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The Implementation of Criminal Numbers to the Violation of Fidusia Guarantee

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Abstract: ***Fiduciary is a collateral institution for movable objects, which is different from a pawning institution because control of the collateral object remains in the hands of the debtor. Prior to the promulgation of the Law on Fiduciary Security, the existence of fiduciary practices in Indonesia was based on the jurisprudence of the Bier Broumerij Arrest decision, where the judge for the first time ratified the existence of such a guarantee mechanism. This study aims to discuss the application of fiduciary guarantees in accordance with applicable statutory provisions as well as ways to improve the function and role of the fiduciary guarantee institution through the application of criminal law against perpetrators of violations of the fiduciary guarantee law. This research is a normative juridical study, using a statute approach. The conclusion is that with the issuance of the law on Fiduciary Security, the application of fiduciary guarantees can be said to have been more secure and more strictly regulated in accordance with the provisions of the applicable laws. Then it has been explained previously that in order to help improve the function and role of the fiducia guarantee institution through the application of criminal law against perpetrators of violations of the fiduciary guarantee law, it is necessary to reform the law, increase the activity of the sanctioning institution, and require socialization of what actions will be considered as fiduciary crime, in order to help improve the function and role of the fiduciary guarantee institution in enforcing the law and reducing criminal acts in fiduciary activities.***

Keyword: Fiduciary, Crime, Guarantee

1. Introduction

In order to create a strong foundation for the development stage, the government directs the need to strive for a fairly high growth rate with the support and active and broad participation of the community. The pace of economic growth needs to be endeavored by further increasing efforts to mobilize funds from within the country, which include Government savings and public savings, so that the role of foreign aid which is a complement to overall development financing is expected to gradually decrease. In this connection, monetary policy plays an important role as an effort to increase the mobilization of public savings funds through financial institutions, such as banking institutions, non-bank financial institutions and the capital market.

Credit policy, in this case is an inseparable part of the macro development policy, credit policy is in line with development objectives, because the purpose of credit is to support the pace of development, credit distribution must be evenly distributed so that all public reports participate in development. For entrepreneurs, both large, medium and small entrepreneurs, credit is the lifeblood for their business development. Credit here is a necessity that helps and is very useful in developing their business. In an effort to get additional capital through the provision of credit by banks for middle and upper class entrepreneurs, it is not a problem to get credit facilities, because they usually meet the requirements requested by the bank in their confidence in the bank's character, ability, and capital. . Business prospects and guarantees, because these entrepreneurs have more abilities than the small entrepreneurs plus middle and upper entrepreneurs have high abilities.[1]

But for small entrepreneurs it is rather difficult to meet these requirements, because usually their position is weak, the company is not well known, the collateral is inadequate and so on and the bank itself as a credit party based on the principle of prudence always considers the safety of the funds that have been distributed and for the usual security. the bank will ask for additional guarantees in the form of material guarantees.[2]In practice, there are frequent violations committed by the recipient of credit, whether it is a delay in payment of deposits or the inability of the debtor to pay off his debt. However, there are those who intentionally do not pay, because they think that the agreement made by the credit party is only an ordinary agreement, not an agreement that arises because of law. In practice in some banks, the amount of credit extension depends on the amount of material collateral provided by the debtor. This is an obstacle for small entrepreneurs who, although their business prospects are considered good and productive and have been given conditions for obtaining simpler credit and low interest rates, they often stumble upon the material guarantees demanded by the bank. As a result, small entrepreneurs in obtaining credit sometimes do not receive adequate funds, so that government efforts to provide assistance to small entrepreneurs often do not achieve their

[1]DjuhaendahHasan "LembagaJaminanKebendaanBagi Tanah dan Benda Lain yang Melekatpada Tanah DalamKonsepsiPenerapanatasPemisahan Horizontal, Citra AdityaBakti, Bandung, 1996, p. 184
[2] Ibid, p. 186

targets due to obstacles in the requirements for the material guarantee.

