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THE LEGAL STATUS OF BPKB "SAFEKEEPING" IN PEOPLE'S BUSINESS CREDIT AGREEMENTS: A CONTRACT LAW PERSPECTIVE

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Abstrak

Penyaluran Kredit Usaha Rakyat (KUR) masih menghadapi persoalan ketika Bukti Pemilik Kendaraan Bermotor (BPKB) diserahkan kepada bank dengan sebutan "titipan". Penelitian ini menganalisis kedudukan hukum penyerahan tersebut dan perlindungan debitur berdasarkan hukum kontrak, hukum jaminan, regulasi KUR, serta ketentuan perlindungan konsumen jasa keuangan. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan konseptual. Hasil kajian menunjukkan bahwa istilah "titipan" tidak menentukan dengan sendirinya akibat hukum hubungan para pihak. Berdasarkan tujuan, fungsi penguasaan, kewenangan bank, dan akibat hukumnya, penyerahan BPKB dapat berbentuk penitipan administratif, kewajiban kontraktual personal, atau jaminan kebendaan yang dibentuk menurut hukum. Penguasaan BPKB tanpa prosedur fidusia tidak melahirkan jaminan fidusia, sedangkan penggunaan "titipan" untuk menyamarkan agunan tambahan pada KUR sampai dengan Rp100 juta perlu diuji berdasarkan Permenko Perekonomian Nomor 1 Tahun 2026. Perlindungan debitur mensyaratkan transparansi klausula, pembatasan kewenangan bank, kepastian pengembalian dokumen, dan mekanisme pemulihan hak.

Kata Kunci: Kredit Usaha Rakyat; BPKB; hukum kontrak; agunan; perlindungan debitur

Abstract

People's Business Credit (KUR) aims to improve financing access for productive businesses, yet borrowers may be asked to surrender motor-vehicle ownership documents (BPKB) as purported "deposits" (titipan). This study examines the legal status of that arrangement and debtor protection under Indonesian contract, security and financial-consumer law. Using normative legal research and statutory and conceptual approaches, it applies a substance-over-nomenclature test addressing the purpose of delivery, the function of custody, the bank's authority and the consequences of default. The analysis distinguishes genuine administrative safekeeping, personal contractual undertakings and formally constituted proprietary security. Possession of a BPKB does not itself create fiduciary security, while nominal safekeeping cannot legitimise additional collateral requirements prohibited for KUR loans of up to IDR 100 million under Coordinating Minister for Economic Affairs Regulation No. 1 of 2026. Borrower protection requires transparent clauses, lawful limits on the bank's powers, clear duties of safekeeping and return, and accessible

remedies. This classification provides guidance for drafting and reviewing KUR agreements.

Keywords: *People's Business Credit; BPKB; contract law; collateral; debtor protection*

Introduction

The People's Business Credit programme, commonly known by its Indonesian abbreviation KUR (Kredit Usaha Rakyat), is a public financing instrument designed to broaden access to affordable working capital and investment finance for productive enterprises, especially micro, small and medium-sized enterprises (MSMEs). Its policy rationale rests on a persistent structural difficulty: enterprises that are commercially viable may nevertheless be excluded from formal bank lending because they lack conventional collateral or a sufficiently established credit history. KUR therefore cannot be understood exclusively as an ordinary bilateral loan. It is simultaneously a banking contract and an implementation mechanism for an economic policy intended to improve financial inclusion, enterprise capacity and employment. The effectiveness of the programme depends not only on disbursement but also on whether the contractual conditions imposed on borrowers remain consistent with its special regulatory character.[1]

The relationship between a KUR-distributing bank and its borrower is nonetheless contractual in nature. The credit agreement allocates duties concerning disbursement, repayment, interest or margins, information, monitoring, default and the consequences of non-performance. In banking practice, however, most contractual terms are prepared in advance by the financial institution. The prospective borrower has relatively limited opportunity to negotiate them and is generally expected to accept or decline the agreement as presented.[2] The existence of a signed document must therefore be distinguished from evidence of meaningful negotiation. In such a setting, freedom of contract cannot be reduced to formal consent: the allocation of rights and burdens, the transparency of significant clauses and the ability of the borrower to understand the transaction are equally important.[3]

Research on KUR distribution identifies the borrower's business characteristics, internal banking conditions and external economic factors as variables affecting the availability of financing. Other scholarship shows that the legal structure of standard-form credit agreements can place debtors in a weaker bargaining position. These lines of inquiry are related but should not be conflated. The distribution of credit is an economic and administrative issue, while the

[1] Ernawati Ernawati and Nesti Hapshari, "Analisis Pengajuan Pinjaman Kredit Usaha Rakyat Di Masa Pandemi Covid-19 Yang Berdampak Pada Sektor UMKM Di Bank BJB KCP Rengasdengklok," *Jurnal Mirai Management* 8, no. 1 (2023), https://doi.org/10.37531/mirai.v8i1.4431.

[2] Muhammad Arif Maulana et al., "Klausula Baku Dalam Perjanjian Kredit Bank Perkreditan Rakyat," *Jurnal USM Law Review* 4, no. 1 (2021): 208–25, https://doi.org/10.26623/julr.v4i1.3369.

