior. Normative legal research also encompasses investigations into legal principles, legal sources, and statutory regulations from a scientific and theoretical perspective, allowing for a structured analysis of the normative legal issues under discussion.

To address the formulated problems, this study utilizes three distinct research approaches:

1. Statutory Approach: This approach is conducted by reviewing and analyzing all laws and regulations relevant to the legal issues being addressed.

2. Conceptual Approach: This approach departs from the prevailing perspectives and doctrines within legal science to build a solid theoretical foundation.

3. Analytical Approach This approach aims to uncover the conceptual meaning behind the terms utilized in statutory regulations, while simultaneously examining their practical application and judicial interpretation. This is accomplished through two levels of examination: first, by extracting new contextual meanings

contained within the relevant legal rules, and second, by assessing these legal terms in practice through the analysis of legal decisions and practices.[4]

In normative legal research, legal materials are collected using literature study techniques (*studi pustaka*). The collection of legal materials or secondary data is performed by gathering primary legal materials, secondary legal materials, tertiary legal materials, and relevant non-legal materials. The retrieval of these materials is conducted by reading, reviewing, and listening to conventional literature, as well as accessing trusted legal materials through internet databases and official websites.[5]

The analysis of legal materials is carried out through critical review, which involves examining, challenging, supporting, expanding, or commenting on the data gathered. Subsequently, a conclusion is formulated based on the researcher's logical reasoning, guided by the chosen theoretical framework.

The nature of analysis in normative legal research is inherently prescriptive; its purpose is to provide standard legal arguments for the research findings. This legal argumentation serves to prescribe a definitive assessment regarding what is right or wrong, or what ought to be (das Sollen) according to the law including legal norms, values, principles, and legal doctrines in relation to the specific legal facts or events under study. This process is deeply intertwined with the applied research approaches, which inherently shape how legal materials are scrutinized within the framework of normative legal science.

DISCUSSION

Notarial Authority in Executing Fiduciary Security Deeds Under Law Number 42 of 1999 concerning Fiduciary Security and the Law on Notarial Office

Within the Indonesian legal system, a notary is a public official (*pejabat umum*) vested with authority by the state to draft authentic deeds and exercise other powers mandated by statutory regulations. The status of a notary as a public official signifies that they do not act for private interests, but rather execute a portion of the state's functions in civil law specifically to provide legal certainty, order, and protection to the public.

Theoretically, authority is defined as the legal power conferred by statutory regulations upon an organ or official to perform specific legal acts. According to Philipus M. Hadjon, authority constitutes formal power derived directly from statutes.[6] Meanwhile, Bagir Manan states that authority is the legitimate power to act within both public and private law spheres based on applicable legal provisions.[7] Consequently, a notary's authority does not arise from personal intent, but from an attribution of authority (*atribusi kewenangan*) granted by the state through legislation. The regulatory framework governing the execution of fiduciary security deeds is elaborated below:

Law Number 42 of 1999 concerning Fiduciary Security

The institution of fiduciary security is a form of *in rem* security interest (*jaminan kebendaan*) that has evolved alongside the public's growing demand for a flexible financing system that ensures legal certainty for both creditors and debtors. The introduction of fiduciary security into the Indonesian legal system serves as a response to modern business practices requiring collateral without transferring physical possession of the asset to the creditor. In trade and financing practices, debtors require continuous possession of the collateral to support their business activities or daily operational needs. Therefore, the state enacted Law Number 42 of 1999 concerning

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[4] Johny Ibrahim, Teori dan Metodelogi Penelitian Hukum Normatif* [Theory and Methodology of Normative Legal Research], 6th print. (Malang: Bayu Media Publishing, 2013), 310.
[5] Muhaimin, *Metode Penelitian Hukum [Legal Research Methods] (Mataram: Mataram University Press, 2020), 65.
[6] Philipus M. Hadjon, Tentang Wewenang [On Authority] (Surabaya: Universitas Airlangga), 36.
[7] Abwabur Rezeki Ghani et al., "Peran Notaris dalam Pembuatan Akta Otentik dan Dampaknya terhadap Keabsahan Hukum di Indonesia" [The Role of Notaries in Making Authentic Deeds and Its Impact on Legal Validity in Indonesia], Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory 3, no. 2 (2025): 72.

