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Substantive Reconstruction of the “Fiduciary Grantor” Element: Unraveling the Disparity Between Acquittal and Conviction in the Normative Conflict Between Article 372 of the Indonesian Penal Code and Article 36 of the Fiduciary Security Law (A Case Study of Supreme Court Decision Number 2319 K/Pid.Sus/2024)

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Abstract: Criminal prosecution involving fiduciary security objects in Indonesia frequently encounters a normative conflict between Article 372 of the Indonesian Penal Code as *lex generalis* and Article 36 of Law Number 42 of 1999 as *lex specialis*. The ambiguity surrounding the “Fiduciary Grantor” element generates interpretive disparities across courts that directly erode legal certainty. This study aims to analyze the normative conflict between both provisions and to evaluate the Supreme Court’s application of evidentiary law in Decision Number 2319 K/Pid.Sus/2024. This research employs a normative juridical method using four complementary approaches: statute, conceptual, case, and internal jurisprudential comparison. Primary legal materials include the Indonesian Penal Code, Criminal Procedure Code, Law Number 42 of 1999 on Fiduciary Security, Sukabumi District Court Decision Number 130/Pid.Sus/2023/PN Skb, and Supreme Court Decision Number 2319 K/Pid.Sus/2024. The analysis proceeds qualitatively and prescriptively through inventory, interpretation, normative conflict analysis, ratio decidendi evaluation, and recommendation formulation. The study finds that Article 36 of the Fiduciary Security Law functions as *lex specialis* to Article 372 of the Indonesian Penal Code across three dimensions: subject, object, and *modus operandi*. The disparity between Sukabumi District Court’s acquittal and the Supreme Court’s reversal stems from formalistic-literal versus substantive-functional interpretation of “Fiduciary Grantor,” ambiguity in Article 1 paragraph 5, and an absence of authoritative technical evidentiary guidelines from the Supreme Court. The study recommends issuance of a Supreme Court Circular Letter or Regulation as a technical guideline covering substantive interpretation of “Fiduciary Grantor,” affirmation of the *lex specialis* principle, and the evidentiary standard for *mens rea*. Limited revision of Article 1 paragraph 5 is also proposed. This study integrates *lex specialis* normative-conflict analysis with the evaluation of judicial disparity through the triadic framework of legal certainty offered by Radbruch, Fuller, and Otto. The approach moves beyond prior research that examined single elements in isolation and positions Supreme Court Decision Number 2319 K/Pid.Sus/2024 as a landmark Indonesian fiduciary evidentiary precedent.

Keywords: evidentiary law, fiduciary security, *lex specialis*, legal certainty, judicial disparity.

INTRODUCTION

Evidence (*bewijs*) occupies the most central position in any criminal justice system operating under the rule of law. Through evidence, judges determine whether an accused has committed a criminal offense, and the evidentiary standard applied directly reflects a legal system's commitment to human rights protection and legal certainty (Hiariej, 2022). Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms the *rechtsstaat* principle, meaning that no one may be punished except through valid legal procedures. The Indonesian evidentiary system, as stipulated in Article 183 of the Criminal Procedure Code (KUHP), adopts the *negatief wettelijk bewijsleer* doctrine which requires at least two valid pieces of evidence supported by the judge's conviction.

Evidentiary law issues become particularly complex when cases involve the intersection of two legal regimes: Article 372 of the Indonesian Penal Code (KUHP) concerning embezzlement and Article 36 of Law Number 42 of 1999 on Fiduciary Security (UU Fidusia). Article 372 KUHP is a general offense criminalizing the unlawful appropriation of goods belonging to another, while Article 36 of the Fiduciary Security Law is a special offense criminalizing a fiduciary grantor who transfers, pledges, or leases objects of fiduciary security without prior written consent from the fiduciary recipient. The relationship between these two provisions should be governed by the *lex specialis derogat legi generali* principle, yet in practice their application remains inconsistent (Lahmado & Puluhulawa, 2024; Attamimi et al., 2024).