This condition is a very dilemma for both the bank and the customers of the small business community, because banks in channeling or issuing credit based on prudential principles ask for additional guarantees in the form of material, on the other hand, small entrepreneurs do not have enough material guarantees desired by the bank. Whereas a bank is an institution that plays an important role in the national economy, bank business activities as an intermediary which includes raising funds and distributing funds to the public, in fact it is very supportive of the implementation of economic development because through these activities the bank acts as an intermediary institution between people who have excess funds and people who have excess funds. need funds. To overcome the material guarantees experienced by both parties, it is necessary to have a fiduciary institution that can guarantee that both parties are not harmed by the take and give principle.

Fiduciary is a collateral institution for movable objects, which is different from a pawning institution because control of the collateral object remains in the hands of the debtor. A fiduciary agreement is an agreement between creditors and debtors that involves a guarantee. The position of the guarantee is still under the control of the collateral owner. The practice of fiduciary has long been recognized as one of the non-possessory property collateral instruments. Unlike the movable property collateral which is possessory, such as a pledge, the fiduciary security allows the debtor to act as the guarantor to retain control over and take advantage of the movable property that has been guaranteed.

Prior to the enactment of Law Number 42 of 1999 concerning Fiduciary Guarantee, the existence of fiduciary practices in Indonesia was based on the jurisprudence of the Dutch HogeRaad known as the Bier Broumerij Arrest ruling, where the judge for the first time legalized the existence of such a guarantee mechanism. Prior to Law Number 42 of 1999 concerning Fiduciary Guarantee, there were very few guidelines that could be held as a reference for the enforcement of the fiduciary instrument. There are also several statutory provisions which pertain to fiduciary as an instrument of guarantee. Even so, in general there is no technical guide regarding the implementation of the fiduciary instrument. The birth of the fiduciary guarantee is purely based on the provisions of Article 1320 jo 1338 of the Civil Code regarding freedom of contract.[3]

Based on the provisions in Article 1152 BW in the pledge institution the object of collateral is under the control of the creditor, which states:

> "Liens on movable objects and on receivables that are placed with the pledge under the control of the debtor or a third party regarding whom has been agreed by both parties".

Illegal is a lien on all objects that are allowed to remain in the power of the debtor or the pawner or who return at the will of the debtor.[4]For the interests of the bank, in terms of guaranteeing the repayment of the credit given, the collateral or collateral submitted by the debtor must be bound or imposition of mortgage rights. Regarding this guarantee agreement or guarantee institution, by Bank Indonesia in its Circular Letter (SE-BI) No. 4/248 / UUPK / PK dated March 16, 1982 states:

> "Objects for movable objects are used by fiduciary and / or pawns and for immovable objects used by mortgage guarantee institutions and / or creditverbands".

Then in SE-BI No. 23/6 / UKU dated 28 February 1991 stated that the collateral / guarantee binding was carried out in accordance with the provisions of the prevailing laws and regulations. Legislation here means positive Indonesian law, including of course the laws and regulations which are a colonial legacy. To increase the guarantee / collateral on a fiduciary basis the legal basis is Law no. 42 of 1999.[5]The need for a collateral institution for movable objects without control over the objects of collateral is greatly felt by large, medium and small entrepreneurs who need capital to develop their business, but sometimes do not have objects that will be used as collateral except for their business capital objects. Although basically fiduciary guarantees are used to fill the legal vacuum in the guarantee legal institution and at the same time to meet the very rapid and increasing needs of the business world for the availability of funds to provide protection for guarantee recipients who cannot be tied to a mortgage institution and mortgage rights.

In practice, goods that are submitted as collateral under fiduciary are socio-economic objects or goods that can support the smooth running of a business / company. These items are such as vehicles (moving objects), land (fixed objects) and so on. Even though fiduciary security is regulated in statutory regulations, namely Law no. 42 of 1999 concerning Fiduciary Guarantee, but in practice there are often legal violations committed by both the debtor and the creditor. The frequent violations are sometimes caused because fiduciary guarantees are still considered the easiest institution to do by everyone because the transfer of rights is based on trust.

In Law Number 42 of 1999 concerning Fiduciary Security Article 36 regulates criminal provisions which read:

> "Giver of fiduciary transfer, pawning or leasing objects that are the object of fiduciary security as referred to in Article 23 paragraph (2) which is done without prior written approval from the fiduciary recipient, shall be punished with imprisonment of up to 2 (two) years and objects of not more than Rp. 50,000,000, - (Fifty million) rupiah".