Fiduciary Security as a specific legal basis guaranteeing the existence, creation, and enforcement of fiduciary security in Indonesia.[8]

Normatively, the definition of fiduciary security is governed by Article 1 Paragraph (1) of the Fiduciary Security Law, which stipulates that a fiduciary (*fidusia*) is the transfer of ownership rights over an asset based on trust, provided that the asset whose ownership rights are transferred remains in the possession of the asset's owner. Furthermore, Article 1 Paragraph (2) explains that fiduciary security (*jaminan fidusia*) is a security interest over movable assets (both tangible and intangible) and immovable assets particularly buildings that cannot be encumbered by a land mortgage (*hak tanggungan*) which remain in the possession of the fiduciary provider as collateral for the repayment of a specific debt, granting preferred status to the fiduciary recipient over other creditors. This provision indicates that the defining characteristic of fiduciary security is the legal transfer of ownership rights (*yuridis*) to the creditor, while physical custody remains with the debtor.

This framework demonstrates that fiduciary security performs a strategic function in modern financing. Creditors receive legal protection through preferred rights (*droit de preference*) over the collateral, while debtors retain the ability to use the asset for business or economic activities. Thus, the fiduciary framework bridges the creditor's need for security and the debtor's operational productivity in a balanced manner. In practice, the scope of fiduciary collateral is extensive, ranging from motor vehicles, commercial inventory, and production machinery to receivables and other movable assets holding economic value.

To establish legal certainty over the encumbrance of fiduciary security, the Fiduciary Security Law provides specific guidelines for executing fiduciary security deeds. This is explicitly mandated in Article 5 Paragraph (1), which states that the encumbrance of an asset with fiduciary security must be drafted via a notarial deed in the Indonesian language, constituting a Fiduciary Security Deed. This statutory provision reveals that the state explicitly authorizes notaries to draw up Fiduciary Security Deeds as a formal prerequisite for the creation of a fiduciary encumbrance.[4] Consequently, the notary occupies a central role in establishing the fiduciary security relationship; without a notarial Fiduciary Security Deed, the encumbrance fails to meet the mandatory formal criteria prescribed by law.

The Law on Notarial Office

The general authority of a notary is regulated under Article 1 Paragraph (1) of the Law on Notarial Office, which defines a notary as a public official authorized to draw up authentic deeds and possess other authorities as referred to in the law or pursuant to other statutes. This provision demonstrates that the core of notarial authority lies in the power to create authentic deeds. Furthermore, the phrasing "other authorities" indicates that the law accommodates the allocation of additional powers to notaries through specific external regulations, including the field of fiduciary security.

In greater detail, the primary regulation concerning notarial authority is set out in Article 15 Paragraph (1) of the Law on Notarial Office. It stipulates that a notary is authorized to make authentic deeds regarding all actions, agreements, and stipulations required by statutory regulations and/or desired by interested parties to be stated in an authentic deed, to guarantee the certainty of the date of the deed's execution, to preserve the deed, and to issue *grosse* (first formal copies), copies, and excerpts of the deed, provided that the drafting of such deeds is not assigned or excepted to other officials or individuals designated by law. This reflects the broad scope of notarial authority within civil law, particularly regarding the creation of written evidence possessing conclusive evidentiary weight.