The disparate application of both provisions manifests most clearly in Sukabumi District Court Decision Number 130/Pid.Sus/2023/PN Skb of 13 October 2023 and Supreme Court Decision Number 2319 K/Pid.Sus/2024 of 14 June 2024. The first-instance court rendered an acquittal (*vrijspraak*) on the ground that the vehicle ownership certificate and the Fiduciary Security Certificate were not registered in the defendant's name, hence the defendant did not qualify as a "Fiduciary Grantor." The Supreme Court, on cassation, reversed this decision, declared the defendant guilty, and imposed one year and three months' imprisonment plus a ten million rupiah fine. This disparity reflects three interconnected problems: an unresolved normative conflict, ambiguity of the subject element, and a threat to jurisprudential consistency.

A review of the literature reveals that scholarship on fiduciary evidentiary law generally remains within one of two perspectives. First, studies that focus on criminal liability based on the normative elements of Article 36 (Lahmado & Puluhulawa, 2024; Maulana et al., 2025). Second, studies that examine evidence at the investigative stage without engaging trial dynamics or judicial *ratio decidendi* (Attamimi et al., 2024). Judicial disparity studies have been conducted for general fraud offenses (Yusuf et al., 2025) but have not been applied specifically to fiduciary cases with a normative-conflict dimension. Sianturi (2024) examined the same pair of decisions, yet focused on a single element without integrating the *lex specialis* framework or the triadic legal certainty theory.

The research gap this study addresses is the integration of three analytical dimensions: (1) the *lex specialis derogat legi generali* conflict between Article 372 KUHP and Article 36 UU Fidusia from an evidentiary law perspective; (2) evaluation of disparity between the first-instance and Supreme Court rulings as a mirror of divergent interpretive paradigms; and (3) implications for legal certainty analyzed through the triadic framework of Gustav Radbruch, Lon L. Fuller's principle of congruence, and Jan Michiel Otto's four conditions. The urgency of this research is reinforced by the need for uniform evidentiary standards in fiduciary cases that continue to grow alongside Indonesia's expanding financing industry.

Based on these premises, two research questions are formulated. First, how are the normative construction and evidentiary standards of Article 372 KUHP and Article 36 UU Fidusia configured under the *lex specialis derogat legi generali* principle? Second, how did the Supreme Court apply evidentiary law in Decision Number 2319 K/Pid.Sus/2024, and what are its implications for legal certainty in Indonesian fiduciary evidentiary practice? The study aims, first, to map the normative conflict between both provisions comprehensively and, second, to evaluate the Supreme Court's *ratio decidendi* while formulating normative recommendations capable of filling the existing evidentiary guidance vacuum.

Literature Review

Theory of Evidence and the Negatief Wettelijk Bewijsleer System

Evidence (*bewijs*) in Indonesian criminal procedural law aims to discover material truth (*materiele waarheid*), differing from civil evidence which seeks only formal truth (*Hiariej*, 2022). The essence of criminal evidence is dual protection: shielding the state from inability to prosecute offenders, while protecting citizens from arbitrary punishment. The Indonesian system adopts *negatief wettelijk bewijsleer*, combining *wettelijk bewijsstelsel* and conviction *intime*, as affirmed in Article 183 KUHAP. This system requires two cumulative conditions: a minimum of two valid pieces of evidence and the judge's conviction. If either is absent, the defendant must be acquitted (Mulyadi, 2018).

Article 184 paragraph (1) KUHAP exhaustively lists five types of valid evidence: witness testimony, expert testimony, documents, indications, and the defendant's statement. The *unus testis nullus testis* principle in Article 185 paragraph (2) holds that a single witness's testimony is insufficient unless corroborated by another valid form of evidence. The burden of proof (*onus probandi*) rests entirely on the prosecution under the presumption of innocence principle guaranteed by Article 8 paragraph (1) of Law Number 48 of 2009 on Judicial Power (Hamzah, 2020). This distribution distinguishes Indonesia's adversarial-style system from purely inquisitorial systems and operates as a citizen's shield against unfounded conviction.

Theories of Legal Certainty: Radbruch, Fuller, and Otto

Legal certainty (*rechtszekerheid*) constitutes one of the three fundamental values of law as formulated by Gustav Radbruch, alongside justice (*Gerechtigkeits*) and utility (Radbruch, 1950). These values are not always harmonious and may produce tension, which according to Radbruch's Formula is resolved by prioritizing justice when injustice reaches an intolerable degree. Achmad Ali (2017) distinguishes formal legal certainty (clarity of written rules) and substantive legal certainty (consistency of application). Wantu (2012) emphasizes that jurisprudential consistency is the primary yardstick of legal certainty in adjudication; without consistency, the predictability of law cannot materialize.