[3] Putra Ilham Mohammad, Berlian Manoppo, and Anastasia Emmy Gerungan, "Perlindungan Konsumen Nasabah Bank Atau Debitur Dalam Perjanjian Kredit Bank Yang Memuat Klausula Baku," *Lex Crimen* 10, no. 8 (2021): 55–62.

enforceability of a particular contractual clause is a question of private law that must be assessed against mandatory regulation. In the case of subsidised or guaranteed financing, the two dimensions intersect because banking risk management operates within a programme specifically designed to relax barriers to borrowing.[4]

Indonesian financial-services law has increasingly emphasised consumer protection in standard-form agreements. The analysis of Abubakar and Handayani demonstrates that standardisation can improve efficiency and legal certainty, but that these advantages do not displace the need to control exemption clauses and one-sided contractual provisions.[5] Financial Services Authority Regulation No. 22 of 2023 on Consumer and Community Protection in the Financial Services Sector (POJK 22/2023) reinforces that orientation. This regulation is especially relevant when an administrative form attached to a credit agreement may create a practical burden not clearly identified in the primary loan documentation. The critical question is not whether a bank may use standard conditions at all, but whether a condition is transparent, proportionate and compatible with the rules governing the particular product.[6]

A specific controversy arises when a borrower transfers the Buku Pemilik Kendaraan Bermotor (BPKB), the motor-vehicle ownership document, to a KUR-distributing bank and the bank characterises the transfer as a mere 'deposit' or 'safekeeping' arrangement (titipan). The word may appear unobjectionable because it seems to indicate only physical custody of a document. Yet the factual arrangement may be more complex. If surrender of the BPKB is required as a condition of loan disbursement, if the bank retains it until the loan is fully repaid and if the bank links its return to the borrower's performance, the document may perform an economic function comparable to collateral. Such a practice invites the question whether contractual terminology accurately describes the legal relationship or conceals an additional mechanism for securing the debt.[7]

The issue is especially consequential because the KUR regulatory framework has been renewed. Coordinating Minister for Economic Affairs Regulation No. 1 of 2026 on Guidelines for the Implementation of People's Business Credit came into force on 13 January 2026 and replaced the earlier Regulation No. 1 of 2022, as amended. The 2026 instrument defines the framework for principal and additional collateral and expressly prohibits KUR distributors from requiring additional collateral beyond principal collateral for loans with a ceiling of up to IDR 100 million. Article 20(2) regulates the possibility of additional collateral for larger loans, subject to identified exceptions. A label such as 'deposit' cannot resolve

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[4] Nur Kumala Sari and Niniek Imaningsih, "Pengaruh Faktor Internal Dan Eksternal Terhadap Penyaluran Kredit Usaha Rakyat (KUR) Bagi UMKM (Studi Kasus Pada PT. Bank Rakyat Indonesia Tahun 2011-2020)," *Journal Ekombis Review* 10, no. Spesial Issue DNU 14 TH (2022): 121–32, https://doi.org/10.37676/ekombis.v10iS1.2008.

[5] Lastuti Abubakar and Tri Handayani, "Enhancing Consumer Protection in the Indonesian Financial Service Sector through the Utilization of Standardized Contracts," *Yustisia Jurnal Hukum* 12, no. 2 (2023): 156–67, https://doi.org/10.20961/yustisia.v12i2.61271.

[6] Ade Pratiwi Susanti, "Pencantuman Klausula Baku Dalam Perjanjian Kredit Di Perbankan Menurut Perspektif Hukum Perlindungan Konsumen," *Andrew Law Journal* 1, no. 1 (2022): 1–6, https://doi.org/10.61876/alj.v1i1.2.

[7] Lastuti Abubakar et al., "Enhancing Consumer Protection in."

whether a particular demand complies with this prohibition; the substantive function of the BPKB transfer must be examined.[8]

The distinction between terminology and substance is not merely semantic. When parties use the language of safekeeping, the ordinary implication is that one party holds an item for another and is obliged to preserve and return it under agreed conditions. By contrast, a security arrangement is directed at the performance of an underlying obligation and may create, if the governing legal requirements are met, specific proprietary rights for the creditor. The receipt of a document, the retention of physical possession and the creation of a security right are three analytically different occurrences. Conflating them can mislead borrowers and can encourage a lender to assert rights exceeding those created by law. The character of a BPKB transfer must accordingly be inferred from its purpose, content, operation and legal consequences.[9]

Freedom of contract under Article 1338 of the Indonesian Civil Code is not an unlimited power to invent contractual forms that defeat mandatory legislation. The provision gives binding force to legally established agreements and requires their performance in good faith. Article 1339 further recognises consequences arising from propriety, custom and law, even where these are not expressly written into the contract. In a KUR agreement, these principles require a contextual reading of a BPKB clause rather than mechanical reliance on the noun chosen by the drafting bank. A clause expressed as safekeeping may still have to be evaluated as a security-related undertaking where the debtor cannot obtain disbursement or recover the document without satisfying additional conditions.[10]

The principle of good faith is important at both the formation and performance stages. Before signing, the borrower must be able to distinguish a document-custody service from an undertaking that limits the ability to dispose of or use a vehicle. During performance, the bank must not expand its authority beyond what was clearly agreed and lawfully permitted. A borrower who reasonably understands 'deposit' as temporary safekeeping may be disadvantaged if the bank later treats possession as a basis for unilateral seizure, disposal or retention after the relevant obligation has ended. Good faith therefore addresses not only intentional deception but also failures to explain material risks that the lender is better positioned to understand.[11]

The use of standard clauses sharpens this difficulty. While a standard form is ordinarily legitimate, the validity of individual provisions cannot be presumed

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[8] Republic of Indonesia, Coordinating Minister for Economic Affairs Regulation No. 1 of 2026 on Guidelines for the Implementation of People's Business Credit, arts. 19–21 (promulgated 13 January 2026), https://peraturan.bpk.go.id/Details/342969/permenko-perekonomian-no-1-tahun-2026.

[9] Windy Pratiwi Candra Santoso and Zaenal Arifin Dilaga, "Implikasi Jaminan Fidusia BPKB Kendaraan Bermotor Yang Tidak Terdaftar Dalam Perjanjian Dalam Perjanjian Kredit Di PT. Bank Perkreditan Rakyat Segara Anak Kencana," *Jurnal Private Law* 5, no. 1 (2025): 42–50.

[10] Gladys Trias Puspadewi et al., "Implementasi Asas Itikad Baik Dalam Perjanjian Kredit Bank BRI (Studi Kasus Putusan Mahkamah Konstitusi Agung No. 12/PDT.GS/2020/PN BIK)," *Causa: Jurnal Hukum Dan Kewarganegaraan* 1, no. 6 (2023), https://doi.org/10.3783/causa.v1i6.957.

