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The Legal Force of Article 1977 of the Indonesian Civil Code Regarding Ownership of Unregistered Movable Property

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Original Article

Abstract

Technological and socio-economic developments have generated significant challenges for the application of Article 1977 of the Indonesian Civil Code (Burgerlijk Wetboek/BW), which governs ownership of unnamed movable property. Normatively, this provision stipulates that possession is deemed equivalent to ownership. However, in practice, difficulties arise in relation to modern electronic devices such as mobile phones and laptops, which can be uniquely identified through IMEI codes or serial numbers. This study examines the binding force of Article 1977 of the Civil Code, explores the legal issues associated with the ownership of unnamed movable property, and evaluates the provision's relevance within the contemporary socio-economic and technological context. The research employs a normative juridical approach, supported by doctrinal analysis, statutory interpretation, and review of empirical literature on movable property ownership. Findings reveal that, although Article 1977 continues to provide formal legal certainty, it fails to adequately address technological advancements. Accordingly, the integration of digital identification mechanisms is essential to ensure substantive justice and safeguard property rights.

Keywords: *Binding force; Article 1977 of the Civil Code; Movable property; Technology*

Abstrak

Perkembangan teknologi dan perkembangan sosial-ekonomi telah menimbulkan persoalan serius terhadap penerapan Pasal 1977 BW yang mengatur penguasaan benda bergerak bukan atas nama. Secara normatif, ketentuan ini menetapkan bahwa pihak yang menguasai benda bergerak dianggap sebagai pemilik, namun praktik di lapangan menunjukkan masalah ketika benda tersebut berupa perangkat elektronik modern, seperti handphone dan laptop, yang dapat diidentifikasi melalui IMEI atau serial number. Penelitian ini bertujuan untuk menganalisis kekuatan mengikat Pasal 1977 BW, mengidentifikasi problematika hukum yang muncul dari penguasaan benda bergerak tak bernama, dan mengevaluasi relevansi ketentuan tersebut dalam konteks sosial, ekonomi, dan teknologi saat ini. Metodologi penelitian menggunakan pendekatan yuridis normatif dengan analisis doktrin, peraturan perundang-undangan, dan literatur empiris terkait penguasaan benda bergerak. Hasil penelitian menunjukkan bahwa meskipun Pasal 1977 BW masih memberikan kepastian hukum formal, ketentuan ini kurang responsif terhadap perkembangan teknologi, sehingga perlu integrasi mekanisme identifikasi digital untuk menjamin keadilan substantif dan perlindungan hak pemilik.

Kata kunci: *Kekuatan mengikat, Pasal 1977 BW, Benda bergerak, Teknologi.*

1. INTRODUCTION

In social life, objects occupy a central role as instruments for fulfilling human needs. Since antiquity, humans have been regarded as *homo economicus*, inherently seeking to enhance their welfare through the control and utilization of objects. Property law therefore emerges as a normative instrument to regulate human-object relations, thereby ensuring legal certainty, justice, and social order. Within the Indonesian civil law system, which remains rooted in the *Burgerlijk Wetboek* (BW), the regulation of objects is codified in Book II on Property, encompassing Articles 499 to 1232. This framework establishes the fundamental legal basis for all relationships involving property, both movable and immovable.

Property law provisions are designed to guarantee ownership certainty. The BW classifies property into two primary categories—movable and immovable—with distinct legal consequences. For movable property, Article 1977 stipulates that possession is deemed equivalent to ownership, whereas immovable property requires registration in a public registry. Within this framework, possession of movable property is presumed to correspond directly with ownership, thus providing legal simplicity, efficiency, and predictability in socio-economic relations.

However, the regulation often generates complex issues. The highly mobile nature of movable property makes ownership difficult to ascertain solely through possession. Numerous cases involving lost items—such as mobile phones and laptops—demonstrate that although such property may change hands, digital identifiers (e.g., IMEI or serial numbers) still link them to their original owners. This exposes a normative gap between the legal principle of *bezit* (actual possession) as ownership and technological capabilities that more accurately verify ownership. Such circumstances raise fundamental questions: should control of movable property suffice to establish ownership under Article 1977 BW, or should the original owner, who can prove digital identity, be afforded stronger protection?

Similar challenges arise in fiduciary guarantees and the transfer of movable property, where assets are often pledged or transferred without the rightful owner's consent—sometimes through fraud—creating disputes between original owners and bona fide third parties. Inconsistent judicial decisions further highlight the weaknesses in applying Article 1977, undermining the legal certainty the provision was intended to ensure. Consequently, a principle designed to simplify transactions has, in practice, become a potential source of disputes.