[3] Tan Kamello, HukumJaminanFidusia, SuatuKebutuhan Yang Didambakan, Alumni, Bandung, 2014, p. 45.

[4] Ibid, p. 185

[5]HasanuddinRahman, "Aspek-aspekHukumPemberianKreditPerbankan di Indonesia", Citra Aditya, Bandung, p. 182

Where in this case many practices often occur violations of the law committed by the fiduciary (debtor) which is contrary to Article 23 paragraph 2 which reads:

> "The giver of fiduciary is prohibited from transferring, pawning or transferring to another party the objects which are the object of fiduciary security which are not in stock, except with prior written approval from the fiduciary recipient"

Based on the description that has been mentioned above, it is important for the author to examine the application of fiducia guarantees in accordance with applicable legislation and ways to improve the function and role of the fiduciary guarantee institution through the application of criminal law against perpetrators of violations of the fiduciary guarantee law.

2. Literature Review

This previous research has become one of the writer's references in conducting research so that the author can enrich the theory used in examining the research undertaken. From previous research, the writer did not find research with the same title as the author's research title. However, the authors raised several studies as references in enriching the study material in the author's research. The following is previous research in the form of several journals related to the research conducted by the author as follows:

1) FaizalPratamaFebriansyah;*TinjauanYuridisKasusPengalihanBarangJaminanFidusia Dari SudutHukumPidana (StudiKasusPengadilanNegeriJepara No.320/Pid.Sus/ 2011/PN.JPR jo No.101/Pid/2012/ PT.SMG jo No.1160 K/Pid.Sus/ 2012)*;The results of the research show that the legal consequences, namely the debtor can be categorized as defaulting and can be prosecuted for the crime of embezzlement and / or the criminal act of renting the object of fiduciary security without the written consent of the fiduciary recipient as Article 36 of the Fiduciary Guarantee Act that the fiduciary is prohibited from transferring , pawn, or lease to another party the object of collateral which is not an item of inventory, except with the prior written approval of the fiduciary.
2) Reka Agustin; *Pelaksanaan Penyidikan Tindak Pidana PemalsuandalamPenyelenggaraanKreditDenganJaminanFidusia (StudiKasuspadaPolresta Bandar Lampung)*; The results of the research and discussion indicate that the implementation of the investigation in this study is quite good, although it is still not optimal due to several obstacles faced by investigators. Based on the Lexspecialis principle, the legal basis in this study applies the special rules of RI Law Number 42 of 1999 concerning Fiduciary Security. Investigators in carrying out this investigation experience several obstacles, (1) Legal factors, there are no regulations regarding the requirements for whistleblowers who do not have a fiduciary guarantee certificate. (2) Law enforcement officers still lack professionalism in Police investigators, so many cases do not arrive court stage. (3) Community factors, lack of community legal awareness. 4) The facility and infrastructure factor lies in the budget for law enforcement efforts. (5) Cultural factors, the culture of people who are indifferent to the law, are also hedonistic in nature and a weak economy encourages people to commit crimes.

3. Research Methodsand Theory

a) Research Approach

This type of research is normative research or normative juridical research, while the approach used to examine the problems mentioned above is the statute approach, which examines problems based on the applicable laws, legislation regarding fiduciary security. By using this approach, it is hoped that a clear picture of the legal basis of the criminal aspects contained in the fiduciary guarantee can be obtained.

b) Legal Materials

The legal materials used in the preparation of this thesis are primary and secondary legal materials. Primary legal material in the form of statutory regulations relating to this subject matter, namely:

- Civil Code / BurgerlijkWetboek (KUHPer / BW).
- Law Number 42 of 1999 concerning Fiduciary Security.