The Nature of Authentic Deeds and the Evidentiary System

Based on the interplay between Law Number 42 of 1999 and the Law on Notarial Office, a notary's authority to execute a Fiduciary Security Deed is an extension of their general capacity as a public official executing authentic deeds. In civil transactions, a deed serves a vital function as written evidence used to provide certainty regarding

[8] Gunawan Widjaja and Ahmad Yani, Jaminan Fidusia [Fiduciary Security] (Jakarta: RajaGrafindo Persada, 2018), 45.

a legal act, a legal relationship, or the rights and obligations of the parties. The public demand for deeds increases alongside the expansion of economic, financial, and commercial interactions that require certainty and legal protection. Therefore, a deed is not merely an administrative document, but a legal instrument holding evidential weight in dispute resolution.

Generally, a deed is defined as a written instrument intentionally created to serve as evidence of an event or legal act. Sudikno Mertokusumo explains that a deed is a signed document containing events that form the basis of a right or obligation, created deliberately from the outset for evidentiary purposes. This perspective indicates that a piece of writing qualifies as a deed if it is intentionally drafted for evidence and details a specific legal relationship. Thus, the essence of a deed lies in its evidentiary function to secure a legal status.

In Indonesian civil law, deeds are categorized into two types: private deeds (*akta di bawah tangan*) and authentic deeds (*akta autentik*). Private deeds are drafted by the parties themselves without the intervention of a public official, whereas authentic deeds are drawn up by or before an authorized public official in accordance with statutory regulations. This distinction heavily influences the evidentiary weight of each document. A private deed carries evidentiary weight only as long as its contents and signatures are acknowledged by the parties, whereas an authentic deed possesses conclusive evidentiary force (*kekuatan pembuktian sempurna*) regarding its contents.[9]

Regulations concerning authentic deeds are anchored in Article 1868 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*), which states that an authentic deed is one drawn up in the form prescribed by law, by or before public officials who hold competent authority at the place where the deed is executed. This provision identifies three cumulative elements required for a deed to be deemed authentic:

1. It must be executed in the form prescribed by law;
2. It must be drawn up by or before an authorized public official;
3. The official must hold competent authority at the location where the deed is drafted.

If any single element is unfulfilled, the deed loses its authentic character.

In notarial practice, the notary acts as the primary public official authorized to create authentic deeds within civil law. This power is delegated by the state through the Law on Notarial Office to administer legal services to the public. Consequently, a notarial deed holds a privileged position in the civil evidentiary system because it guarantees certainty, order, and legal protection for the transacting parties.[10]

The evidentiary value of an authentic deed comprises three dimensions: external (*lahiriah*), formal (*formal*), and material (*material*) evidentiary force. External evidentiary force dictates that a deed must be presumed authentic as long as its outward appearance complies with statutory forms. Formal evidentiary force implies that what is stated and witnessed by the public official in the deed is legally presumed to have occurred before that official. Material evidentiary force denotes that the contents of the deed are deemed true and binding upon the parties unless proven otherwise by a definitive court judgment. Consequently, an authentic deed maintains a paramount position in the law of evidence compared to other written instruments.

Within financing and secured transactions, authentic deeds are critical because these relationships generally involve significant economic value and a high potential for future litigation. Establishing an *in rem* security interest requires absolute certainty regarding the identities of the parties, the collateral, the valuation, and the

[9] Rexy Rionaldi Refri, "Akibat Hukum Perjanjian Fidusia Yang Dibuat Dengan Akta Dibawah Tangan" [Legal Consequences of Fiduciary Agreements Made via Private Deeds], Notaire Journal 1, no. 1 (2018): 112.
[10] Harlien Budiono, Teknik Pembuatan Akta Notaris [Techniques of Drafting Notarial Deeds] (Bandung: PT. Citra Aditya Bakti, 2018), 58.

subsequent rights and obligations. Therefore, the law mandates that specific security interests be executed via authentic deeds to guarantee legal certainty and protect the contracting parties as well as third parties.[11]

Regarding fiduciary security, the use of an authentic deed is crucial because it yields a proprietary security right that grants preferred status to the creditor. This preferred status affects not only the debtor and creditor but also third-party claimants. For this reason, the legislature intended for the encumbrance of fiduciary security to be executed through a highly secure formal mechanism specifically, a Fiduciary Security Deed drawn up by a notary.[12]

Theoretical Analysis: Authority and Legal Certainty

The Law on Notarial Office provides the baseline authority for notaries to draft authentic deeds for all legal acts required by law or requested by interested parties. This underscores that notaries possess the legal competence to formalize civil relationships into authentic forms, including those concerning the encumbrance of proprietary security. In this context, notarial authority is attributed directly by statute as a manifestation of the state's role in delivering legal certainty to the public.