Lon L. Fuller (1969) adds a dimension of internal morality of law through eight principles, among which the congruence principle (congruence between official action and declared rule) requires that official actions, including judicial decisions, align with declared legal norms. Vertical inconsistency between first-instance and cassation rulings on the same facts violates the congruence principle. Jan Michiel Otto (2010) formulates four conditions of legal certainty: (1) availability of clear rules; (2) consistent application by state institutions; (3) citizens adjusting behavior to the rules; and (4) independent judges consistently applying rules in disputes. Otto's framework offers systemic evaluative instruments for analyzing legal certainty deficits in concrete cases.

Prior Studies and Research Position

Relevant prior studies can be mapped into three groups. First, studies on fiduciary evidence at the investigative stage by Attamimi et al. (2024), finding that evidence depends

heavily on the fiduciary certificate and witness testimony. Second, studies on Article 36 application in other cassation decisions, such as Lahmado and Puluhalawa's (2024) analysis of Supreme Court Decision Number 698 K/Pid.Sus/2023, which confirmed the fulfillment of Article 36 elements in a dump truck transfer case. Third, judicial disparity studies by Yusuf et al. (2025) on fraud offenses (Article 378 KUHP), demonstrating how disparities erode constitutional legal certainty. Sianturi (2024) examined the same decisional pair as this study, yet focused on a single element without integrating the *lex specialis* normative-conflict dimension or the triadic legal certainty framework.

This study extends the literature through three original contributions. First, it situates Article 372 KUHP and Article 36 UU Fidusia in a normative-conflict relationship analyzed structurally through an element-comparison matrix. Second, it evaluates the disparity between Sukabumi District Court and the Supreme Court not merely as right-versus-wrong adjudication, but as a mirror of formalistic versus substantive-functional interpretive paradigms. Third, it operationalizes the Radbruch-Fuller-Otto triadic framework as an evaluative instrument for fiduciary evidentiary legal certainty, translating findings into concrete normative recommendations for the Supreme Court, the prosecution, and the legislature.

METHODS

This is a normative legal research (doctrinal legal research) study which treats positive legal norms as premises for legal reasoning rather than as social phenomena (Marzuki, 2021). The research specification is descriptive-analytical with a prescriptive orientation: it does not stop at describing norms and decisions but proceeds to evaluate normative consistency and formulate *das sollen* propositions. This choice is grounded in the nature of the legal issue under examination normative conflict and statutory ambiguity which falls within the domain of legal dogmatics (Fajar & Achmad, 2017).

The research employs four complementary approaches. First, the statute approach applied to the KUHP, KUHAP, Law Number 42 of 1999 on Fiduciary Security, and Government Regulation Number 86 of 2000. Second, the conceptual approach addressing the doctrines of *negatief wettelijk bewijsleer*, the *lex specialis* principle, *ratio decidendi*, and theories of legal certainty. Third, the case approach focused on Sukabumi District Court Decision Number 130/Pid.Sus/2023/PN Skb and Supreme Court Decision Number 2319 K/Pid.Sus/2024 with emphasis on their *ratio decidendi*. Fourth, internal jurisprudential comparison both vertically (District Court versus Supreme Court) and horizontally with Supreme Court Decision Number 698 K/Pid.Sus/2023.

Legal materials were collected through library research encompassing three categories. Primary legal materials include the constitution, statutes, government regulations, and relevant court decisions. Secondary legal materials cover scholarly books, articles in accredited journals, prior research, and case commentaries. Tertiary legal materials include legal dictionaries, encyclopedias, and official institutional publications. Searches were conducted through the National Legal Documentation and Information Network, the Supreme Court Decision Directory, Google Scholar, the SINTA portal, and university repositories.

Analysis was conducted qualitatively and prescriptively through five stages. First, inventory and classification of legal materials by normative hierarchy and relevance to the research questions. Second, legal interpretation integrating four interpretive methods: grammatical, systematic, teleological, and historical. Third, normative-conflict analysis and testing the application of the *lex specialis derogat legi generali* principle. Fourth, evaluation of judicial decisions and *ratio decidendi* comparing the reasoning structures of Sukabumi District Court and the Supreme Court. Fifth, drawing deductive-inductive conclusions and formulating operational normative recommendations for stakeholders (Hadjon & Djamiati, 2014). Research

validity is ensured through triangulation of primary, secondary, and tertiary legal materials and through the consistent application of theory as analytical instrument.