The secondary materials used are those sourced from literature, magazines, writings of experts (articles) and so on relating to the issues to be discussed.

c) Legal Materials Collection and Analysis Techniques

In collecting legal materials for this thesis, the first step taken is to take inventory of existing laws and regulations as well as those related to issues that will be discussed later, especially those related to fiduciary in its criminal aspect. After the statutory inventory is complete, the next step is to review library books, magazines and articles from legal experts who are competent in their fields as well as other references related to the discussion or problems faced in the making of this thesis. Henceforth arranged systematically based on the subject matter in this paper

d) Legal Material Processing Techniques

Processing of legal materials in this paper goes through after the data has been collected then analyzed deductively. Analysis by way is used when analyzing data from statutory regulations or legal principles. This is then followed by a qualitative analysis, which is then described.

e) Theory of Justice

According to Thomas Hobbes, justice is an act that can be said to be fair if it has been based on an agreement that has been agreed upon. From this statement it can be concluded that justice or a sense of justice can only be achieved when there is an agreement between the two promised parties. The agreement is defined in a broad form not only limited to an agreement between two parties who are entering into a business contract, leasing, and others. But the agreement here is also an agreement to fall the ruling between the judge and the accused, the laws and regulations that do not take sides with only one party but promote the interests and welfare of the public.[6]

Roscoe Pound sees justice in the concrete results it can

[6]Muhammad SyukriAlbaniNasution,*HukumdalamPendekatanFilsafat*, (Jakarta: Kencana, 2017), p. 217-218.

provide to society. He saw that the results obtained should be in the form of satisfying human needs as much as possible with the smallest sacrifice. Pound himself said that he himself was pleased to see "the growing recognition and satisfaction of human needs, demands or desires through social control; the more widespread and effective guarantees of social interests; an effort to eliminate continuous and more effective waste and avoid clashes between humans in enjoying resources, in short, social engineering is increasingly effective.[7]

According to Hans Kelsen, justice is a certain social order under which the search for truth can flourish and flourish. Because according to him justice is justice for freedom, justice for peace, justice for democracy - justice for tolerance.[8]

4. Results / Findings

4.1 Application of Fiduciary Guarantee in Accordance with the Applicable Legislation

There are two forms of fiduciary security, *fiduciary cum crediture* and *fiduciary cum amico*. Both arise and an agreement called *pactumfiduclae* which is then followed by the transfer of rights or *in lure cessio*. In the first or complete form *fiducia cum crediturecontracta*, which means a trust promise made with a creditor, it is said that the debtor will transfer ownership of an object to the creditor as collateral for his debt with an agreement that the creditor will transfer said ownership back to the debtor when the debt has been paid.[9]

The emergence of this *fiduciary cum crediture*is due to the public's need for guarantee law. At that time, there was felt a need for this guarantee law that had not been regulated by legal construction. With this *fiduciary cum crediture*, there will be greater authority held by the creditor, namely as the owner of the goods delivered as collateral. The debtor believes that the creditor will not abuse the given authority. Its strength is only limited to belief and morally and not the power of law. The debtor cannot do anything if the creditor does not want to return the title of the goods submitted as collateral. This is a weakness of fiduciary in its initial form when compared to the security law system as we know it today.[9]

In its journey, fiduciary has undergone significant developments. This development, for example, concerns the position of the parties. In ancient Roman times, the position of the recipient of the fiduciary was as the owner of the goods being diffused, but only the position as collateral holder.[10]The next development concerns the position of the debtor, relationships with third parties and regarding objects that can be diluted. Regarding fiduciary objects, both the Dutch HogeRaad and the Indonesian Supreme Court consistently argue that fiduciary can only be applied to movable property. However, in later practice people have used fiduciary for immovable property. Moreover, with the enactment of the Basic Agrarian Law (Law No. 5 of 1960) the difference between movable and immovable property has become blurred because the Law uses distinctions based on land and non-land.[11]With the birth of Law No. 42 of 1999 concerning Fiduciary Security, objects of fiduciary guarantee include movable objects, tangible or intangible and immovable objects, especially buildings with land rights that are not encumbered with Mortgage Rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights.

Fiduciary security is the right to guarantee movable and immovable objects, especially buildings that cannot be encumbered with mortgages. This is in accordance with what has been outlined by article 1 (2) of Law Number 42 of 1999.

And the description above is understandable, that fiduciary security is a material right. In this case there are several characteristics of the material rights referred to, namely as follows:

1) Absolute means that the material rights can be defended against anyone;
2) *Droit de suite*, which means that the material rights follow the object in the hands of whoever the object is;
3) Priority, meaning that material rights that are born first will take precedence over those who are born later;
4) Preference (*droit de preference*), which means that a debt guarantee agreement that has the right to write off its debt takes precedence over the settlement of the debt.