The Fiduciary Security Law reinforces this authority by strictly requiring that the encumbrance of an asset with fiduciary security be made via a notarial Fiduciary Security Deed. This regulatory structure indicates that the legislature places the notary as the formal authority capable of bringing a fiduciary security relationship into legal existence. The mandatory use of a notarial deed stems from the nature of fiduciary security as a proprietary interest affecting third parties. Hence, a notary is necessary to ensure the fulfillment of formal criteria, verify the identities of the parties, clarify the collateral description, and record the contractual substance within an authentic instrument.

The intersection between these two statutes highlights the relationship between general and specific provisions (*lex generalis* and *lex specialis*). The Law on Notarial Office serves as the foundational attribution of notarial authority as a public official executing authentic deeds, whereas the Fiduciary Security Law specializes this authority within the context of establishing fiduciary security. Thus, a notary's power to execute a Fiduciary Security Deed is not an isolated power, but a concrete application of general notarial authority reaffirmed through specialized secured transactions law. This demonstrates that the Indonesian legal system positions the notary as an essential mechanism for creating legal certainty and protection within public financing activities.

The analysis confirms that a notary's role in executing a Fiduciary Security Deed is not merely administrative or a matter of formality; it serves a preventive function to mitigate future legal disputes. Through an authentic deed executed by a notary, the legal relationship between creditor and debtor gains formal legitimacy and conclusive evidentiary force. Thus, the notary holds a vital position in ensuring administrative legal order, protecting party rights, and securing the execution of financing transactions that utilize fiduciary security as a debt enforcement mechanism.

When connected to the notary's authority to execute Fiduciary Security Deeds, the theory of legal certainty demonstrates that the provisions in the Law on Notarial Office and Law Number 42 of 1999 are concrete efforts by the state to stabilize public financing transactions. This certainty is evident in the rules dictating that fiduciary encumbrances must be drafted as a Fiduciary Security Deed by a notary as the authorized public official. This framework provides clarity regarding the competent official, the legal forms required, and the formal procedures that must be followed.

From the perspective of legal certainty theory, clarity regarding notarial authority is vital because it determines the legitimacy of an authentic deed. Through explicit statutory provisions, the public receives assurance that a Fiduciary Security Deed can only be drafted by a legally competent notary. Consequently, parties in a financing relationship understand that a fiduciary encumbrance cannot be executed orally or via a simple private

[11] Sjaifurrachman, Aspek-Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta [Aspects of Notarial Liability in Deed Drafting] (Bandung: Mandar Maju, 2011), 63.
[12] Laksana Arum Nugraheni, Op. Cit.

agreement; it must be recorded in an authentic deed drawn up by a legally recognized official. This reflects the application of clear and consistent rules as advocated by this theory.

The relationship between the theory of legal certainty and notarial authority is also visible in the preventive function of authentic deeds. The execution of a Fiduciary Security Deed by a notary aims to minimize ambiguity and potential litigation in financing. With an authentic deed, the parties obtain an instrument holding high evidentiary weight, making their respective rights and obligations transparent. Here, the notary operates not just as a document writer, but as an official who helps maintain legal order through the creation of valid, certain evidence.