[11] Raja Husain, Heri Tahir, and Hasnawi Haris, "Analisis Yuridis Kedudukan Kontrak Standar Perbankan Menurut Hukum Perjanjian Kaitannya Dengan Hukum Perlindungan Konsumen," *Supremasi* 20, no. 1 (2025): 170–82, https://doi.org/10.26858/supremasi.v20i1.70958.

solely from the debtor's signature. Scholarship on exemption clauses, bank credit contracts and consumer rights highlights the risk that the lender may enlarge its discretion while limiting the customer's remedies. The term 'titipan' must be scrutinised in this setting because the appearance of a harmless administrative requirement may coexist with the practical effect of withholding an economically important ownership document. The contractual assessment should identify who may hold the BPKB, for what purpose, for how long, subject to what duties of care and under which lawful conditions it must be returned.[12]

Existing studies approach related questions from several directions. Research on KUR commonly considers disbursement effectiveness, borrower characteristics, MSME development, lending risk and resolution of troubled loans. Studies of bank credit contracts examine standard terms, exemption clauses, freedom of contract and unequal bargaining power. A further body of scholarship concerns motor-vehicle documents and the establishment of fiduciary security. These contributions provide valuable doctrinal foundations, but they do not in themselves settle the narrower question raised by the classification of a BPKB transfer as a 'deposit' in a KUR agreement. The issue is distinct from a general debate about whether vehicle ownership documents can be associated with security: it asks what legally follows when they are retained under the appearance of safekeeping.[13]

The research gap is therefore a problem of legal characterisation. Neither the literal word used in the contract nor the creditor's general interest in repayment is sufficient to classify the relationship. A functional enquiry should assess whether the agreement creates pure custody, a personal contractual undertaking related to the loan, or an attempted proprietary security arrangement. The distinctions matter because each category has different formation requirements, creditor powers, debtor protections and consequences for enforcement. The approach adopted here may be described as 'substance over nomenclature': legal effects follow the rights and duties actually established, subject to mandatory legal requirements, rather than the title attached to the transaction.[14]

This approach also reveals why contractual fairness and collateral regulation must be considered together. A bank may require information or monitor an asset for legitimate prudential reasons without thereby acquiring a proprietary interest. It may impose certain personal obligations if their content is lawful and appropriately disclosed. It may not, however, achieve the legal effects of a registered fiduciary security merely by holding an ownership document. Nor may it employ an ostensibly administrative requirement to circumvent a regulatory restriction on additional collateral for a qualifying KUR facility. The four evaluative

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[12] Evi Febri Sartika et al., "Klausula Eksonerasi Dalam Perjanjian Kredit Perbankan Di Indonesia: Kebebasan Berkontrak vs Imperatif Perlindungan Konsumen," *Jurnal Dimensi* 14, no. 3 (2025): 998–1009, https://doi.org/10.33373/dms.v14i3.8690.

[13] Berd Elkiopas Pelupessy, Sella Petrix Pelupessy, and Sobardo Hamonangan, "Aspek Hukum Penerapan Asas Kebebasan Berkontrak Terhadap Perjanjian Kredit Konsumtif Pada Bank Papua Kantor Cabang Kota Jayapura," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 2, no. 11 (2025): 509–20, https://doi.org/10.5281/zenodo.15642239.

[14] Firdayanti, "Pertanggungjawaban Hukum Notaris Terhadap Penggunaan Klausula Baku Dalam Perjanjian Kredit Ditinjau Dari Asas Kebebasan Berkontrak," *Integrative Perspectives of Social and Science Journal* (IPSSJ 2, no. 3 (2025): 3358–69.

criteria employed in this article are the purpose of delivery, the operational function of custody, the powers granted to the lender and the legal consequences of default and repayment.[15]

The principal contribution of this article is twofold. It develops a three-part doctrinal classification of BPKB custody in KUR financing and formulates a minimum-disclosure standard for contractual clauses governing the document. The first contribution provides a framework for distinguishing safekeeping from contractual credit protection and formally constituted fiduciary security. The second seeks to ensure that borrowers receive meaningful information about the purpose and effects of surrendering the document, and that banks do not obtain powers which have not been validly created. These contributions also provide a practical basis for assessing compliance with the updated KUR framework and financial-services consumer-protection requirements.[16]

Accordingly, this study addresses two questions: what is the legal status of a BPKB described as a 'deposit' in a People's Business Credit agreement when examined through Indonesian contract and security law; and what forms of legal protection should be available to borrowers subjected to such a clause? The discussion argues that a correct classification must recognise the difference between possession of an ownership document and rights over the underlying vehicle, while reconciling the bank's legitimate interest in managing credit risk with the borrower's statutory and contractual rights.

Research Method

This article adopts normative legal research with a descriptive and prescriptive orientation. Its object is not a representative survey of banking practices or a claim that a particular bank has committed a violation. Rather, it examines the legal meaning and permissible consequences of a BPKB 'deposit' clause in the context of KUR financing. The research combines statutory, conceptual and case-oriented analysis as indicated in the two underlying manuscripts. Because the manuscripts do not identify a specific judicial decision resolving a BPKB-deposit dispute, the case-oriented aspect is treated as contextual analysis of the contractual practice described in the literature and not as an independently verified study of a judgment. This methodological distinction avoids treating hypothetical examples as findings of a decided case.

The primary legal materials include the Indonesian Civil Code, Law No. 42 of 1999 on Fiduciary Security, Law No. 8 of 1999 on Consumer Protection, Coordinating Minister for Economic Affairs Regulation No. 1 of 2026 and POJK No. 22 of 2023. The study considers the legal effects of contractual consent, safekeeping and credit undertakings; the formal requirements for creating a fiduciary security right; the regulatory limitation on additional collateral; and the special protections attaching to a financial consumer. Secondary materials comprise journal scholarship on KUR, banking contracts, fiduciary security,

[15] Ni Komang Diana Putri Yasua and Made Aditya Pramana Putra, "Tinjauan Yuridis Perjanjian Baku Dalam Perjanjian Kredit Bank: Perspektif UU Perlindungan Konsumen Dan Peraturan OJK," *Jurnal Media Akademik* 3, no. 9 (2025): 1–16, https://doi.org/10.62281/zm61k396.