Fiduciary guarantees as material guarantees as mentioned above, but in Law number 42 of 1999 concerning fiduciary guarantees there is not a single article that provides a formulation that fiduciary is a material right. However, if we look at Article 20 of Law Number 42 of 1999, it can be concluded that this article provides the main characteristics of fiduciary security as material security. As in article 20 it contains:

> "Fiduciary security still follows the object which is the object of fiduciary security in the hands of whoever the object is located, except for the transfer of inventory objects that are the object of fiduciary security ".

This provision is a characteristic or characteristic of the *droit de suite* of fiduciary guarantees and the granting of this characteristic is based on and contains the intention of giving a strong position to the right holder. Because basically the rights that arise from an engagement are personal rights, namely rights that can only be addressed to the debtor who is a party to the engagement. In such a position and condition, the creditor's position is weak and very vulnerable to being rendered powerless, because the debtor will easily commit the act of transferring the title of

[7]SatjiptoRahardjo, *IlmuHukum*, (Bandung: Citra AdityaBakti, 2014),p. 174.
[8]*Ibid*.
[9]GunawanWidjajadanAhmadiYani, "Seri HukumBisnisJaminanFidusia. PT. Raja GrafindoPersada, Jakarta, p. 114
[10] ibid
[11] ibid

the collateral object to another person.[12]

The nature of the *droit de suite* of fiduciary guarantees does not apply to inventory items used as objects of fiduciary security. Article 1 paragraph 2 of Law Number 42 of 1999 states that the right of fiduciary security gives priority to fiduciary creditors over other creditors. This is the principle of preference for fiduciary material rights, which when compared to personal ones will reveal the characteristics possessed by the preference. Regarding personal property rights, it can be seen in articles 1113 and 1132 BW.

Obstacles in law enforcement of fiduciary crime in the investigation process can be seen from three elements, namely the Legal Structure where the police agency acts as a law enforcer, the Legal Substance where the rules or laws exist in society, and the Legal Culture.

In the application of the fiduciary guarantee, of course it cannot be separated from the legal problems that occur in its implementation. The legal problems in implementing the fiduciary guarantee include:

a) There are still Fiduciary recipients who have not registered the Fiduciary Security Deed at the Fiduciary Registration Office.As stipulated in Law No. 42 of 1999 concerning Fiduciary Security and various implementing regulations, fiduciary recipients are obliged to register a Fiduciary Security Deed at the Fiduciary Registration Office in order to obtain a Fiduciary Guarantee certificate which has an executorial title.In fact, maybe there are still those who make the Fiduciary Guarantee Act not before a notary.This may occur due to reasons to avoid costs incurred, namely the cost of making a deed of 2.5% for a guarantee value of up to Rp100 million and registration fees at the Fiduciary Registration Office.There are also those who make and register the Fiduciary Guarantee Deed when consumers show signs of non-payment of installments.[13] As a legal consequence for a Fiduciary recipient who does not make a fiduciary security deed in the form of a notary deed or does not register with the Fiduciary Registration Office, he cannot immediately file for execution, but must first file a lawsuit at the District Court, so the process is lengthy. However, for disputes less than Rp. 200 million, currently the Supreme Court has issued PERMA No.2 of 2015 concerning Simple Lawsuit Resolution. In the absence of a Fiduciary Guarantee certificate, the execution of the fiduciary guarantee cannot be carried out in accordance with the provisions of Article 29 of Law No. 42 of 1999.
b) The provisions of Article 36 of Law No. 42 of 1999 are *lex specialists*, but the sanctions are lighter than Article 327 of the Criminal Code.This is also one of the reasons why Fiduciary Recipients are reluctant to register with the Fiduciary Registration Office.Article 36 of Law 42/1999 regulates criminal provisions for fiduciary givers who pawn or transfer the object of fiduciary security, namely the threat of imprisonment for a maximum of two years and with a maximum of Rp.50,000,000 (fifty million rupiah).Unfortunately, this is lighter than the provisions of Article 327 of the Criminal Code.[14]
c) There is a point of contact between the method of settlement through BPSK and filing a lawsuit to the District Court.In general, the Fiduciary Guarantee deed and the principal agreement are still in the form of a standard agreement which most likely also contains standard clauses.Thus, it opens up opportunities for the fiduciary to submit the problem to BPSK.
d) There is a problem in the form of a customer / debtor disappearing or running away at the time of the execution of the fiduciary object or the withdrawal of the fiduciary object, for example a motorized vehicle, which is in the customer / debtor's position.This problem often arises and will indirectly hinder the execution process of the fiduciary security object, because the search for debtors and collateral objects also takes a long time..