Based on this analysis, a notary's standing as a public official is derived attributes from the state specifically for the execution of Fiduciary Security Deeds. This authority possesses legitimacy because it is direct, statutory, executed to fulfill a state function, and bounded by legal provisions regulating the scope of notarial office. Therefore, a notary's authority in drawing up Fiduciary Security Deeds must be viewed as a public law authority whose execution must comply with the principle of legality and statutory mandates.

Ultimately, notarial authority in this context is an attributive power granted directly by the state through the Law on Notarial Office and reinforced by Law Number 42 of 1999. This authority positions the notary as a public official empowered to create authentic instruments that provide legal certainty and protection within financing transactions. In the perspective of the theory of authority, this power exists due to a legally mandated distribution of competence, requiring its execution to submit to prescribed legal boundaries. Concurrently, based on Jan's theory of legal certainty, the regulation of notarial competence and the mandatory formalization of fiduciary encumbrances via authentic deeds show clear, consistent, and state-recognized rules designed to secure the formation of fiduciary interests. Thus, the notary's involvement is not a bureaucratic formality, but an execution of a state function to ensure legality, certainty, and conclusive evidentiary strength for the legal relationship between creditor and debtor.

Legal Consequences on the Authenticity of the Deed and the Enforceability of Fiduciary Security for Collateral Located Outside the Notary's Area of Office

In the practice of establishing a fiduciary security interest, a notary holds a crucial position because the encumbrance of fiduciary security must be incorporated into a Fiduciary Security Deed drawn up by a notary as a public official. This requirement indicates that the legislature intended to foster legal certainty, administrative order, and legal protection within financing transactions through the use of authentic deeds. As public officials, notaries exercise authority delegated by the state under statutory regulations; thus, the execution of such authority must remain strictly within the boundaries prescribed by law, including the notary's designated area of office.[13]

In practice, situations frequently arise where the fiduciary collateral is physically located outside the area of office of the notary executing the Fiduciary Security Deed. This state of affairs triggers a legal issue because the Law on Notarial Office mandates that a notary possesses a restricted area of office when exercising their authority as a public official. This restriction shows that notarial authority is not absolute but rather territorially bounded by statute. Within the concept of an authentic deed, the competence of the public official is a decisive element determining the validity of the document as an authentic deed. Therefore, executing authority outside the legally prescribed boundaries potentially impacts the authenticity of the deed.

The authenticity of a deed is fundamentally determined by the fulfillment of elements stipulated by statutory law. In Indonesian civil law, provisions regarding authentic deeds are anchored in Article 1868 of the Indonesian Civil Code, which defines an authentic deed as one drawn up in the form prescribed by law, by or before public officials who hold competent authority at the place where the deed is executed. Under this provision, the competence of the public official stands as a primary requirement determining authenticity. Consequently, in

[13] Kheke Nadea et al., "Pengaturan dan Tanggungjawab Notaris Terhadap Penyimpanan Minuta Akta Fidusia di Kota Pekanbaru" [The Regulation and Responsibility of Notaries for the Storage of Fiduciary Deed Minutes in Pekanbaru City], Sibatik Journal 2, no. 5 (2023): 1460.

notarial practice, the issue of the boundaries of notarial authority is intrinsically linked to the legal force and standing of an instrument as an authentic deed.

In the context of a Fiduciary Security Deed, the issue of authenticity is frequently linked to the placement of the collateral outside the notary's area of office. This problem emerges because the Law on Notarial Office stipulates that a notary is assigned to a specific area of office and is strictly prohibited from conducting official duties outside that territory. This provision has led to an interpretation that if the fiduciary collateral is located outside the notary's area of office, the notary is deemed to have acted ultra vires (beyond authority), thereby stripping the executed deed of its authentic character. Such an interpretation stems from the premise that a public official's competence must be rigidly restricted based on the territorial jurisdiction defined by law.