[16] Shintia Putri Maharani et al., "Aspek Hukum Perlindungan Konsumen Terhadap Perjanjian Baku Kredit Pemilikan Rumah," *Viva Themis: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 2 (2026): 463–81, https://doi.org/10.24967/vt.v9i2.4841.

standard clauses, good faith and debtor protection. The titles of Indonesian-language publications are retained in their original form in the bibliography to preserve bibliographic accuracy.[17]

The analysis proceeds in four stages. First, the relevant legal rules are organised according to the different interests they protect: contractual autonomy, secured credit, the KUR programme and financial consumer protection. Second, the obligations implied by the described BPKB practice are separated into custody, personal undertakings and claims of proprietary security. Third, the consequences of each classification are tested against the formation requirements and prohibitions of the applicable laws. Fourth, these results are translated into a prescriptive checklist for drafting and reviewing the clause. This sequence allows the study to identify risks of concealed collateral without assuming that every transfer of a BPKB automatically establishes a security interest.[18]

The reasoning is qualitative and primarily deductive, moving from the applicable rules and concepts to possible configurations of the particular clause. Where a conclusion depends on an unprovided contract, a real transaction or a judicial finding, it is expressed conditionally. The study therefore does not infer the existence of unlawful bank conduct merely because a borrower delivered a document. The relevant legal test is whether the delivery was compulsory, how the bank used its custody, which powers the contract purported to confer and whether the legal requirements for those powers were satisfied. This cautious method is central to the distinction between a doctrinal analysis and an empirical allegation about an identifiable financial institution.

Results and Discussion

1. The Legal Status of a BPKB 'Deposit' in the Contractual Relationship between KUR Banks and Borrowers

A KUR agreement constitutes an enforceable relationship between a distributor and a borrower, but the transaction is embedded in a special public financing programme. The bank legitimately seeks repayment and prudent control of credit risk; the borrower seeks finance on the conditions established for eligible productive businesses. These objectives must be reconciled, not treated as mutually exclusive. Contractual terms are therefore assessed simultaneously against general private-law rules and the specific provisions governing KUR. A term that might be acceptable in a conventional secured loan cannot automatically be transplanted into KUR where regulations intentionally limit requirements for additional collateral. The distinctiveness of KUR is relevant not only to the distribution decision but also to the rights that may be created after the loan is granted.

The 2026 KUR regulation provides the immediate regulatory starting point. Article 19 distinguishes principal collateral, consisting of the financed enterprise

[17] Adevin Utari Manek and Putu Devi Yustisia Utami, "Keabsahan Penggunaan Perjanjian Baku Dalam Sektor Jasa Keuangan," *Jurnal Media Akademik* (JMA) 4, no. 7 (2026): 1–16, https://doi.org/10.62281/bz0hpb42.

[18] Lastuti Abubakar and Tri Handayani, "Enhancing Consumer Protection in the Indonesian Financial Service Sector through the Utilization of Standardized Contracts," *Yustisia Jurnal Hukum* 12, no. 2 (2023): 156–67, https://doi.org/10.20961/yustisia.v12i2.61271.

or financed object, from additional collateral, which may take the form of tangible or intangible assets under the applicable conditions. Article 20(1) prohibits a KUR distributor from requiring additional collateral beyond principal collateral for facilities with a ceiling of up to IDR 100 million. For larger facilities, Article 20(2) permits additional collateral subject to specified agricultural exceptions. This distinction prevents an overbroad inference that additional collateral is never permissible under KUR. At the same time, it means that the functional role of BPKB custody must be assessed with particular care in facilities falling within the protected threshold.[19]

The factual starting point described in both revisions is the delivery of a motor-vehicle ownership document by a borrower to a bank, with that document referred to as a titipan. BPKB is a document evidencing information about motor-vehicle ownership and registration. It is not identical to the vehicle itself. Consequently, physical possession of the BPKB must not be equated with possession or ownership of the motor vehicle, and still less with a valid proprietary charge over it. The bank may have physical custody of a piece of paper without acquiring a right of preference over other creditors or a right of execution against the vehicle. This separation is the core analytical safeguard against conflating a document-management practice with a security transaction.[20]

Indonesian fiduciary security law imposes formal requirements for the creation of such a right. Law No. 42 of 1999 establishes the accessory character of the fiduciary agreement and requires a notarial deed executed in Indonesian when encumbering property with fiduciary security. Registration is obligatory, and Article 14(3) fixes the creation of the fiduciary security right at the time it is recorded in the fiduciary register. A borrower handing over a BPKB does not replace the notarial deed or registration, and the mere custody of the document does not cause a fiduciary security interest to arise. The underlying loan may remain enforceable if otherwise valid, but the bank cannot claim the proprietary priority or special enforcement rights of a registered fiduciary creditor without complying with the law.[21]

The distinction is supported by scholarship concerning the use of motor-vehicle ownership documents in credit arrangements. Research on unregistered fiduciary arrangements illustrates the practical risk that a lender may regard the BPKB as security while lacking the legal status which registration would confer. Megawati, Subaryah and Rastuti likewise discuss the regulatory inconsistencies that may arise in KUR financing when collateral-related practices are not aligned with the programme's stated design. Such research demonstrates why it is necessary to analyse both the agreement and the security formalities instead of

[19] Republic of Indonesia, Coordinating Minister for Economic Affairs Regulation No. 1 of 2026 on Guidelines for the Implementation of People's Business Credit, arts. 19–21 (promulgated 13 January 2026), https://peraturan.bpk.go.id/Details/342969/permenko-perekonomian-no-1-tahun-2026.

[20] Raja Husain, Heri Tahir, and Hasnawi Haris, "Analisis Yuridis Kedudukan Kontrak Standar Perbankan Menurut Hukum Perjanjian Kaitannya Dengan Hukum Perlindungan Konsumen," *Supremasi* 20, no. 1 (2025): 170–82, https://doi.org/10.26858/supremasi.v20i1.70958.