4.2 Improving the Function and Role of the Fiducia Guarantee Institution through the Application of Criminal Law Against Perpetrators of Fiducia Guarantee Law violations

As with other laws, the existence of this Law on Fiduciary Security is one form of national legal politics, namely to create new laws in the field of guarantee law for the development of national law development. By diatumya Fiduciary Guarantee in a law comprehensively provides clarity and legal certainty for the parties and the parties concerned. In addition, it will also be able to overcome problems so far in economic life, especially in the business world, in settling debts using the Fiduciary Guarantee.

In order to provide greater legal certainty as one of the ideals of the Indonesian people, in the fiduciary agreement, relatively complete data is required since the inclusion of fiduciary in the Notary deed, which must contain complete data as required by article. 6 Fiduciary Law. The above-mentioned principle is still further applied by requiring fiduciary registration at the Fiduciary Registration Office, the list must contain complete data as required by article 13 of the Fiduciary Law.[15]Likewise, changes that occur during the guarantee period, need to be reported and recorded in the register at the Fiduciary Registration Office, which is of course intended to keep the data complete and up to date. In the fiduciary guarantee the transfer of ownership rights is intended solely as a guarantee for the repayment of debt, not permanently owned by the fiduciary. This is the essence and the meaning of fiduciary security as referred to in article 1 point 1.Even in accordance with Article 33 of the Fiduciary Security Law, any promise that gives the fiduciary the authority to own objects that are the object of fiduciary security if the debtor fails to promise, will be null and void by law. . In a fiduciary agreement, it does not only involve

[12]Kayun W, "PendatIaranHakJaminanFidusiaMenurut t1U. No.42/99, Teals 2002, h_33 PaseasarjanaUniversitasAirlangsa, p. 34

[13]Hukum Online, *Ini Lima PermasalahanHukumdalamPenerapanJaminanFidusia*, dalamhttps://www.hukumonline.com/berita/baca/lt5729fa53ed660/ini-lima-permasalahan-hukum-dalam-penerapan-jaminan-fidusia/, diakses 20 Oktober 2020.

[14]*Ibid.*

[15]Satrio, J., HukumJaminan, HakJaminanKebendaanFidusia, Citra AdityaBakti, 2002, p. 141

two parties of the king, namely the creditor and the debtor, but also often involves a third party. In Roman times the creditor of the fiduciary was the owner of the goods being diluted. However, in its development, the fiduciary recipient is only the holder of the guarantee.

As a legal subject between the two parties between the creditor and the debtor, of course there will be no principle of adverse trial between the two parties, but here the creditor's position as a fiduciary certainly occupies a heavier position than the debtor as the fiduciary recipient. Therefore, the way to protect the creditor's interest is to provide definite provisions on the creditor's rights. In addition to providing protection to creditors as mentioned above, Law number 42 of 1999 also provides a strong position to creditors. Article 2 of the Fiduciary Law states that the creditors who receive the fiduciary status are preferred creditors. The creditor position as stated in article 27 sub 1 and the meaning of it is further clarified in article 27 sub 2 of the Fiduciary Law.

It has been mentioned above that both the creditor and the debtor are both legal subjects, namely carriers of rights and obligations and responsibilities. Fellow legal subjects, of course, it is impossible for legislators to discriminate between the two. Besides the Fiduciary Law protecting creditors it also protects the interests of debtors. The provisions contained in article 4 of the Fiduciary Law, which state the follow-up nature of the fiduciary agreement, indirectly also provide protection for the rights of the fiduciary over collateral, because by that means, that by means of, among other things, the settlement of the principal agreement. , then the fiduciary guarantee agreement will automatically be nullified (article 25 of Law number 42 of 1999 concerning Fiduciary Security). This means that the ownership rights to the fiduciary property automatically return to the debtor / fiduciary. Deletion of records in the guarantee list at the Registration Office (article 25 sub 3 in conjunction with article 26 of Law No. 42 of 1999) is only administrative in nature.[16]