This discrepancy underscores a widening gap between normative law and empirical reality. While property law aspires to create certainty through the straightforward principle that possession implies ownership, socio-economic practices and technological advancements reveal its limitations. The advent of digital identification technologies necessitates a reformulation of the concept of ownership of

movable property, while empirical evidence highlights the inadequacy of existing legal protections for rightful owners.

Scholarly studies on property law, particularly concerning movable and immovable property under the Civil Code, have been extensive. Much of this literature has focused on principles of ownership, publicity, and legal protection, and how they operate within modern society. However, the emergence of digital identifiers for movable objects—such as serial numbers and IMEIs on electronic devices—introduces new challenges that remain underexplored in existing scholarship.

Setiono examines the complexity of transactions involving property within the broader dynamics of Indonesian society and the economy. Given the sheer number and diversity of objects, regulation through Book II of the Civil Code (BW) represents an attempt to establish a uniform normative framework. However, he argues that Article 1977 of the Civil Code, which links ownership of movable objects without a name to actual possession, often creates legal uncertainty, particularly in cases of ownership disputes.¹

Renee highlights the highly mobile nature of movable property, which makes it especially prone to frequent transfers. As a result, determining ownership solely on the basis of possession (*bezit*) becomes problematic. A person in possession of a movable object is not necessarily its legal owner, but may merely be a holder (*houder*). This problem is compounded in situations where property is lost or stolen and subsequently transferred to a third party acting in good faith.²

Gozali clarifies the legal distinction between ownership regulations for movable and immovable property. Under Article 1977, possession establishes ownership of movable property, while ownership of immovable property requires registration in a public register. This dichotomy underscores the disparity in legal protection afforded to different categories of property.³

In more recent research, Budimansyah explores the technological identification of movable property through serial numbers and IMEI codes. Such digital identities enable the tracing of lawful ownership, even though Article 1977 continues to normatively link ownership to physical possession. His study contributes to the discourse on the need

¹ Gentur Cahyo Setiono, “Jaminan Kebendaan Dalam Proses Perjanjian Kredit Perbankan: Tinjauan Yuridis Terhadap Jaminan Benda Bergerak Tidak Berwujud,” *Transparansi Hukum* 1, no. 1 (2018): 1–18, <https://doi.org/10.30737/transph.v1i1.159>.

² Rodrico Agustino Renee, “Hipotek Sebagai Jaminan Hak Kebendaan Setelah Berlakunya Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan,” *Lex Et Societatis* 9, no. 1 (2021): 146–53, <https://doi.org/10.35796/les.v9i1.32193>.

³ Djoni Sumardi Gozali, “Dasar Filosofis Dan Karakteristik Asas Publisitas Dalam Jaminan Kebendaan,” *Jurnal Hukum Dan Kenotariatan* 5, no. 4 (2021): 590–609, <https://doi.org/10.33474/hukeno.v5i4.10875>.

for a reformulation of property law to make it more responsive to technological developments.⁴

Lubis and Salam address the issue of legal protection in cases where property is used as fiduciary collateral without the owner's knowledge. Their findings reveal that existing legal provisions leave gaps that may disadvantage bona fide parties, indicating that despite the Civil Code's comprehensive framework, practical application continues to generate significant protection challenges.⁵ Isnaeni, in her study of the distribution of waqf assets, emphasizes the importance of distinguishing between movable and immovable property. She argues that effective classification of national wealth is crucial to ensuring that property law accommodates the needs of a rapidly evolving society. This analysis highlights the broad implications of property law, extending beyond private relations into the public domain.⁶

Mahmudiyah investigates the legal consequences of third-party possession of movable assets within the framework of *droit de suite*. He concludes that the degree of legal protection afforded to owners depends on the good faith of third-party acquirers. Where property is obtained in good faith, the rights of the original owner cannot be reclaimed. This study underscores the complexity of applying Article 1977, particularly in resolving ownership disputes.⁷

Syaloomita and Doringin examine the role of the statute of limitations in determining property rights through possession. Their study shows that under certain conditions, a possessor (*bezitter*) may acquire ownership through continued control. This demonstrates the flexibility of property law in allowing possession to evolve into legal ownership.⁸ Similarly, Siwi discusses the treatment of immovable property as fiduciary collateral, tracing the development of regulations from before Law No. 4 of 1996 on Mortgage Rights to Law No. 42 of 1999 on Fiduciary Rights. His analysis illustrates how property law must continuously adapt to the economic and credit demands of society.⁹

⁴ Ahmad Budimansyah, "Pelanggaran Hak Ekonomi Dalam Jual Beli Serial Number Program Komputer Perspektif Regulasi Hak Cipta Dan Fatwa Ulama Indonesia," *Journal of Islamic Business Law* 6, no. 3 (2022): 1–17, <http://urj.uin-malang.ac.id/index.php/jibl/article/view/1792>.