RESULTS AND DISCUSSION

Results

Normative Construction of Article 372 KUHP and Article 36 UU Fidusia

Article 372 KUHP defines embezzlement as the intentional and unlawful appropriation of goods belonging wholly or partly to another, where the goods came into the offender's possession otherwise than through crime. The core of the offense lies in *wederrechtelijke toe-eigening*, the transformation of intent from lawful possession based on title (loan, deposit, or financing agreement) into unlawful possession (Soesilo, 2016). The Article 372 evidentiary standard is abstract because *mens rea* must be inferred from a chain of facts and circumstances, as permitted by Article 188 KUHP through indicative evidence (Hamzah, 2020).

Article 36 in conjunction with Article 23 paragraph (1) UU Fidusia criminalizes the transfer of fiduciary objects by a fiduciary grantor who transfers, pledges, or leases the object without prior written consent from the fiduciary recipient, with imprisonment of up to two years and a fine of up to fifty million rupiah. The elements (*bestanddelen*) to be proven are: the defendant's status as "Fiduciary Grantor"; the lawful existence of the fiduciary object evidenced by a Fiduciary Certificate; the act of transferring/pledging/leasing; and the absence of prior written consent (Badrulzaman, 2018). This formulation is concrete but ambiguous regarding the meaning of "owner" in Article 1 paragraph 5, which does not specify whether the term refers to formal or substantive ownership.

A structural comparison of the two provisions is presented in Table 1.

Table 1. Comparative Normative Construction of Article 372 KUHP and Article 36 UU Fidusia

Aspect	Article 372 KUHP	Article 36 UU Fidusia
Norm position	Lex generalis (general offense)	Lex specialis (special offense)
Subject of offense	"Whoever" (anyone)	"Fiduciary Grantor" (Art. 1 para. 5)
Object of offense	Goods belonging to another	Registered fiduciary security object
Prohibited conduct	Appropriation (<i>zich toe-eigenen</i>) abstract	Transferring / pledging / leasing
Mens rea	Explicit (intent & unlawfulness)	Implicit, inherent in active conduct
Criminal sanction	Up to 4 years imprisonment or fine	Up to 2 years imprisonment and fine up to IDR 50 million
Typical evidentiary standard	Inference of <i>wederrechtelijke toe-eigening</i>	Deed + Certificate + absence of consent

Source: compiled by the authors from the KUHP and Law Number 42 of 1999.

Case Chronology and Mapping of Evidence

The case originated from a Financing Agreement Number 020520000020 dated 10 January 2020 between PT Mandiri Utama Finance Sukabumi Branch and Ivan Rusvansyah Trisya for the purchase of a Honda Civic HB Turbo E CVT at IDR 486,000,000 with a financing facility of IDR 367,388,930 and monthly installments of IDR 9,400,000 over sixty months. On 17 January 2020, Fiduciary Security Deed Number 6268 was drawn up, naming the defendant's wife, Eriesa Ismia Dewi, as the formal Fiduciary Grantor, and was registered on 20 January 2020 generating Fiduciary Certificate Number W11.00105622.AH.05.01. The defendant paid installments regularly through the 23rd payment and ceased payment beginning

January 2022. After Civil Decision Number 6/Pdt.GS/2022/PN Skb of 28 November 2022 declared the defendant in default, the defendant pledged the vehicle to Adiansyah Permana alias Uhe for IDR 150,000,000 far below the outstanding obligation.

The prosecution prepared alternative charges: Article 36 in conjunction with Article 23 paragraph (1) UU Fidusia (first alternative) or Article 372 KUHP (second alternative). Evidence presented included testimony from five witnesses (Eriesa Ismia Dewi, Hendra, Suherman, Adiansyah Permana, and Deliana Fauziana), seventeen documents (fiduciary deed and certificate, financing contract, demand letters, civil decision, dishonored BJB cheque, vehicle ownership certificate, and payment history), the defendant's statement, and indications drawn from WhatsApp messages between the defendant and Hendra, the dishonored cheque, and the disparity in the pledge price. Quantitatively, the volume and variety of evidence exceeded the minimum threshold of Article 183 KUHAP.

