# THE URGENCE OF RENEWAL LEGAL POLITIC ON FIDUCIARY GUARANTEE IN INDONESIA

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## ABSTRACT

This paper aims to examine the legal politics on Law of Fiduciary Guarantees , because the Fiduciary Guarantee Law is still unable to provide and guarantee the fair law, it can be seen that there are still many cases that occur related to fiduciary guarantees by related parties, with the aim that the direction of fiduciary guarantee arrangements can provide wider benefits for running real sector businesses in providing business capital, legal certainty, and propotional justice, so that they will be able to make a real and significant contribution to national economic development. Therefore, it will produced a fiduciary law that is normatively futuristic, empirically provide easy access to business capital and dignified justice on the basis of the values of Pancasila as the philosophy of Indonesia. To achieve this goal, a study was conducted on the basis of normative legal research, with an exploratory and prescriptive nature of research, using a statute approach, and multi-disciplinary. The data used was in the form of secondary data base that were primary legal materials and secondary legal materials. They were obtained through literature study. Data validity was carried out by means of triangulation and source criticism. The data were analyzed by conducting legal interpretation, in the form of systematic and grammatical interpretation. The results of research and studies shown that the Fiduciary Law in its normative body contains inconsistent arrangements, which results in legal uncertainty both in normative juridical and empirical aspects. The existence of conflicting norms, vague norms, the unclear fiduciary objects that have not been stated explicitly and specifically, have resulted in fiduciary practice experiencing many problems and obstacles that are detrimental to the parties and the wider community. The recommendations from this research are in the form of immediately updating the substance of the Fiduciary Law, especially in the political aspects of the law, regulating the existence of legal structures and their functions, as well as arrangements in building a community legal culture or culture that can mitigate the Fiduciary existence properly, so that it can provide optimal benefits according to the purpose of the law, namely for happiness and prosperity.

**Keywords:** fiduciary, guarantee, justice, renewal, legal politics.

## PRELIMINARY

Fiduciary comes from the Roman language, namely *fiducia cum creditore*, namely the debtor's goods are handed over to the creditor's ownership and the object is movable objects. If the debtor has fulfilled his obligations, the creditor returns the collateral goods to the debtor. According to Roman Law, this Fiduciary was intended as a sham buying and selling, where the debtor handed over an object to the creditor and the debtor would receive the object back from the creditor if the debtor's debt had been paid in full. This legal construction is as a pawn. Problems arise, when the debtor needs business capital, and does not have movable objects to be used as collateral except for movable objects used in the process or business activities,

Fiduciary regulations in Indonesia began with the issued of the *Hooge Raad's* (Dutch Supreme Court) decision in the case of *AW de Haan versus Heinneken Bierbrouwerij Maatschappij,* on 25 January 1929. This decision was an early development of Fiduciary in the Netherlands, which emphasized that Fiduciary was recognized as a guarantee born of legal discoveries. by the judge, as the narrow regulation of Pawn in the Civil Code (4). The *Hooge Raad* decision was then followed and became jurisprudence. The incident related to Fiduciary in Indonesia occurred in the case of *Bataafsche Petroleum Maatschappij* versus *Pedro Clicnett* (on 18 August 1932) with Fiduciary object in the form of a movable object, in this case a car, with the consideration of the decision being the same as the decision of *Hooge Raad* on 25 January 1929. The decisions of the Supreme Court (MA) related to Fiduciary which can be mentioned here are 1) the Supreme Court's decision in the case of BI versus Lo Ding Siang (1 September 1971); 2) Supreme Court Decision BNI 1946 versus Fa Megaria (2 January 1980); 3) Decision of the Supreme Court of BNI 1946 versus PT Sriwidjaya Lines (28 July 1986). The Fiduciary cases decided by the Supreme Court consist of movable objects and details of objects that cannot be fiduciary (Varia Peradilan, 1986).

The Fiduciary Guarantee Law, namely Law Number 42 of 1999, was born to meet legal needs in the field of Fiduciary Guarantees in order to guarantee certainty and provide legal protection for interested parties with the consideration that Fiduciary Guarantees as a form of guarantee institution that at that time still based on jurisprudence, not yet regulated in laws and regulations directly and comprehensively. The presence of the Fiduciary Guarantee Law is apparently still not able to provide legal certainty and protection and this can be seen by the many cases that occur due to inconsistent norms in the Fiduciary Guarantee Law, conflicting norms and unclear or vague norms. .

There have been many studies and studies on fiduciary. Yasir M (2016) examined the legal aspects of fiduciary guarantees. In the same year, Lidya Mahendra, Retno Murni, and Putu Gede Arya Sumertayasa (2016) investigated the protection of creditor rights in the event of the transfer of collateral by the debtor. Elis Herlina and Sri Santi (2018) investigated the legal protection related to fiduciary. It's just that the focus is on legal protection for consumers in financing agreements for unregistered fiduciaries. In the same year, research and studies were identified on the legal consequences of fiduciary registration in the on-line system (Ida Ayu Made Widyasari, 2018). Research and fiduciary studies with institutional themes, conducted by Linda Susilo (2021), which examines and examines the position of fiduciary guarantees and legal protection for consumer finance institutions. In the same year, Rahmadi Usman (2021) tried to research and examined the depth of the meaning of transferring ownership rights to objects that fiduciary security on the basis of trust. Reviewing these studies, it can be seen that the studies and studies are still limited to the corridor of implementation or implementation of the Fiduciary Guarantee Act. It has not touched the political aspects of the law that determine and direct the purpose of the Fiduciary Guarantee Act, which will be researched and reviewed by this research.