⁵ Aditya Nabilah Lubis and Abdul Salam, "Perlawanan Pihak Ketiga Sebagai Pemilik Benda Terhadap Benda Yang Dijadikan Jaminan Fidusia Tanpa Persetujuan Pemilik Benda: Studi Kasus Putusan Mahkamah Agung 1012 K/PDT/2021," *Lex Patrimonium* 1, no. 1 (2022): 1–17, https://scholarhub.ui.ac.id/lexpatri/vol1/iss1/5?utm_source=scholarhub.ui.ac.id%2Flexpatri%2Fvol1%2Fiss1%2F5&utm_medium=PDF&utm_campaign=PDFCoverPages.

⁶ Moch Isnaeni, "Benda Terdaftar Dalam Konstelasi Hukum Indonesia," *Jurnal Hukum Ius Quia Iustum* 7, no. 3 (2016): 47–64, <https://doi.org/10.20885/iustum.vol7.iss13.art4>.

⁷ Arida Mahmudiyah, "Konsekuensi Hukum Penguasaan Benda Bergerak Oleh Pihak Ketiga Berdasarkan Sifat Kebendaan *Droit De Suite*: Hak Kebendaan Yang Mengikuti Pemiliknya," *Wasaka Hukum: Jendela Informasi Dan Gagasan Hukum* 7, no. 2 (2019): 333–48, <https://ojs.stihsa-bjm.ac.id/index.php/wasaka/article/view/22>.

⁸ Ronna Syaloomita and Lorena Doringin, "Syarat Hapusnya Kedudukan Hak Kebendaan Berdasarkan Buku II *Kuhperdata*," *Lex Crimen* 12, no. 4 (2024): 1–10, <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/59048>.

⁹ Celine Tri Siwi, "Aspek Hukum Benda Tidak Bergerak Sebagai Obyek Jaminan Fidusia," *Jurnal Notariil* 2, no. 1 (2017): 13–22, <https://doi.org/10.22225/jn.2.1.150.13-22>.

Suryantoro underscores the importance of distinguishing between movable and immovable property within the framework of substantive rights. He argues that this distinction directly affects the types of collateral instruments that may be employed in loan agreements, thereby reinforcing the urgency of ensuring legal protection for ownership of movable property.¹⁰ Edgar and Mahmudah address the transfer of movable property in the context of joint ownership. Their study demonstrates that the transfer of jointly owned movable property without the consent of one party violates the legal authority to act, rendering the transaction void. Nevertheless, unlike unregistered movable property, Article 1977 of the Civil Code continues to extend protection to third parties acting in good faith.¹¹

Prior scholarship has largely concentrated on the legal protection of movable property in relation to fiduciary guarantees, the transfer of ownership rights, and issues concerning third-party good faith. However, limited attention has been given to high-technology unregistered movable property—such as mobile phones and laptops—that carry digital identifiers (e.g., serial numbers and IMEIs). Technological advancements have introduced new instruments for more accurate ownership verification, a dimension that has yet to be fully explored in the literature. This study therefore offers originality by examining the relevance and binding force of Article 1977 of the Civil Code (BW) in relation to unregistered movable property in the digital era, a perspective seldom addressed in prior research.

Accordingly, this research aims to: (1) critically analyze the binding force of Article 1977 BW regarding unregistered movable property, with particular attention to its application in Indonesian practice; (2) identify the legal issues arising from ownership disputes over unregistered movable property, especially modern electronic devices such as mobile phones and laptops, which, although normatively subject to Article 1977 BW, can be technologically identified; and (3) evaluate the extent to which Article 1977 BW remains adequate and relevant in addressing contemporary social, economic, and technological developments, while ensuring legal certainty and justice.

2. RESEARCH METHODOLOGY

This study employs a normative juridical approach, focusing on the analysis of property law norms as codified in the Indonesian Civil Code, particularly Article 1977, and their relevance to technological developments in the context of unregistered movable property. This approach was selected because the research addresses the gap between positive legal norms and empirical reality, thereby requiring a comprehensive

¹⁰ Dwi Dasa Suryantoro, “Eksistensi Hak Kebendaan Dalam Perspektif Hukum Perdata BW,” *Legal Studies Journal* 3, no. 1 (2023): 19–35, <https://doi.org/10.33650/ljs.v3i1.5820>.