Ratio Decidendi of Sukabumi District Court

On 13 October 2023, the Sukabumi District Court panel rendered an acquittal based on the central argument that the vehicle ownership certificate and the Fiduciary Security Certificate were not in the defendant's name but in his wife's name, so the defendant did not qualify as the "Fiduciary Grantor" under Article 36 UU Fidusia. The court's argumentative construction was built in five layers: (1) reliance on Article 1 paragraph 5 UU Fidusia defining a Fiduciary Grantor as the owner of the object; (2) literal-formalistic interpretation of "owner" as the party whose name appears in formal documents; (3) inference from the documents that Eriesa was the Fiduciary Grantor; (4) conclusion that the subject element was unmet; and (5) closure of the second alternative charge with similar reasoning. This approach is characteristically formalistic-positivistic, prioritizing the literal meaning of norm text over substantive context.

Ratio Decidendi of the Supreme Court

Through Decision Number 2319 K/Pid.Sus/2024 of 14 June 2024, the Supreme Court annulled the District Court's acquittal and pronounced the defendant guilty, imposing one year three months' imprisonment and a fine of ten million rupiah. The Supreme Court's ratio decidendi rests on four argumentative pillars. First, justification for examining the cassation of an acquittal based on Constitutional Court Decision Number 114/PUU-X/2012, which declared the phrase "except against acquittals" in Article 244 KUHAP non-binding. Second, the construction of "usufructuary loan" (pinjam pakai), positioning the defendant as the physical possessor of the vehicle but not its owner, while PT Mandiri Utama Finance was qualified as the substantive owner deserving protection.

Third, the construction of "as if entirely his own" establishing mens rea through inference from a chain of correlative facts: the defendant's awareness as debtor, awareness that the vehicle was still security, cessation of payment at the 24th installment, rejection of the IDR 367 million BJB cheque, and subsequent pledging to a third party. Fourth, the substantive interpretation of "Fiduciary Grantor" encompassing parties who factually possess, transfer, or pledge fiduciary objects, even if their names do not appear as formal Fiduciary Grantors in the deed. This approach is characteristically substantive-functional, prioritizing the ratio legis of UU Fidusia protection of the fiduciary recipient over formal documentary ownership.

Mapping of Evidentiary Disparities

Table 2 presents a comparative mapping of the factors underlying the disparity between the two judicial levels.

Table 2. Mapping of Factors Causing Evidentiary Disparities

Aspect	District Court (Acquittal)	Supreme Court (Conviction)
Interpretive method	Formalistic-literal	Substantive-functional
Assessment of subject element	Defendant not Fiduciary Grantor (BPKB in wife's name)	Defendant is substantive Fiduciary Grantor
Weighting of evidence	BPKB & Deed as exonerating evidence	BPKB & Deed as transaction-structure information
Chronology analysis	Not in depth	Detailed from 1st to 23rd installment, demands, and cheque rejection
Ownership conception	Formal-documentary	Substantive-contractual
Mens rea construction	Not examined	Built through correlative-fact chain
Ratio legis consideration	Not anchored	Implicit (creditor protection)
Lex specialis application	Not consciously applied	Implicit prioritization of Article 36

Source: compiled from District Court Decision Number 130/Pid.Sus/2023/PN Skb and Supreme Court Decision Number 2319 K/Pid.Sus/2024.

Discussion

Application of the Lex Specialis Derogat Legi Generali Principle

The normative analysis presented in Table 1 confirms that Article 36 UU Fidusia satisfies all conditions of *lex specialis* under Mertokusumo's (2016) framework. Both provisions regulate the same underlying matter the unlawful transfer of an object whose formal possession lies with the perpetrator while ownership belongs to another. Article 36 UU Fidusia is more specific in subject (Fiduciary Grantor rather than "whoever"), object (fiduciary object rather than "goods"), and modus (three concrete acts rather than the abstract "appropriation"). The *lex posterior derogat legi priori* principle reinforces preference for UU Fidusia 1999 over the colonial-era KUHP. Consequently, when the object has been lawfully registered as fiduciary security, Article 36 UU Fidusia should serve as the primary basis for the indictment.