[21] Republic of Indonesia, Law No. 42 of 1999 on Fiduciary Security, arts. 4–5, 11, 14–15, https://jdih.kemenkeu.go.id/api/download/fulltext/1999/42TAHUN1999UU.htm.

presuming that retention of the BPKB automatically creates a legally effective encumbrance.[22]

The first possible classification is genuine administrative safekeeping. Here the borrower voluntarily hands the document to the bank for a specific administrative or custodial purpose. The bank is responsible for preserving it and returning it under the terms of that limited arrangement, but it has no independent proprietary right over the vehicle. A genuine deposit does not empower the bank to sell, transfer, encumber or execute upon the vehicle, nor to treat the document as substitute satisfaction of the loan. Its legal consequences relate to custody, care and return. The mere presence of a deposit receipt or the use of the word titipan is insufficient to establish this classification; the bank's actual powers and practices must be consistent with safekeeping.

The second possible classification is a contractual credit-protection undertaking that remains personal rather than proprietary. For example, a debtor may covenant to notify the bank before selling an asset, maintain insurance, or refrain from creating competing security without the bank's consent. A negative-pledge clause, properly so called, is an undertaking not to encumber an asset in favour of another creditor; it is not itself a registered fiduciary security interest. Depending on its drafting and the surrounding legal framework, custody of the BPKB might be associated with such a personal undertaking. However, this category requires particular scrutiny because a contractual covenant cannot evade a mandatory KUR restriction or confer proprietary rights which the law reserves to formal security. The mere absence of registration does not automatically make every related contractual promise void, but neither does it validate an otherwise prohibited demand for additional collateral.

The third possible classification is an attempted or formally established proprietary security arrangement over the vehicle. If the parties actually intend the vehicle to secure payment of the debt, the question must be answered using the relevant security-law rules. When the required fiduciary deed and registration are completed, the creditor's rights arise within the scope established by law. If the parties intend a fiduciary arrangement but omit those requirements, the purported security right does not become effective simply because the BPKB remains in the bank's safe. Even in a properly formed arrangement, the enforceability of particular creditor powers must be determined according to the governing law rather than a unilateral interpretation of a document-holding clause.[23]

These three categories should not be mistaken for three interchangeable legal labels. Each depends on a distinct combination of purpose, permissible powers and legal effect. Genuine safekeeping imposes duties of care and restitution; a personal covenant creates contractual obligations without the proprietary priority of a secured creditor; and a valid fiduciary security can arise only through its legally required constitution. An arrangement may also be legally defective or ambiguous, in which case it cannot be assigned to the most favourable category for the bank merely because the bank desires security. A well-drafted

[22] Windy Pratiwi Candra Santoso et al., "Implikasi Jaminan Fidusia BPKB."

[23] Leny Megawati, T Subaryah, and Tuti Rastuti, "Agunan KUR Tanpa Agunan: Inkonsistensi Regulasi Dan Jalan Menuju Penjaminan Hybrid," *Jurnal Penelitian Hukum De Jure* 25, no. 3 (2025), https://doi.org/10.30641/dejure.2025.V25.219-232.

agreement should make clear which category is intended and should avoid giving contradictory signals to the debtor.

Four practical indicators are especially important in applying a substance-over-nomenclature test. The first is purpose: why was the document requested and whose interests was its retention intended to serve? The second is function: was the document held for record-keeping, or was custody used to prevent the borrower from disposing of the vehicle or to pressure repayment? The third is authority: did the agreement claim to permit the bank to retain, transfer, repossess or sell the vehicle? The fourth is consequence: what occurs if the debtor defaults, repays the loan, asks for the BPKB back or disputes the bank's claim? Examined together, these indicators can distinguish a custodial arrangement from a credit-security device far more effectively than the word written at the top of a form.[24]

Consider a conditional illustration, not a finding concerning an identified bank. A KUR borrower is informed that a loan cannot be disbursed unless a BPKB is delivered; the bank retains it throughout the loan term and promises to return it only when the debt has been completely repaid. If the borrower is also required to consent to enforcement steps against the vehicle upon default, the arrangement strongly suggests a security function, despite the word 'deposit'. By contrast, where delivery is genuinely optional, custody is justified by an identifiable administrative need and the bank disclaims any additional security rights, the legal assessment may be different. The ultimate classification depends on the contract and proven practice, not on an assumed motive.

The legal consequences of an ineffective attempt to create security require particular precision. A flawed fiduciary arrangement does not necessarily extinguish the underlying debt, because the principal credit agreement and its accessory security are conceptually separable. Nor does the failure to register automatically invalidate every personal covenant connected with the loan. What it does mean is that the bank cannot rely on a fiduciary priority or special fiduciary execution right that never validly arose. Conversely, a clause conflicting with mandatory consumer-protection rules or the KUR collateral prohibition may be unenforceable to the extent of that conflict. The specific effect must be assessed according to the applicable statute, the wording of the clause and the legal interests affected.[25]

This approach reflects Articles 1320, 1338 and 1339 of the Civil Code. The parties' consent and the lawfulness of the agreement remain important, while performance in good faith and implications arising from law and propriety prevent a formalistic reading that disregards actual effects. The bank's legitimate concern for repayment cannot authorise it to construct a proprietary security right outside the statutory mechanism. Equally, the borrower cannot invoke the programme's collateral rules to deny repayment obligations lawfully incurred under the main

[24] Sahrul Ramadan and Anggalana, "Tinjauan Yuridis Mitigasi Terjadinya Non Performing Loan Pada Kredit Usaha Rakyat Berdasarkan Permenko Perekonomian Nomor 1 Tahun 2023 (Studi Pada Bank Pembangunan Daerah Lampung)," *Jurnal Hukum Respublica* 23, no. 2 (2024): 89–103, https://doi.org/10.31849/respublica.v23i02.18024.