However, a systematic analysis reveals that the statutory provisions governing a notary's area of office concern the physical venue where the notary exercises their office and where the deed is executed, rather than the physical location of the legal subject matter (*collateral*) incorporated within the deed. Article 17 Paragraph (1) Letter a of the Law on Notarial Office emphasizes that a notary is prohibited from running their office outside their designated territory. This phrasing indicates that the regulatory focus rests upon the official actions of the notary namely, the place where the notary performs their authority to draft an authentic deed. Consequently, the prohibition does not explicitly dictate that the legal object listed in the deed must reside within the notary's area of office.

This argument gains relevance when linked to the characteristics of fiduciary collateral, which typically consists of movable objects. Unlike land rights (*hak atas tanah*), which have a strict territorial attachment, fiduciary objects are dynamic and can move across jurisdictions. Motor vehicles, production machinery, commercial inventory, or receivables serving as fiduciary objects may easily be located in a different region from where the creditor resides or where the executing notary runs their office. Therefore, if the authenticity of a Fiduciary Security Deed were to be determined by the physical location of the collateral, it would create profound legal uncertainty and impede financing practices that require operational flexibility.

Furthermore, Law Number 42 of 1999 concerning Fiduciary Security does not impose a requirement that the fiduciary collateral must be located within the area of office of the executing notary. The Fiduciary Security Law only mandates that the fiduciary encumbrance must be drawn up via a notarial deed in the Indonesian language. Consequently, as long as the Fiduciary Security Deed is drafted by a competent notary within their designated area of office in compliance with the Law on Notarial Office, the physical location of the collateral outside that area does not automatically divest the deed of its authentic nature.

From the perspective of the law of evidence, the authenticity of a deed depends fundamentally on the fulfillment of the formal elements required to create an authentic instrument, which are: [14]

1. It is drawn up in the form prescribed by law;
2. It is executed by or before a competent public official;
3. It is executed within the territorial jurisdiction of that official.

If these three elements are satisfied, the instrument retains its status as an authentic deed. Therefore, determining the authenticity of a Fiduciary Security Deed should not be based on the location of the collateral, but rather on the legality of the notary's official conduct at the time of drafting. In other words, as long as the notary executes the deed within the province that constitutes their area of office and satisfies all formal drafting procedures, the Fiduciary Security Deed remains authentic, even if the collateral is located elsewhere.

Conversely, adverse legal consequences regarding authenticity only arise if the notary physically executes their office outside their territorial jurisdiction. In such a scenario, the element of the public official's competence as

[14] Agung Hari Sandi, "Kedudukan Akta Jaminan Fidusia yang Dibuat Oleh Notaris Di Luar Wilayah Jabatannya" [The Standing of Fiduciary Security Deeds Executed by Notaries Outside Their Area of Office] (Master's thesis, Master of Notary Law Study Program, Universitas Sriwijaya, 2020), 83.

mandated by Article 1868 of the Indonesian Civil Code is unfulfilled. As a consequence, the executed deed faces a degradation of its evidentiary weight from an authentic deed to a private deed (*akta di bawah tangan*). This degradation is not caused by the location of the fiduciary object, but because the notary performed an official act beyond the territorial boundaries of authority granted by law.[15]

Thus, the existence of fiduciary collateral outside a notary's area of office does not directly affect the authenticity of the Fiduciary Security Deed. Authenticity remains intact as long as the notary exercises their authority in compliance with the Law on Notarial Office and the formal procedures for creating an authentic deed are satisfied. Therefore, the pivotal legal issue determining the authenticity of a Fiduciary Security Deed is not the location of the collateral, but the validity of the notary's execution of authority in drafting the deed.

Normative Disharmony and Legal Protection for Creditors

When connected to notarial authority in executing Fiduciary Security Deeds, the primary problem lies in the divergent regulatory focuses between the Law on Notarial Office and the Fiduciary Security Law. The Law on Notarial Office emphasizes territorial boundaries for the notary's office, whereas the Fiduciary Security Law contains no restrictions based on the location of the collateral. This asymmetry in statutory construction opens a gray area for interpretation regarding whether the location of collateral outside a notary's area of office can nullify the authenticity of the deed.