This *lex specialis* relationship operates conditionally rather than automatically, and three doctrinal requirements warrant examination. First, as to the protected legal interest (*rechtsgoed*), both provisions protect property against unlawful appropriation, yet Article 36 UU Fidusia protects a narrower interest, namely the registered security right of the fiduciary recipient, whereas Article 372 KUHP protects ownership in general; the *specialis* preference is therefore justified only where this specific fiduciary interest is actually engaged. Second, the constituent elements do not overlap completely, since Article 36 requires the additional elements of a valid Fiduciary Certificate and the absence of prior written consent, which are absent from Article 372; this partial rather than total overlap confirms a genuine *specialis-generalis* relationship rather than mere duplication. Third, Article 372 KUHP remains fully applicable when the fiduciary relationship is legally defective or unregistered, because where the object was never registered or the Fiduciary Certificate is invalid the specific elements of Article 36 cannot be satisfied, the *lex specialis* condition lapses, and the conduct reverts to Article 372 KUHP as *lex generalis*. The displacement of the general provision is thus contingent upon the lawful existence of registered fiduciary security, not an automatic consequence of the two provisions coexisting.

The alternative-charging strategy employed by the prosecution in Case Number 130/Pid.Sus/2023/PN Skb reflects the inconsistent application of the *lex specialis* principle.

Alternative charges grant judges broad discretion to choose the basis for conviction, thereby obscuring normative hierarchy. Ideally, the prosecution should employ either a single Article 36 charge when all elements are clearly established, or a subsidiary structure (Article 36 primary, Article 372 KUHP subsidiary) only when doubts exist about the formal validity of the fiduciary security. This strategic inconsistency creates space for formalistic defenses at the first-instance level.

Judicial Disparity as Reflection of Competing Interpretive Paradigms

The disparity between the Sukabumi District Court and the Supreme Court rulings cannot be reduced to a mere difference in factual assessment, since both panels examined identical evidence. The disparity is rooted in a more fundamental contest of interpretive paradigms. The Sukabumi District Court embraced a formalistic-positivistic paradigm closely aligned with the principle of legality (*nullum delictum nulla poena sine praevia lege poenali*), prioritizing the literal meaning of normative text. The Supreme Court embraced a substantive-functional paradigm anchored in *ratio legis* and protective purpose (Marzuki, 2021). Both possess methodological legitimacy yet yielded opposite conclusions.

This study does not treat the substantive-functional paradigm as inherently superior to the formalistic approach; each paradigm carries distinct normative risks that must be weighed objectively. The principal risk of substantive interpretation lies in its tension with the principle of legality (*asas legalitas*), which in criminal law demands *lex stricta*, namely the strict and narrow construction of penal norms, and prohibits analogy (*analogie verbod*) to expand criminal liability beyond the statutory text. Extending the subject “Fiduciary Grantor” to parties not named in the fiduciary deed risks crossing the line between permissible extensive interpretation, which clarifies a meaning already latent in the text, and prohibited analogy, which creates liability the text does not contain. The formalistic paradigm, conversely, safeguards the citizen against arbitrary punishment but risks substantive injustice and evasion of the law. The substantive interpretation is therefore defensible only insofar as it remains within the semantic boundaries of the statutory wording and does not operate as covert analogy; otherwise, the gain in protective purpose is secured at the expense of legal certainty and the *nullum crimen* guarantee.

Five principal factors contribute to the disparity. First, divergent paradigms of normative interpretation. Second, divergent techniques of evidence weighting: the District Court gave determinative weight to the BPKB and Fiduciary Deed, whereas the Supreme Court treated them as evidence of transactional structure to be read alongside the financing contract and the chronology of conduct. Third, the absence of technical evidentiary guidelines for Article 36 UU Fidusia that ought to have been issued by the Supreme Court as a Circular Letter or Regulation. Fourth, ambiguity in Article 1 paragraph 5 which fails to specify whether “owner” is to be understood formally or substantively. Fifth, potential non-legal factors given that the defendant was a regional legislative council member although verifying this factor requires further socio-legal research.

Substantive Interpretation of “Fiduciary Grantor”: Teleological and Systematic Justification

The substantive interpretation adopted by the Supreme Court can be justified from two interpretive standpoints. Teleologically, the *ratio legis* of UU Fidusia is to protect the fiduciary recipient from debtor bad faith, so it would be unduly narrow to limit criminal liability only to those formally registered as Fiduciary Grantors. A formalistic interpretation creates a wide evasion loophole: simply registering the security object in another’s name (spouse, child, relative) would allow debtors to escape Article 36 liability. Systematically, Article 1 paragraph 5 must be read together with Article 1 paragraph 2 which defines fiduciary security as a security

right over movable goods “for the repayment of a specific debt.” Debt repayment is the debtor’s obligation, so the subject of Article 36 must systematically encompass the substantive debtor.