The problems that occurred prompted the author to research and study the Fiduciary Guarantee Law/Act, in the context of reform, with a focus on its legal politics; good substance normatively, empirically and philosophically; implementing structure and law enforcement; and build a legal culture of society, especially business actors. The significance of this research and study is meaningful because currently there is an activity to draft a movable property guarantee law, which has produced an academic manuscript. 2017 data shows that fiduciary registration is 11,641,586 with 9,676,642 in the form of two-wheeled vehicles and 1,916,599 four-wheeled vehicles, fiduciary guarantees are only used for consumer financing activities, less on movable objects as access to working capital funding for Micro and Small Enterprises Medium (MSME), and overcome movable property guarantee arrangements that are still scattered in several laws (National Legal Development Agency, 2019). It has now reached the stage of electronic fiduciary, with a positive trend, requiring more access to the banking industry, non-bank financial industry, and other service industries (Juan Maulana Alfida, 2021).

## THEORY

The essence of law is towards order and justice. The orderly order is intended to avoid friction in the interests of the community, among others, when the community performs transactional actions in the field of property

law, such as borrowing and borrowing business capital transactions with fiduciary guarantees. This order will be achieved if the law can provide benefits in the form of guarantees of certainty over the rights and obligations of the parties to be the transaction, which then the parties respect each other, and implement them properly, which ultimately provides a sense of justice. The theories used for the analysis of the political reform of the Fiduciary Law are the theory of legal expediency (*doelmatigheid)*, the theory of belief, and the theory of the legal system, from Lawrence M Friedman, which states that the level of legal success, one of which is a law, depends on following three factors, namely: the legal substance, the legal structure and the legal cultural factors. In addition to these two theories, studies of modern law are also used as a basis for reforming the Fiduciary Guarantee Law, especially in the context of updating its legal politics.

In a fiduciary, the legal position of the debtor who controls the object that is guaranteed is within the framework of providing optimal benefit to the object which is a productive object. The theory of the usefulness of law to ensure the happiness of society states that in essence the law aims to provide benefits that produce for many people. The theory adopted by Jeremy Bentham (1748-1832) with the flow of utilitarianism which puts benefit as the main purpose of the law, with the main principle being happiness (Lili Rasidi, 2010), which must be enforced qualitatively. To make it happen, a law exists to achieve: guaranteeing a living, sufficient food, providing protection, and achieving equality (Muh Erwin, 2011, Riyanta S, 2020). A criticism of this theory was put forward by Utrecht (Said Sampara, 2011), by providing responses 1) the theory does not provide a place to properly consider concrete rights; 2) only pay attention to things that are useful and the content is general; 3) very individualistic and does not give a sense of law; 4) consideration of which interests are greater than the interests of others. In its development, Rudholf van Jhering (1800-1889) initiated the theory of social utilitarianism. The focus is on the purpose of law, the goal is the creator of all law, and there is no legal regulation that does not have its origin in the goal, namely the practical motive. The purpose of law is the maximum welfare for the people, and legal evaluation is carried out is based on the consequences resulting from the process of implementing the law, based on the purpose of the law ; welfare creation. Therefore, on the basis of this theory, the contents of the law are provisions to reach welfare state. The law is expected to fulfill 1) aspects of ontology, namely creating peace and happiness in human life; 2) aspects of epistemology, law must be born through a certain method that is systematic and objective, so that it gives birth to law which is part of science; 3) the axiological aspect, the law must have values that must be obeyed and implemented by every citizen in society of the state. Thus the renewal of the Fiduciary Guarantee Law, especially in its legal politics, must be so, so that the benefits of Fiduciary as a business institution can be truly felt by business people, especially those who do not have assets that can be guaranteed, other than capital goods used in the production/business process. Fiduciary can be interpreted as trust. A legal relationship can be established because of an agreement, including in this case a fiduciary, when the desired agreement occurs. The theory of trust (*vertrouwenstheorie*) teaches that the agreement occurs when the statement of will is deemed worthy of acceptance by the party offering (Mariam Darus Badrulzaman, 1996, Suwadi, P., Ayuningtyas, P. W., Septiningrum, S. Y., & Mantovani, R. 2022).