¹¹ Isadora Nathania Edgar and Siti Mahmudah, “Peralihan Benda Bergerak Aset Harta Bersama Tanpa Persetujuan Salah Satu Pihak,” *Notaire: Journal of Notarial Law* 6, no. 2 (2023): 215–236, <https://doi.org/10.20473/ntr.v6i2.45067>.

examination of the structure, principles, and substantive provisions governing ownership of movable property. The research is descriptive-analytical in nature, outlining relevant legal provisions, doctrines, and jurisprudence, while simultaneously evaluating their effectiveness and formulating legal arguments as a foundation for potential legal reform.

The legal materials consist of primary sources, including the Civil Code—specifically Book II and Article 1977—the Fiduciary Guarantee Law, and Supreme Court decisions concerning ownership disputes over movable property. Secondary materials include scholarly literature, peer-reviewed journal articles, prior research, and the perspectives of legal experts in property law. Tertiary materials encompass legal dictionaries, encyclopedias, and other supporting references. Data collection was conducted through library research, drawing on both national and international legal databases.

The analysis of legal materials was carried out qualitatively through the inventory, classification, and interpretation of norms. Legal interpretation employed grammatical, systematic, historical, and teleological methods to contextualize the meaning of Article 1977 of the Civil Code in the contemporary era. Based on this interpretation, legal arguments were developed to illuminate the gap and to propose recommendations for reforming property law. The validity of the findings was reinforced through triangulation of legal materials and reasoning, grounded in the principles of legal certainty, justice, and expediency.

3. RESEARCH RESULT AND DISCUSSION

3.1. The Binding Force of Article 1977 of the Civil Code (BW) on Unregistered Movable Property

The primary objective of this study is to critically examine the binding force of Article 1977 of the Indonesian Civil Code (BW) as it applies to unregistered movable property. The analysis focuses on how this provision operates in Indonesian legal practice and the extent to which it remains relevant amid contemporary social dynamics and technological advancements. In particular, the study explores the gap between the normative principle that legitimizes ownership based on possession and the empirical reality in which electronic identification markers—such as IMEI numbers on mobile phones or serial numbers on laptops—can establish the original owner even after the property has changed hands.

According to Article 499 BW, “property” is defined as any item or right that can be subject to ownership, encompassing both tangible and intangible objects. The Civil Code regulates property comprehensively in Book II, which establishes classifications with distinct legal implications, including movable and immovable property (Article 504

BW). This distinction has significant consequences for issues of possession, transfer, expiration, collateral, and seizure.

With respect to movable property, Article 1977 BW stipulates that possession is equivalent to ownership. This principle simplifies legal and economic transactions by eliminating the need to prove ownership history. However, the principle becomes problematic when applied to modern movable property—such as mobile phones and computers—that carry unique identifiers. These identifiers demonstrate that mere physical control does not necessarily equate to legal ownership.

In practice, Article 1977 BW serves as the legal basis for presuming ownership of movable property, as reflected in transactions involving second-hand goods, market exchanges, and informal transfers. Good-faith purchasers are afforded legal protection, even in cases where the property was stolen or lost. Article 1977(2) BW, however, introduces an exception: the original owner may reclaim lost or stolen property within three years (revindication), unless the item was acquired at an annual market, public auction, or from a trader who regularly sells similar goods. While this provision provides limited protection for the original owner, it also creates a persistent legal dilemma.

Empirical evidence indicates that disputes over movable property ownership frequently arise in relation to items such as mobile phones and laptops. Although the current possessor is legally presumed to be the owner, digital identifiers often establish the rightful owner's identity, thereby creating a tension between formal legal certainty and substantive justice. Legal doctrine offers two primary theories to explain this issue:

- 1) Eigendomtheorie – which regards ownership of movable property as a perfect right, such that good-faith possession (*te goeder trouw*) confers ownership; and
- 2) Legitimacy Theory – which maintains that possession is not identical to ownership but provides legitimacy for claims of ownership.

Legal practice in Indonesia tends to favor the *eigendom* theory, particularly in transactions involving second-hand goods and auctions, where the possessor is presumed to be the rightful owner. However, technological developments increasingly support the legitimacy theory, as ownership can now be verified through digital identifiers.

The findings of this study demonstrate that while Article 1977 BW formally retains binding force, its effectiveness is increasingly questionable. The provision continues to provide a framework of formal legal certainty but fails to adequately address the challenges of modern practice. Normatively, the principle of “possession equals ownership” remains the cornerstone of movable property law. Empirically, however, digital identifiers such as IMEIs and serial numbers reveal that possession is no longer sufficient to establish legal ownership. Although Article 1977(2) BW grants the original owner a right of revindication, the three-year limitation is often ineffective in practice, as movable property can change hands rapidly.