This systematic reading must nonetheless be tested against the express wording of Article 1 paragraph (5), which defines the Fiduciary Grantor as the party that owns the object encumbered by fiduciary security. A purely functional expansion equating the Fiduciary Grantor with any substantive debtor risks transforming a precisely defined legal subject into an open-ended category, thereby blurring the limits of criminal responsibility and offending the requirement of *lex certa*. A more rigorous interpretation therefore confines the substantive reading to its defensible core: the subject extends only to the debtor who is contractually bound by the financing agreement and who exercises factual control over the registered object, not to any party who merely possesses it. Even so construed, the boundary remains too indeterminate to rest on judicial interpretation alone, which is precisely why the limited revision of Article 1 paragraph (5) proposed below is required to legitimise the reconstruction and to preserve certainty as to who may be held criminally liable.

Nevertheless, methodological critique should be directed at the Supreme Court’s *ratio decidendi*. The Court did not expressly state that the subject element of Article 36 is interpreted substantively, nor did it elaborate the normative basis for that interpretation. The “usufructuary loan” construction borrowed from Articles 1740–1753 of the Civil Code is accessory and does not substitute for the criminal-fiduciary framework. Consequently, the Court’s *ratio decidendi* contains ambiguity that may generate inconsistency in subsequent decisions if not supplemented by technical guidelines via a Supreme Court Regulation or Circular Letter. While this ruling has the potential to become a normative precedent, its status remains uncertain without binding institutionalization.

Evaluating Disparity Through the Triadic Legal Certainty Framework

Evaluated through Radbruch’s framework, the Supreme Court ruling more closely approximates substantive justice (*Gerechtigkeit*) and utility (*Zweckmäßigkeit*) because it closes the evasion loophole and enforces the *ratio legis* of UU Fidusia. The District Court ruling, while consistent with formal legality, produces substantive injustice in the form of perpetrator escape and obstruction of creditor protection. However, from the standpoint of legal certainty (*Rechtssicherheit*), the disparity itself constitutes the principal threat: parties in similar future cases cannot reasonably predict outcomes. Under Radbruch’s Formula, this tension is resolved by prioritizing justice when the District Court’s formalistic injustice reaches an intolerable degree, though the short-term cost to formal certainty remains tangible.

Fuller’s (1969) congruence principle implies that official actions must align with declared norms and remain consistent across decisions. The vertical disparity between the District Court and the Supreme Court clearly violates this principle. Yet the tiered judicial system is precisely designed to permit correction of lower-court errors, so what Fuller demands is not absolute uniformity but consistency in the norms applied. Supreme Court Decision Number 2319 K/Pid.Sus/2024 has the potential to set an interpretive standard, provided it is published, accessed by lower courts, and consistently followed. Without institutionalization, congruence in similar future cases remains vulnerable to violation.

Evaluation through Otto’s (2010) four conditions is presented in Table 3. Three of the four conditions remain unfulfilled, indicating a structural deficit in legal certainty for fiduciary evidentiary practice in Indonesia.

Table 3. Legal Certainty Evaluation Based on Otto's Four Conditions

Otto's Condition of Legal Certainty	Status	Evaluative Note
1. Availability of clear rules	Partially fulfilled	Article 36 exists, but the formulation of "Fiduciary Grantor" is ambiguous between formal and substantive readings.
2. Consistent application by state institutions	Not fulfilled	Disparity between District Court and Supreme Court demonstrates inconsistent application.
3. Citizens adjust behavior to the rules	Difficult to fulfill	Without interpretive certainty, neither creditors nor debtors can reliably predict consequences.
4. Independent judges apply rules consistently	Not fulfilled	A Supreme Court Regulation or Circular Letter is needed so that Decision Number 2319 K/Pid.Sus/2024 is uniformly followed by District Courts.

Source: compiled by the authors based on Jan Michiel Otto's (2010) framework.