In the context of legal certainty, the interpretation of a notary's area of office must be conducted systematically so as not to cause disruption in financing practices. Regulations regarding a notary's territory are fundamentally designed to limit where the notary may physically perform their duties as a public official, not to restrict the location of the legal objects described within the deed. Therefore, using the location of the fiduciary object as a baseline to determine authenticity injects legal uncertainty, given that there is no statutory provision explicitly requiring the collateral to be within the notary's area of office.

From the standpoint of legal certainty theory, such a restrictive interpretation contradicts the primary objective of establishing the fiduciary security institution, which was designed to offer legal protection and certainty in financing activities. Legal certainty is achieved when the standard for a deed's authenticity is measured by the fulfillment of the formal requirements of an authentic deed namely, that it is executed by a competent notary within their designated area of office as regulated by the Law on Notarial Office. Thus, the assessment of authenticity must focus on the legality of the notary's official actions, not on where the collateral is stored.

Within a financing relationship secured by a fiduciary interest, legal protection holds an essential position because the relationship involves the substantial economic interests of the parties specifically the creditor as the fiduciary recipient and the debtor as the fiduciary provider. The creation of fiduciary security fundamentally aims to give creditors peace of mind regarding debt recovery without stripping the debtor of the asset's possession. Therefore, the Fiduciary Security Deed as an authentic instrument plays a central role because it serves as the legal foundation for the birth of the fiduciary right, which grants preferred rights and executorial force (*hak eksekutorial*) to the creditor. In this context, legal protection is required to ensure that the rights of the parties remain secure and legally recognized, particularly when questions arise concerning the deed's authenticity due to the out-of-district location of the collateral.

In financing practices, this issue can lead to significant legal ramifications. For instance, a financing company based in Mataram City extends motor vehicle financing to a debtor, while the vehicle serving as the fiduciary collateral is operated and located in Bali. The Fiduciary Security Deed is executed by a notary residing and practicing in Mataram City, West Nusa Tenggara, fully within their territorial jurisdiction. However, upon default (*wanprestasi*), when the creditor attempts to enforce their executorial rights, the debtor raises an objection, arguing that because the collateral is located outside the notary's area of office, the Fiduciary Security Deed fails to satisfy the public official's competence requirement. If this argument is accepted without a proper

[15] Denny Saputra and Sri Endah Wahyuningsih, "Prinsip Kehati-hatian Bagi Notaris/PPAT dalam Menjalankan Tupoksinya dalam Upaya Pencegahan Kriminalisasi Berdasarkan Kode Etik" [The Prudent Principle for Notaries/PPAT in Executing Their Duties and Functions to Prevent Criminalization Based on the Code of Ethics], Jurnal Akta 4, no. 3 (2017): 348.

interpretation of the regulations on notarial jurisdiction, the creditor's position as a fiduciary recipient becomes unprotected, and the preferred rights and executorial force of the fiduciary security risk losing legal legitimacy.[16]

This scenario highlights that the problem of a notary's area of office does not merely touch upon administrative aspects of notary practices, but directly correlates with the legal protection of parties in a financing relationship. The party most in need of legal protection under these circumstances is the creditor as the fiduciary recipient, as they rely on the legal strength of the Fiduciary Security Deed to guarantee debt repayment. Concurrently, the debtor also requires legal protection so that the financing relationship remains stable and free from litigation stemming from an ambiguous deed status. Thus, legal protection in the formation of a Fiduciary Security Deed is ultimately aimed at maintaining a balance of interests while securing the stability of the financing sector.

Analyzed through the theory of legal protection put forward by Maria Theresia Geme, legal protection is understood as an exclusive action by the state to enforce its laws for the purpose of guaranteeing the rights of an individual or a group.[17] Based on this theory, legal protection manifests through the existence of legal rules and their enforcement by the state to safeguard legal subjects from harm. In the context of a Fiduciary Security Deed, the state provides legal protection by regulating notarial authority, mandating the creation of authentic deeds, and recognizing the binding legal force of fiduciary security.