Previous studies emphasized that the Civil Code is characterized as dualistic and closed, thereby preventing parties from establishing legal arrangements beyond its provisions. The findings of this research are consistent with that view, as Article 1977 of the Civil Code functions as a coercive legal norm. However, this study extends earlier findings by incorporating the dimension of digital identification technology as a novel factor that challenges the continuing validity of Article 1977.¹² Recent scholarship on International Mobile Equipment Identity (IMEI) numbers demonstrates that every mobile device can be traced to its rightful owner through an international database. This development suggests the necessity of reconstructing Article 1977 to ensure greater adaptability. Accordingly, this research not only affirms prior critiques of the rigidity of property law under the Civil Code but also introduces a new perspective emphasizing the need for technological integration in the enforcement of property rights.¹³

The interpretation of these findings reveals that Article 1977 embodies a legal paradox. On the one hand, the provision seeks to promote legal certainty in transactions involving movable property through the principle that possession equals ownership. On the other hand, it risks generating injustice when original owners lose their rights merely because the property has changed hands. Technological advancements underscore that legal certainty should no longer be based solely on physical possession but must also consider digital identifiers. IMEI numbers and serial numbers increasingly serve as “electronic registers,” functioning in ways comparable to land registers for immovable property. Consequently, applying Article 1977 without regard to technological evidence risks undermining substantive justice.

Moreover, the interpretation of Article 1977 must reflect a proportional balance between the protection of good-faith third parties and the rights of original owners. Excessive protection for good-faith acquirers may encourage the circulation of stolen goods, while absolute protection of original owners could hinder market transactions. Based on the foregoing analysis, this study yields several key findings:

- 1) The binding force of Article 1977 remains formally valid but is no longer fully effective in contemporary practice, as its normative structure reflects 19th-century conditions rather than the complexities of a digital society.

¹² Isnaeni, “Benda Terdaftar Dalam Konstelasi Hukum Indonesia”; Mahmudiyah, “Konsekuensi Hukum Penguasaan Benda Bergerak Oleh Pihak Ketiga Berdasarkan Sifat Kebendaan Droit De Suite: Hak Kebendaan Yang Mengikuti Pemiliknya.”

¹³ Yogi Aditama, “Sanksi Terhadap Pajak Impor Dalam Pendaftaran IMEI Pada Perangkat Telekomunikasi Dari Luar Negeri,” *Dharmasisya: Jurnal Program Magister Hukum* 2, no. 12 (2022): 695–708, <https://scholarhub.ui.ac.id/dharmasisya/vol2/iss2/12> ; Amelia Wulandari and Guntur Rambey, “Aspek Hukum Jual Beli Smartphone Dengan IMEI Tidak Terdaftar Pada Central Equipment Identity Register (CEIR) Kementerian Perindustrian,” *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 2 (2024): 119–125, <https://doi.org/10.38035/jihhp.v4i2.1861>.

- 2) Technological developments are reshaping the paradigm of ownership in movable property. Digital identifiers such as IMEI and serial numbers enable the tracing of rightful ownership despite changes in possession.
- 3) Article 1977 requires reformulation or reinterpretation. The principle that “possession equals ownership” should be recalibrated in light of technological evidence to harmonize legal certainty with substantive justice.
- 4) The right of revendication under Article 1977(2) must be reinforced. The current three-year limitation period is ineffective in protecting original owners and requires a more responsive mechanism.
- 5) Legal practice in Indonesia continues to prioritize formal certainty over substantive justice, as reflected in numerous court decisions favoring good-faith third parties despite the availability of technological evidence establishing original ownership.

3.2. Legal Issues Arising from Ownership of Unregistered Movable Assets

This study investigates the legal challenges associated with the ownership of movable assets not registered under a specific name, particularly modern electronic devices such as mobile phones and laptops. Although these assets are normatively governed by Article 1977 of the Indonesian Civil Code (BW), their ownership can in fact be verified through technological identifiers such as serial numbers and IMEIs. Specifically, the study examines (i) the compatibility of the principle of possession under Article 1977 of the BW with contemporary social and technological developments in the digital era, (ii) the paradigm shift in ownership of movable assets from purely physical possession to technologically verifiable electronic identity, and (iii) the theoretical and practical implications of property law reform to enhance adaptability and responsiveness to empirical realities.