Robert B Seidman revealed that the operation of law in society is influenced by all other personal forces (all the strengths of individual societies) which cover the whole process:[17]

a) Legal rules addressed to that person;
b) The legal regulatory sanctions;
c) Activities of sanctioning institutions such as: Police, prosecutors, courts;
d) The whole complex of social, political and economic forces that influence it

So to help improve the function and role of the fiducia guarantee institution through the application of criminal law against perpetrators of violations of the fiducia guarantee law, it is necessary to have legal regulations aimed at that person, where the Fiduciary Guarantee Law makes an act a criminal act as outlined in article 35 and Article 36 with consequences for imprisonment and fines. In fact, it is necessary to consider whether the Fiduciary Guarantee Law requires renewal, considering that the Law is 20 years old.

Then the legal sanctions, in which Article 36 of the Fiduciary Guarantee Act guarantees criminal acts in fiduciary will be punished with imprisonment of 2 (two) years and a maximum fine of 50,000,000 (fifty million).

Then increase the activities of sanctioning institutions such as: Police, prosecutors, courts, where coordination between the judiciary is very crucial in helping to improve the function and role of the fiduciary guarantee institution through the application of criminal law against perpetrators of violations of the fiduciary guarantee law.

Finally, for the entire complex of social, political, economic forces that influence it, it is necessary to understand that the investigation process provides education to the public that the act of transferring, pawning or renting objects that are the object of fiduciary security is a criminal act.[18]This means that if the Police, Prosecutors and Courts know and take action against fiduciary crimes, it is necessary to socialize it. Back to the public what actions will be considered fiduciary crimes, in order to help improve the function and role of fiduciary security institutions in enforcing the law and reducing a criminal act in fiduciary activities.

5. Conclusion

In its journey, fiduciary has undergone significant developments. With the enactment of the law on Fiduciary Security, the implementation of the fiduciary guarantee can be said to have been more secure and more strictly regulated in accordance with the provisions of the applicable laws. Although there are still some obstacles in the application of the Legal Substance Legal Structure where the rules or laws exist in society, and the Legal Culture.

Then it has been explained previously that in order to help improve the function and role of the fiducia guarantee institution through the application of criminal law against perpetrators of violations of the fiduciary guarantee law, it is necessary to reform the law, considering that the Law is 20 years old, to increase the activities of sanctioning institutions such as: Police, prosecutors , Courts, as well as requiring the existence of socialization regarding any actions that will be considered as fiduciary crimes, in order to help improve the functions and roles of fiduciary security institutions in enforcing the law and reducing criminal acts in fiduciary activities.

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Islam, Marital Status, Rank of Main Attorney (IV / e), Position of Deputy Attorney General for Development, Hobbies in Reading and Sports.

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SDN graduated in 1969 in Magetan
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SMAN graduated in 1975, at the Faculty of Law, Islamic University of Indonesia Yogyakarta, graduated in 1982
Law and Management Business Institute, Jakarta graduated in 2002
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Young Research Assistant, in 1986
Head of Sub Division of Program Development, in 1987
Adjunct Prosecutor, in 1989 the Head of Report and Distribution at the Center for Research and Development, in 1996
Head of Research, in 1999
General Staff of the Attorney General, in 2003
Head of the Attorney General's Office of Education and Training, in 2004
Head of Civil Service bureau, in 2005
Chief prosecutor for Tinggi Gorontalo, in 2009
Director of Legal Efforts for Pidum Execution and Examination, in 2010
Head of Research and Development Center, in 2010
Head of the Central Java High Prosecutor's Office, in 2011
Head of the Indonesian Prosecutor's Office for Education and Training, in 2012
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Drug Diversion Study Tour in Australia, 2010

5. EDUCATION AND TECHNICAL TRAINING:
Hiukum Research Personnel Education, 1983
Pre-Service Training Education, 1984
Attorney Formation Education, 1989
Position Anaisis, 1990
Smuggling Special Attorney Training, 1991

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SPADYA training at the Prosecutor's Education and Training Center, 1994
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