[25] Republic of Indonesia, Law No. 42 of 1999 on Fiduciary Security, arts. 4–5, 11, 14–15, https://jdih.kemenkeu.go.id/api/download/fulltext/1999/42TAHUN1999UU.htm.

loan. Distinguishing the existence of the debt from the existence of a security right is essential to maintaining both contractual discipline and statutory protection.

The specific KUR prohibition adds a further test. Where the credit ceiling does not exceed IDR 100 million, a bank may not require additional collateral beyond principal collateral. If surrendering the BPKB is effectively a precondition for disbursement or a means of holding a vehicle as assurance for repayment, the arrangement must be examined against this prohibition. For higher-value KUR loans, additional collateral may be permissible subject to the regulation and other applicable law, but any intended fiduciary security still has to meet fiduciary-law formalities. The distinction prevents the conclusion that the name titipan can independently make a prohibited requirement lawful, or that every custody arrangement is necessarily prohibited.[26]

Article 21 of the 2026 KUR regulation identifies a programme-level consequence where a distributor demands additional collateral in contravention of Article 20(1): the relevant interest or margin subsidy is not paid in relation to the affected borrower. This mechanism underscores the public-policy character of the collateral restriction. It also shows why the legal analysis cannot stop with an abstract discussion of the Civil Code. Mischaracterisation of an additional-collateral requirement may engage not only debtor protection and contractual enforceability but also the administrative conditions under which a financial institution participates in a subsidised credit scheme.[27]

Banks remain subject to prudential obligations and may employ lawful alternatives for managing default risk. They can evaluate repayment capacity, analyse the financed enterprise, document the flow of funds, follow permitted monitoring procedures and use available guarantee mechanisms within KUR. Research on non-performing loans recognises the need for such risk management. However, prudence must be exercised through authorised instruments and cannot be used as a general justification for imposing security requirements that the special programme rules prohibit. The financial institution's risk-management interest is legitimate; the legal form and proportionality of the measures chosen remain independently reviewable.[28]

The doctrinal result is a classification rule rather than a categorical accusation. If the BPKB is delivered solely for lawful administrative custody, the arrangement can remain a deposit. If the document is retained as part of a lawful and adequately disclosed personal undertaking, its effects are contractual, not automatically proprietary. If it is intended to secure repayment by conferring rights over a vehicle, security law and the applicable KUR restrictions control. This differentiation advances the literature beyond a simple debate over 'collateral

[26] Republic of Indonesia, Coordinating Minister for Economic Affairs Regulation No. 1 of 2026 on Guidelines for the Implementation of People's Business Credit, arts. 19–21 (promulgated 13 January 2026), https://peraturan.bpk.go.id/Details/342969/permenko-perekonomian-no-1-tahun-2026.

[27] Republic of Indonesia, Coordinating Minister for Economic Affairs Regulation No. 1 of 2026 on Guidelines for the Implementation of People's Business Credit, arts. 19–21 (promulgated 13 January 2026), https://peraturan.bpk.go.id/Details/342969/permenko-perekonomian-no-1-tahun-2026.

[28] Sahrul Ramadan et al., "Tinjauan Yuridis Mitigasi Terjadinya."

versus no collateral' and provides a practical framework for determining the consequences of different contractual designs.

2. Legal Protection for Debtors against BPKB 'Deposit' Clauses in KUR Agreements

The classification problem has an immediate consumer-protection dimension. A KUR borrower is at once a debtor under private contract law and a customer of a financial-services business. Legal protection therefore derives from several overlapping sources: the Civil Code's requirements for valid and good-faith contracts, the Consumer Protection Law, OJK's rules on standard-form financial-services agreements and the rules specifically governing KUR. Each source addresses a different part of the same risk. Contract law determines the obligations created between the parties; consumer law controls misleading or unfair conduct; banking regulation imposes duties of disclosure and fair treatment; and KUR regulation limits the collateral conditions that a programme distributor may demand.

The imbalance ordinarily associated with standard-form lending explains why protective rules are necessary. The bank possesses expertise in banking documents and determines the language of the agreement, while the borrower may encounter the relevant clause for the first time at the signing stage. If a BPKB 'deposit' is described only as an administrative formality, a borrower may reasonably assume that the bank has merely accepted custody. The risk arises when the bank subsequently treats that custody as a basis for withholding the document indefinitely or asserting control over the vehicle. Effective protection is therefore preventive as well as remedial: the borrower must receive understandable information before consent is given, rather than learning the arrangement's actual effect only after a dispute.[29]

POJK 22/2023 provides an important starting point. The regulation adopts consumer-protection principles including transparent information, fair treatment and responsible business conduct. Its provisions on product information require financial-services providers to present material information clearly and without misleading consumers. Provisions addressing agreements also emphasise balance, fairness, the provision of time and explanation sufficient for consumers to understand their rights and obligations, and restrictions on impermissible standard terms. Applied to BPKB custody, these requirements call for a meaningful account of the reason for delivery, the document's status while held by the lender, the lender's permitted actions and the circumstances under which the document will be returned.[30]

The content of a standard clause is more important than its existence. Banks may use uniform documentation to administer large numbers of loans, and standardisation in itself does not make a contract unfair. The difficulty occurs

[29] Sidik Miswanto and Siti Ummu Adillah, "Analysis of Legal Protection for Debtors Regarding The Position of Using Standard Contracts in Relation To The Principle of Freedom of Contract on Bank Credit Agreement," *Tabellius Journal of Law* 2, no. 4 (2024): 692–717.