The BW regulates property law in Book II (Articles 499–1232). Its provisions are characterized as *dwingend recht*, or mandatory and closed in nature, meaning that parties are not permitted to deviate from the established regulations in order to preserve legal certainty.¹⁴ Objects are categorized in several ways, with the most fundamental distinction being between movable and immovable property (Article 504). Concerning movable assets, Article 1977(1) provides that “anyone who possesses a movable object is presumed to be its owner.” This principle was historically intended to simplify transactions involving movable goods, which frequently change hands. However, Article 1977(2) introduces an exception, allowing an owner of a lost or stolen item to

¹⁴ Mahmudyah, “Konsekuensi Hukum Penguasaan Benda Bergerak Oleh Pihak Ketiga Berdasarkan Sifat Kebendaan Droit De Suite: Hak Kebendaan Yang Mengikuti Pemiliknya”; Isnaeni, “Benda Terdaftar Dalam Konstelasi Hukum Indonesia.”

reclaim it within three years, unless the item was purchased in good faith at a public market or auction.

The principle embodied in Article 1977 reflects the socio-economic conditions of the nineteenth century, when movable assets were primarily simple goods such as horses, carriages, or jewelry, and physical possession was considered the most reliable indicator of ownership. In contrast, contemporary movable assets such as cell phones and laptops are equipped with unique digital identifiers (IMEIs, serial numbers), making it possible to establish rightful ownership beyond mere possession. Consequently, physical possession is no longer a sufficient criterion for determining ownership. Empirical evidence shows that numerous disputes arise from the circulation of second-hand electronic devices. While Article 1977 presumes ownership based on possession, registered IMEIs often demonstrate that the device belongs to another party. This creates a legal dilemma between formal legal certainty, which protects good faith purchasers under Article 1977, and substantive justice, which allows the original owner to prove ownership through technology.

The findings of this study highlight two theoretical perspectives on ownership. The first, *eigendoms Theorie*, regards ownership as an absolute right, provided it is exercised in good faith (*te goeder trouw*). The second, *legitimatietheorie*, conceptualizes ownership primarily as legal legitimacy rather than absolute control. In practice, Indonesian legal enforcement tends to favor *eigendoms Theorie* to safeguard transactional certainty. However, technological advancements such as IMEIs and serial numbers lend greater weight to *legitimatietheorie*, as they demonstrate that possession is not necessarily equivalent to true ownership.

Based on both normative and empirical analyses, this study finds that although Article 1977 of the Indonesian Civil Code remains normatively recognized, it has become increasingly ineffective in addressing the realities of modern movable property. The emergence of electronic identification technologies opens the possibility for more equitable ownership verification. For instance, a cell phone with an IMEI number or a laptop with a serial number demonstrates that ownership can be traced even when the object has changed hands. Nevertheless, the right of revendication provided under Article 1977(2) of the Civil Code has proven insufficient, as the three-year limitation period is disproportionately long compared to the rapid circulation of movable property in the market. The findings of this research confirm and expand prior scholarship: Isnaeni emphasized the Civil Code's rigidity in ensuring legal certainty but overlooked its technological dimensions¹⁵; Mahmudiyah highlighted the coercive nature of property law that restricts the flexibility of legal reform¹⁶; and Maulidina and Purwanto stressed

¹⁵ Isnaeni, "Benda Terdaftar Dalam Konstelasi Hukum Indonesia."

¹⁶ Mahmudiyah, "Konsekuensi Hukum Penguasaan Benda Bergerak Oleh Pihak Ketiga Berdasarkan Sifat Kebendaan Droit De Suite: Hak Kebendaan Yang Mengikuti Pemiliknya."

the importance of property classification to avoid multiple interpretations.¹⁷ This study advances these discussions by integrating the dimension of digital identity. Recent studies on the International Mobile Equipment Identity (IMEI) system further demonstrate how serial numbers can operate as legal instruments for tracing ownership. Accordingly, this research makes a novel contribution by underscoring the necessity of reconstructing Article 1977 of the Civil Code to better accommodate technological developments.¹⁸

The results indicate that although Article 1977 was originally designed to ensure legal certainty, in practice this certainty often comes at the expense of substantive justice for original owners. IMEI and serial numbers function as electronic registers, analogous to general registers for immovable property, thereby offering technology as a corrective instrument for the deficiencies inherent in the principle of possession. If Article 1977 remains unrevised, legal disputes in the digital age will inevitably persist. A reinterpretation that incorporates technological forms of evidence is therefore essential to preserving the relevance of property law. This study highlights five key points: (1) a normative–empirical gap (the principle of possession as ownership) and *das sein* (electronic identification as proof of ownership); (2) weaknesses in legal protection, as the right of revendication is ill-suited to the rapid circulation of movable property; (3) the urgency of legal reformulation, requiring reinterpretation—or even reconstruction—of Article 1977 to prevent legal certainty from undermining justice; (4) the need for technological integration, recognizing digital identification as a new legal foundation for determining ownership of modern movable property; and (5) reinforcement of legitimacy theory, which posits that ownership constitutes legitimacy rather than absolute dominion.