Implications for Fiduciary Evidentiary Certainty and Normative Recommendations

The legal certainty deficit identified cannot be remedied merely by "correct" cassation decisions such as Supreme Court Decision Number 2319 K/Pid.Sus/2024. More systemic normative intervention is required so that the constitutional guarantee of Article 28D paragraph (1) of the 1945 Constitution is substantively realized. The study formulates three tiered recommendations. First, the Supreme Court should issue a Circular Letter (SEMA) or Regulation (PERMA) containing four technical guidelines: substantive interpretation of "Fiduciary Grantor" to include debtors possessing fiduciary objects; affirmation of the *lex specialis* principle prioritizing Article 36 UU Fidusia for objects lawfully registered as fiduciary security; the evidentiary standard for the "absence of prior written consent" element via witness testimony from the fiduciary recipient and the absence of consent documents; and the evidentiary standard for *mens rea* via inference from correlative facts, as applied by the Supreme Court.

Second, the Attorney General's Office should issue guidelines on drafting fiduciary indictments. Such guidelines would specify: a single Article 36 UU Fidusia charge when the fiduciary security has been lawfully registered; a subsidiary structure (Article 36 primary, Article 372 KUHP subsidiary) only when formal validity is doubtful; an evidence-collection strategy prioritizing the Fiduciary Deed, Certificate, financing contract, and chronology of transfer; and anticipation of formalistic defenses against the "Fiduciary Grantor" element through substantive interpretation. Third, the House of Representatives and the government should undertake limited revision of Article 1 paragraph 5 UU Fidusia, clarifying that the Fiduciary Grantor includes "debtors who substantively provide or pledge an object as fiduciary security," alongside adjustment of the Article 36 fine to current inflationary conditions.

Among the three recommendations, issuance of a Supreme Court Regulation or Circular Letter is the most immediately actionable and the most effective in mitigating disparity. It binds judges across all levels without requiring lengthy legislative processes and can be formulated based on the jurisprudence of Supreme Court Decision Number 2319 K/Pid.Sus/2024. Once issued, three of Otto's four conditions would be fulfilled (clear rules, institutional consistency, and consistent judicial application), and the fourth condition (citizens adjusting behavior) would follow as a natural consequence.

CONCLUSION

Provided the object has been lawfully registered as fiduciary security, Article 36 of Law Number 42 of 1999 on Fiduciary Security functions as *lex specialis* to Article 372 KUHP across

three mutually reinforcing dimensions: subject (Fiduciary Grantor rather than “whoever”), object (registered fiduciary object rather than “goods”), and *modus operandi* (transferring/pledging/leasing rather than the abstract “appropriation”). This relationship is conditional rather than automatic, since where the fiduciary security is defective or unregistered the elements of Article 36 cannot be met and Article 372 KUHP reverts to govern the conduct as *lex generalis*. The evidentiary standards of both provisions are governed by Article 183 KUHP, yet their *bestanddelen* structures differ fundamentally: Article 372 KUHP relies on inferring an abstract *wederrechtelijke toe-eigening*, while Article 36 UU Fidusia demands concrete proof of the existence of a Fiduciary Grantor, lawful security status, transfer conduct, and absence of written consent. For objects lawfully registered as fiduciary security, the *lex specialis derogat legi generali* principle directs that Article 36 UU Fidusia be employed as the primary basis for indictment.

The application of evidentiary law in Supreme Court Decision Number 2319 K/Pid.Sus/2024 reflects a substantive-functional paradigm positioning creditor-protection ratio legis as the interpretive context of the “Fiduciary Grantor” element. The disparity with the Sukabumi District Court ruling, which embraced a formalistic-literal paradigm, is attributable to five factors: divergent interpretive paradigms, differing techniques of evidence weighting, absence of technical guidelines, ambiguity in Article 1 paragraph 5, and potential non-legal factors. Evaluated through the Radbruch-Fuller-Otto triadic framework, the disparity reflects a structural deficit in legal certainty: three of Otto’s four conditions are unmet, Fuller’s congruence principle is breached, and the Radbruch trichotomic tension is resolved at the cost of short-term *Rechtssicherheit*. The concrete implication is that the guarantee of Article 28D paragraph (1) of the 1945 Constitution remains suboptimally realized until a Supreme Court Regulation or Circular Letter is issued as a technical guideline for fiduciary evidentiary practice. Future research is recommended to empirically examine post-Decision 2319 K/Pid.Sus/2024 jurisprudence and to develop socio-legal studies on the practice of registering security objects in third-party names.

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