[30] Financial Services Authority of the Republic of Indonesia, Regulation No. 22 of 2023 on Consumer and Community Protection in the Financial Services Sector, arts. 3, 29, 32, 44–46, https://www.ojk.go.id/id/regulasi/Pages/Pelindungan-Konsumen-dan-Masyarakat-di-Sektor-Jasa-Keuangan.aspx.

when the language is opaque or allocates one-sided powers inconsistent with mandatory rules. Research on the validity of standard contracts in financial services and on debtor protection repeatedly identifies transparency, proportionality and the prohibition of abusive exemption terms as critical factors.[31] These considerations are particularly compelling when a borrower is asked to surrender an ownership document without being told whether it can be used for security or retained upon default.[32]

Law No. 8 of 1999 on Consumer Protection provides an additional layer. It recognises the consumer's rights to accurate, clear and honest information and to fair treatment. Article 18 restricts certain standard clauses that shift responsibility or confer impermissible unilateral powers, while its provisions also address text which is difficult to read or understand. Where an offending clause falls within the prohibited categories, the statute provides consequences for its validity. It would be incorrect to conclude that every clause concerning a BPKB is automatically void. The legally relevant question is whether the term, read in context, possesses the characteristics that the consumer-protection framework forbids.[33]

The relevant duties should be translated into a minimum-disclosure requirement adapted to the specific transaction. A KUR agreement or a separate custody instrument should state at least seven matters. First, it must identify the precise purpose of delivering the BPKB and whether delivery is compulsory, optional or connected to a legally permissible security arrangement. Second, it must identify the document and explain that custody of a BPKB does not by itself transfer ownership of the vehicle or create fiduciary security. Third, it should define the actions the lender is and is not authorised to perform. Fourth, it should set out the lender's duties to safeguard the document and prevent its unauthorised use. Fifth, it should identify the period of custody and an objectively ascertainable procedure for its return. Sixth, it should establish a process for addressing disputes about the document's status or return. Seventh, it should specify the responsibility and remedy if the document is lost, damaged or improperly withheld. These items convert a vague administrative description into verifiable obligations.

Disclosure should not be reduced to a signature beside a long technical clause. The bank should explain in plain language whether the vehicle itself is intended to constitute security, whether a fiduciary deed and registration are required, how the BPKB relates to the borrower's repayment obligations and whether any conditions survive full payment. If the document is received only for custody, the form should explicitly disclaim a right to dispose of or execute against the vehicle and should avoid wording that could be interpreted as a security grant. Where the bank seeks a valid security arrangement for a facility legally permitting additional collateral, it should use a clear security instrument and comply with the governing formalities rather than placing the undertaking in an ambiguously labelled deposit form.[34]

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[31] Adevin Utari Manek et al., "Keabsahan Penggunaan Perjanjian Baku."

[32] Ni Komang Diana Putri Yasua and Made Aditya Pramana Putra, "Tinjauan Yuridis Perjanjian Baku Dalam Perjanjian Kredit Bank: Perspektif UU Perlindungan Konsumen Dan Peraturan OJK," *Jurnal Media Akademik* 3, no. 9 (2025): 1–16, https://doi.org/10.62281/zm61k396.

[33] Republic of Indonesia, Law No. 8 of 1999 on Consumer Protection, arts. 4 and 18.

[34] Republic of Indonesia, Law No. 42 of 1999 on Fiduciary Security, arts. 4–5, 11, 14–15, https://jdih.kemenkeu.go.id/api/download/fulltext/1999/42TAHUN1999UU.htm.

The four-part substance-over-nomenclature inquiry can be converted into a contract-review checklist. Reviewers should inspect the loan agreement, any BPKB receipt, attachments, correspondence and internal terms governing disbursement and return. They should ask whether delivery is a formal condition of approval; whether the lender's right to retain the document lasts only for an administrative task or for the whole repayment period; whether the borrower may recover the document while the loan remains outstanding; and whether default allegedly entitles the lender to exercise powers over the vehicle. Consistency matters: a form that promises mere custody but contains a separate enforcement authorisation is not made transparent by its heading alone.

The proportionality of the clause must likewise be assessed in light of the facility. A small KUR loan with a ceiling at or below IDR 100 million is subject to a specific prohibition on additional collateral. The borrower should not have to surrender an unrelated asset as a disguised security condition merely because the bank calls the requirement administrative. For larger facilities, or where the additional-collateral rules otherwise permit security, the issue becomes whether the requirement is genuinely disclosed and lawfully constituted. A reviewing court or regulator should not infer a universal prohibition covering every KUR category; the relevant ceiling, exception and time of the transaction must be identified before a conclusion is reached.[35]

Good faith provides an interpretive discipline in cases of ambiguity. Article 1338(3) of the Civil Code requires parties to perform agreements in good faith, and Article 1339 recognises consequences derived from law and propriety. If the bank's documentation reasonably communicates safekeeping, it should not use an undisclosed interpretation to enlarge its enforcement rights. If the borrower knows and validly accepts a lawful personal undertaking, the bank may invoke the undertaking according to its terms, but cannot transform it into a proprietary interest by assertion. An objective reading of the parties' conduct is thus necessary to prevent both artificial reliance on contractual names and arbitrary expansion of creditor power.[36]

The distinction between preventive and repressive protection is useful here. Preventive measures operate before or at the time the contract is made: clear drafting, explanation of material terms, confirmation of borrower understanding, issuance of a custody receipt, preservation of records and regulatory compliance review. Repressive measures address a dispute after it has occurred: a written complaint to the financial institution, escalation through available consumer-dispute mechanisms, appropriate regulatory channels and, where necessary, judicial proceedings. The appropriate remedy depends on whether the dispute concerns loss or damage to the document, delayed return, an invalid clause, or unauthorised enforcement against the vehicle.[37]

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[35] Republic of Indonesia, Coordinating Minister for Economic Affairs Regulation No. 1 of 2026 on Guidelines for the Implementation of People's Business Credit, arts. 19–21 (promulgated 13 January 2026), https://peraturan.bpk.go.id/Details/342969/permenko-perekonomian-no-1-tahun-2026.

[36] Gabriela Sapardi, Nancy Silvana Haliwela, and Marselo Valentino Geovani Pariela, "Perlindungan Hukum Bagi Debitur Terhadap Kreditur Pada Perjanjian Kredit Di Koperasi Simpan Pinjam," *Lutur Law Journal* 5, no. 2 (2024): 58–67, https://doi.org/10.30598/lutur.v5i2.16171.

[37] Gabriela Sapardi, Nancy Silvana Haliwela, et al., "Perlindungan Hukum Bagi Debitur."