3.3. Compliance of Article 1977 of the Civil Code with Socio-Economic and Technological Developments: Ensuring Legal Certainty and Justice

This study aims to critically assess the extent to which Article 1977 of the Indonesian Civil Code (*Burgerlijk Wetboek/BW*) aligns with contemporary social, economic, and technological developments, while also examining its continuing relevance in guaranteeing legal certainty and justice. The analysis not only highlights the weaknesses inherent in these longstanding provisions but also underscores the need for reformulating property law in light of technological advancement.

The BW, as the principal source of civil law in Indonesia, regulates property comprehensively in Book II (Articles 499–1232). Article 499 defines property as

¹⁷ Alfi Dianti Maulidina and Aldira Mara Ditta Caesar Purwanto, “Tinjauan Yuridis Hak Royalti Sebagai Harta Bersama Dalam Perkawinan,” *Wajah Hukum* 8, no. 2 (2024): 673–83, <http://dx.doi.org/10.33087/wjh.v8i2.1554>.

¹⁸ Aditama, “Sanksi Terhadap Pajak Impor Dalam Pendaftaran IMEI Pada Perangkat Telekomunikasi Dari Luar Negeri”; Wulandari and Rambey, “Aspek Hukum Jual Beli Smartphone Dengan IMEI Tidak Terdaftar Pada Central Equipment Identity Register (CEIR) Kementerian Perindustrian.”

encompassing both tangible and intangible goods and rights subject to ownership. The classification of property, as outlined by Isnaeni, includes categories such as tangible versus intangible, movable versus immovable, consumable versus non-consumable, divisible versus indivisible, and owned versus unowned.¹⁹ Property regulation under the BW is characterized as *dual-recht*, both coercive and closed²⁰, a system designed to prevent multiple interpretations and thereby ensure legal certainty.²¹ However, this closed nature in practice has proven to be a barrier to accommodating societal and technological change.

Article 1977 of the BW contains two core provisions. Paragraph (1) stipulates that anyone in possession of a movable object is presumed to be its owner, thereby applying the principle of *bezit als volkomen titel* to guarantee legal certainty in transactions involving movable property. Paragraph (2), however, provides an exception, allowing the original owner of a lost or stolen object to reclaim it within three years, unless the object was legally acquired in good faith through a public market or auction. In such cases, the provision protects bona fide third-party purchasers.

This principle emerged in the 19th century to facilitate the circulation of movable goods, which at the time were relatively simple in nature (e.g., horses, jewelry, carriages). Physical possession was then regarded as the most reliable indicator of ownership. In the modern context, however, many movable objects such as smartphones and laptops are equipped with unique electronic identifiers. For example, International Mobile Equipment Identity (IMEI) numbers on phones and serial numbers on computers allow ownership to be traced across transactions.²² Consequently, physical possession can no longer be equated with genuine ownership.

Empirical evidence illustrates the growing tension between possession and ownership in the circulation of used digital devices. Stolen and resold mobile phones, for instance, are often treated as legitimately owned by subsequent purchasers under Article 1977(1), despite IMEI records identifying the rightful owner. Similarly, a lost laptop found and sold to a third party presents a conflict: under the *bezit* principle, the new possessor is deemed the owner, while technological evidence clearly supports the claim of the original owner. Such scenarios reveal a normative conflict between formal legal certainty (protection of good faith purchasers) and substantive justice (recognition of original ownership rights traceable through technology).

The principle of possession has generated two dominant theoretical interpretations. The *Eigendomstheorie* posits that possession of movable property in good

¹⁹ Isnaeni, "Benda Terdaftar Dalam Konstelasi Hukum Indonesia."

²⁰ Mahmudiyah, "Konsekuensi Hukum Penguasaan Benda Bergerak Oleh Pihak Ketiga Berdasarkan Sifat Kebendaan Droit De Suite: Hak Kebendaan Yang Mengikuti Pemilikanya."

²¹ Fatma Afifah, "Hukum Benda: Definisi, Asas-Asas, Pembedaan Macam Kebendaan Dan Macam-Macam Hak Kebendaan," *Jurnal Ilmu Hukum Wijaya Putra* 3, no. 1 (2025): 1–21, <https://doi.org/10.38156/jihwp.v3i1.232>.

²² Wulandari and Rambey, "Aspek Hukum Jual Beli Smartphone Dengan IMEI Tidak Terdaftar Pada Central Equipment Identity Register (CEIR) Kementerian Perindustrian."

faith automatically confers complete ownership rights, thereby legitimizing the possessor. In contrast, the *Legitimationstheorie* views possession merely as conferring temporary legitimacy, not absolute ownership, thus allowing true ownership to be established through legal evidence or documentation. While the BW largely adopts the former approach to ensure transactional certainty, technological progress has reinforced the relevance of the latter, since ownership can now be verified through identifiers independent of physical possession.