CONCLUSION OF THE DISCUSSION

Based on the analysis above, it can be concluded that the legal consequence regarding the authenticity of a Fiduciary Security Deed when the collateral is located outside the notary's area of office does not hinge on the physical location of the collateral, but rather on the validity of the notary's execution of authority. The Law on Notarial Office stipulates that a notary possesses a restricted area of office and is prohibited from practicing outside those boundaries; however, this restriction applies strictly to the venue of the notary's official actions, not to the location of the legal objects listed within the deed. Meanwhile, Law Number 42 of 1999 concerning Fiduciary Security contains no restrictions regarding the location of fiduciary collateral based on a notary's area of office.

Therefore, as long as a Fiduciary Security Deed is drawn up by a competent notary, executed within their designated territory, and fulfills the formal requirements of an authentic deed pursuant to Article 1868 of the Indonesian Civil Code, the deed remains authentic despite the collateral being located outside the notary's area of office. In the perspective of Jan Michiel Otto's theory of legal certainty, this interpretation provides clarity and consistency because legal certainty must be grounded in clear rules and the proper exercise of authority under statutory provisions, rather than on restrictive interpretations not explicitly mandated by law.

Furthermore, under Maria Theresia Geme's theory of legal protection, the state is obligated to guarantee the rights of the transacting parties, particularly the creditor as the fiduciary recipient who relies on the legal force of the Fiduciary Security Deed for debt recovery. Consequently, the existence of fiduciary collateral outside a notary's area of office should not automatically invalidate the authenticity of the deed or the enforceability of the fiduciary security. To hold otherwise would induce legal uncertainty and undermine the legal protection afforded to parties within modern financing relationships.

CONCLUSION

Based on the research and analysis conducted in this study, two main conclusions can be drawn:

1. The Regulatory Scope of Notarial Authority: Under Law Number 2 of 2014 concerning Notarial Office and Law Number 42 of 1999 concerning Fiduciary Security, a notary's authority to execute Fiduciary Security Deeds is an attribution of power from the state. The statutory restriction regarding a notary's

[16] Supianto, Hukum Jaminan Fidusia: Prinsip Publisitas Pada Jaminan Fidusia [Fiduciary Security Law: The Publicity Principle in Fiduciary Security] (Jakarta: Garudhawaca, 2015), 37.
[17] Salim HS and Erlies Nurbani, Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi [The Application of Legal Theory in Thesis and Dissertation Research], 6th print. (Depok: Rajawali Pers, 2022), 24.

area of office (*territorial jurisdiction*) strictly governs the physical venue where the notary performs their official duties and where the transacting parties appear to sign the deed. Conversely, the Fiduciary Security Law does not impose any restrictions based on the physical location of the collateral. Therefore, there is a clear division: notarial territorial jurisdiction governs the *official conduct of the notary*, while the *location of the collateral* is legally independent of this territorial restriction, particularly since fiduciary objects are typically movable assets with high cross-regional mobility.

2. Legal Consequences on Authenticity and Enforceability: The physical location of fiduciary collateral outside a notary's area of office does not automatically nullify the authenticity of the deed or the enforceability of the fiduciary security interest. Pursuant to Article 1868 of the Indonesian Civil Code, a deed remains fully authentic as long as it is executed by a competent notary within their designated territory and satisfies all mandated formal requirements. A degradation of evidentiary weight from an authentic deed to a private deed (*akta di bawah tangan*) only occurs if the notary physically executes their office outside their assigned jurisdiction (*ultra vires*). Consequently, as long as the notary drafts the deed within their lawful area of office, the creditor's preferred rights (*droit de preference*) and executorial force (*hak eksekutorial*) remain legally intact and fully enforceable, thereby securing legal certainty and legal protection for all parties within modern financing transactions.

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