Physical custody also creates practical duties independent of security rights. A bank holding a BPKB must take appropriate care of the item and account for its return under the applicable agreement. If the document is lost or damaged through the custodian's fault, the parties must consider compensation and necessary steps for replacement under the relevant administrative procedures. If the bank refuses to return the BPKB after the contractual basis for retention ends, the dispute may involve performance of the custody obligation and potential losses resulting from wrongful retention. These questions remain conceptually separate from the borrower's obligation to repay a valid loan.

When a lender seeks to use a retained BPKB as leverage in the event of default, both the contractual and regulatory foundations of its action require scrutiny. A default may entitle a creditor to demand performance, pursue lawful collection or exercise a validly constituted security right. It does not, by itself, turn an unregistered security arrangement into a registered fiduciary right. Nor does default retrospectively convert a safekeeping receipt into a grant of power over the underlying vehicle. The law must distinguish debt collection based on the credit agreement from the specific proprietary remedies available only to a lawful secured creditor. This distinction also protects legitimate banks by clarifying which measures are enforceable and which would expose them to legal dispute.[38]

The Consumer Protection Law and POJK 22/2023 therefore operate alongside, not in place of, the KUR rules. A BPKB clause might be transparent yet still incompatible with a prohibition on required additional collateral. Conversely, a document deposit might not contravene the additional-collateral rule because it confers no security function, yet remain inadequately drafted if it fails to explain the lender's custody obligations or return procedure. A complete review must test transparency, fairness, legal form and programme compliance separately. Treating any single test as conclusive would overlook another possible source of legal harm.

The two revisions together support a three-layer model of borrower protection. The first is contractual protection: rights and obligations must be clearly expressed, consistently implemented and limited to the purpose lawfully agreed upon. The second is regulatory protection: the bank must respect the programme-specific limits on additional collateral and the financial-services duties imposed on standard contracts. The third is remedial protection: the debtor must have accessible means to challenge improper retention, unauthorised claims over the vehicle, loss or misuse of the BPKB, or reliance on an invalid clause. These layers operate sequentially but also reinforce each other: good drafting reduces disputes, clear regulation reduces evasive practices, and effective remedies strengthen incentives to comply.

This framework does not deny the bank's legitimate interest in mitigating risk. Lending would become unsustainable if creditors were prevented from assessing repayment capacity, monitoring a financed enterprise or using lawful instruments to respond to non-performance. The point is that risk management must be legally authorised and candidly disclosed. The bank's ability to demand repayment is preserved by the loan agreement itself, while security rights exist only where and to the extent that the law provides for their constitution. The

[38] Republic of Indonesia, Law No. 42 of 1999 on Fiduciary Security, arts. 4–5, 11, 14–15, https://jdih.kemenkeu.go.id/api/download/fulltext/1999/42TAHUN1999UU.htm.

resulting balance is not achieved by weakening all creditor protections, but by ensuring that creditor protections take the appropriate legal form and do not defeat statutory protections for KUR borrowers.

The practical implication for contract drafting is straightforward. A lender wishing merely to store a BPKB should use a distinct custody clause describing the administrative purpose, document-care duties and return conditions. A lender seeking a personal covenant should describe its obligations and limitations without suggesting that custody creates preferential rights over property. A lender seeking fiduciary security for a loan in a category where such collateral may legally be required must use the procedure stipulated by fiduciary-security legislation. In all cases, disclosure should be intelligible to the intended borrower. These drafting alternatives provide a more reliable compliance route than the use of the generic expression titipan for several legally different arrangements.

On the basis of the sources examined, the legally sound conclusion is therefore conditional and specific. The expression 'BPKB deposit' is not necessarily invalid, because a true custody arrangement remains conceptually possible. It is equally not a safe harbour: if the arrangement in substance serves as required additional collateral or purports to create a fiduciary security outside the prescribed procedure, it must be assessed against the governing mandatory provisions. A court, regulator or institutional compliance officer should decide the matter by analysing the actual clause, the surrounding transaction, the facility category and the bank's proven practice. The contribution of the substance-over-nomenclature method lies in making that inquiry explicit and replicable rather than dependent on labels.

Conclusion

The combined analysis establishes that the legal status of a motor-vehicle ownership document described as a 'deposit' in a People's Business Credit agreement is determined by the transaction's purpose, the function of custody, the creditor's actual and purported powers, and the legal consequences of performance or default. Three categories must be distinguished: genuine administrative safekeeping, personal contractual credit-protection undertakings and a formally constituted proprietary security right. The possession of a BPKB does not, without compliance with Law No. 42 of 1999, constitute fiduciary security or create a fiduciary creditor's special enforcement rights. At the same time, the principal loan obligation and any lawful personal undertaking must be evaluated separately rather than presumed invalid simply because a claimed security interest has not arisen.

The programme-specific rules are decisive where a BPKB is retained to secure repayment. Under Coordinating Minister for Economic Affairs Regulation No. 1 of 2026, distributors may not require additional collateral for KUR facilities with a ceiling of up to IDR 100 million. For loans outside that category, any permitted additional security remains subject to the applicable legal requirements. A bank therefore cannot evade the substantive restriction through the vocabulary of titipan, and a borrower cannot rely on the mere use of that term as proof of an unlawful practice where the actual arrangement is limited to administrative custody. The correct legal classification is a contextual inquiry anchored in the contract, its implementation and the statutory framework.

Borrower protection requires a combination of clear contract terms, compliance with KUR and consumer-protection rules, and effective remedies. At minimum, a BPKB clause should identify the document, explain its purpose and legal status, define the bank's powers and custody duties, specify the period and manner of return, and provide mechanisms for disputes, damage or wrongful retention. Financial institutions should separate custody receipts from genuine security instruments and should avoid clauses whose legal effect is inconsistent with their heading. Future empirical research may test this framework against actual loan agreements, institutional procedures and adjudicated disputes; the present normative study, by contrast, establishes the legal criteria without attributing particular misconduct to any bank.

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