Based on both normative analysis and empirical evidence, this study finds that Article 1977 of the Civil Code increasingly fails to accommodate contemporary social realities and technological developments, as physical possession alone is no longer a sufficient basis for establishing ownership. Digital identification technologies, including IMEI numbers and serial numbers, now provide reliable legal instruments for tracing and verifying ownership of movable property. However, the right of revindication under Article 1977(2) has proven largely ineffective in practice, given that the three-year timeframe is excessively long relative to the rapid circulation of movable property in modern markets. This discrepancy between legal norms and empirical reality generates substantial legal uncertainty, particularly in cases involving theft or unauthorized distribution of electronic devices, thereby necessitating legal adaptations that are more responsive to technological advancements.

These findings extend prior research by highlighting the limitations of Article 1977 in addressing technological developments. Suryantoro emphasized the closed nature of the Civil Code, which aims to prevent multiple interpretations, but did not account for the dynamics of modern technology.²³ Similarly, Siwi focused on the coercive nature of property law and its emphasis on legal certainty.²⁴ Edgar and Mahmudah and Suryantoro underscored the importance of systematic classification of objects as a critical instrument for dispute resolution. This study complements these perspectives by demonstrating the pivotal role of digital identification technologies in establishing ownership of movable property.²⁵ Consistent with findings by Aditama and Wulandari & Rambey, IMEI numbers have been shown to effectively track legal ownership of mobile phones.²⁶ Consequently, this research contributes both theoretically and practically by emphasizing the urgent need to integrate digital identity mechanisms into property law.

The results of this study can be interpreted from three main perspectives. First, a paradox exists between legal certainty and substantive justice: while the Civil Code seeks

²³ Suryantoro, "Eksistensi Hak Kebendaan Dalam Perspektif Hukum Perdata BW."

²⁴ Siwi, "Aspek Hukum Benda Tidak Bergerak Sebagai Obyek Jaminan Fidusia."

²⁵ Edgar and Mahmudah, "Peralihan Benda Bergerak Aset Harta Bersama Tanpa Persetujuan Salah Satu Pihak"; Suryantoro, "Eksistensi Hak Kebendaan Dalam Perspektif Hukum Perdata BW."

²⁶ Aditama, "Sanksi Terhadap Pajak Impor Dalam Pendaftaran IMEI Pada Perangkat Telekomunikasi Dari Luar Negeri"; Wulandari and Rambey, "Aspek Hukum Jual Beli Smartphone Dengan IMEI Tidak Terdaftar Pada Central Equipment Identity Register (CEIR) Kementerian Perindustrian."

to ensure certainty through the principle of *bezit*, this certainty can disadvantage original owners who lose possession of an object. Second, technology functions as an electronic register, with IMEI and serial numbers serving as official records for movable objects, analogous to general registers for immovable property. Third, reinterpretation of Article 1977 is essential; without textual revision and technological integration, recurring legal disputes are likely, undermining the relevance of property law in the modern context.

This study confirms five key points: (1) the normative principle in Article 1977, equating control with ownership, is no longer aligned with the realities of contemporary technology; (2) legal protection via the right of revindication under Article 1977(2) is insufficient in the digital era; (3) the reformulation of property law is urgent to ensure that legal certainty does not compromise substantive justice; (4) technological instruments such as IMEI and serial numbers can serve as valid legal evidence for establishing ownership of modern movable objects; and (5) the findings reinforce legitimacy theory, which posits that possession confers only temporary legal legitimacy rather than absolute ownership rights.

4. CONCLUSION

This study critically examines the binding force of Article 1977 of the Civil Code concerning unregistered movable property, evaluates its application in Indonesian practice, and assesses its alignment with contemporary social, economic, and technological developments. The findings indicate that, although Article 1977 normatively establishes that possession of movable property constitutes ownership, its implementation faces substantial challenges in the technological era. Modern electronic devices, such as mobile phones and laptops—classified as unregistered movable property—can now be identified through IMEI or serial numbers. This capability generates legal complexities, particularly when physical possession does not correspond to substantive ownership, causing the traditional principle of *bezit* to occasionally fail in ensuring substantive justice.

The results further demonstrate that while Article 1977 continues to provide formal legal certainty in transactions involving movable property, it is less responsive to contemporary economic and technological dynamics. Incorporating digital identification mechanisms offers a promising means of enhancing legal certainty while safeguarding the rights of original owners. This study contributes both empirically and theoretically by providing a foundation for policymakers, academics, and legal practitioners to develop adaptive legal strategies for governing modern movable property.

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