One of the theorists of trust is Francis Fukuyama, who provides an understanding of trust as an expectation that arises be regular, honest and cooperative behavior, with other parties in the community. Trust is a social capital, as a binder between community members, and is an ability to organize them in an innovative institution, in order to achieve common goals. *Trust* is a means of mediator for the formation of an effective institution. Interpersonal trust is the basis for social relationships, which can enhance business transactions. *Trust* allows people to relate to other people, to help develop social capital (Bhandari H and Yasunobuka K, 2009, Pujiyono, P., Waluyo, B., & Manthovani, R. 2020). Trust enabling and supporting trusting relationship on term of detachment (Mathew Harbug, 2013). The fiduciary focuses on the agreement on the transfer of ownership rights, provided that the ownership rights to the transferred and object remain in the control of the owner of the object. This is based on trust. So if the debtor breaks his promise, the recipient creditor cannot own the fiduciary collateral, but instead sell it to take payment of his receivables in accordance with the preferential rights granted by law to creditors. On the other hand, creditors can also be held accountable if there are indications of committing a crime as regulated in Articles 335, 365, 368 of the Criminal Code (Hadiwinata Ryan Ari, 2021), and creditors' mistakes, can not be addresed to the fiduciary company (Joseph de Lacex and Natasha Molson, 2022)

A good law, with directed legal politics, to be efficient and effective, must be prepared by taking into account the factors that support and hinder (*forde field analysis,* according to Lawrence M. Friedman (2009) in the

theory of the legal system, there are three factors that must considered, namely: legal substance, legal structure, and legal culture, that are related to the law. Legal substance is a norm or rule that is a legal product. The legal system is a rule, norm, behaviour that processes the system or institution, which include products produced or located in the system legal structure, its existence is created by the legal system functioning in law enforcement.The legal structure is one of the keys to successful law enforcement. The legal structure has a meaning, a framework that gives shape and limits to the process, in the form of institutions or law enforcement officials. As for legal culture, it contains aspects of behavior and values that live in society, which of course is closely related to law, which will appreciate whether the law is good or not. Legal culture is also an atmosphere of thoughts and/or social power that determines the use of law, avoided, or misused, which includes ideas, habits, ways of thinking, and ways of acting, both apparatus and society. In order for the Fiduciary Guarantee Law to be efficient and effective, futuristic, procedural and substantive, it must be pay the attention to these factors.

The renewal of the Fiduciary Guarantee Law, must be done based on the norms, knowledge, methods of drafting laws that are correct and good (Law Number 12 year 2011 which has been amended by the Law Number 15 year 2019). The law is the maximum means for the spiritual welfare of society and individuals, through reforms (Elydar Chaidir and Sudi Fahmi, 2010). In building or updating the law, it must pay attention to or be based on a philosophical, sociological, and juridical basis ( Bagir Manan, 2009) so that it has norms that are legal, legally and capable of being effective, because they can be accepted by the community fairly and are valid for a certain time. long time (Muh Jufri Dewa, 2011). Developments in the form of influence from common law to civil law must also get attention (Thito Kuntz, 2020). From the form of equity in common law, to exist on a continuum in civil law (Martin Gelter and Genevieve, 2018). Furthermore, at the level of a modern fiduciary approach in the form of remidies, especially equitable compensation (Sarah Worthington, 2021).

## METHOD

This type of legal research is normative legal research (doctrinal research), the nature of this prescriptive research with a statute approach. In this research data used on secondary data base, in the form of primary legal materials and secondary legal materials (Marzuki, 2017). The primary legal materials includes: Jurisprudence, Civil Code, Commercial Code, Law Number 42 of 1999 on Fiduciary Guarantees, Law Number 12 of 2011 in conjunction with the Law Number 15 of 2019 on the Establishment of Legislation, Government Regulation Number 21 of 2015 on Fiduciary Guarantee regulations and fees, Minister of Finance Regulation Number 130/PMK.010/2012 on Registration of Fiduciary Guarantees for the Financing Companies, National Police Chief Regulation Number is 8 of 2011 on Security of Execution of Fiduciary Guarantees, Regulation of the Minister of Law and Human Rights Number 9 of 2013 on the Implementation of Fiduciary Guarantees Electronically), Regulation of the Minister of Law and Human Rights Number 10 of 2013 on Procedures for Electronic Registration of Fiduciary Guarantees, Circular of the Directorate General of General Legal Administration Number AHU-06 OT.03.01/2013 on the Implementation of the Electronic Fiduciary Guarantee Registration Administration System. The Secondary legal materials are sourced from legal journals and the reference books that study Fiduciary. The validity of the data was done by triangulation of sources and source criticism. Data analysis was done by the carrying out legal interpretation, in this case the legal systematic interpretation and grammatical interpretation.

## RESEARCH RESULTS AND DISCUSSION

The research and studies that have been carried out have produced the following findings.

**Legal Political Aspect**

The legal politics of the Fiduciary Guarantee Law can be seen in its Preamble, which states that, “The big and ever-increasing need for the business world for the availability of funds needs to be regulated by the clear and complete legal provisions of governing guarantee institutions. Fiduciary guarantees as a form of guarantee institution are still based on jurisprudence and have not been regulated in a complete and comprehensive legislation. In order to fulfill the legal needs that can be guarantee of the legal certainty and legal protection for interested parties, it is necessary to establish complete regulation regarding fiduciary guarantees. Taking into account these considerations, it appears that the objectives of the enactment of the Fiduciary Guarantee Law are 1) to stimulate national development business activities; 2) guarantee legal certainty; 3) provide legal protection. Fiduciary guarantees have been widely used in lending and borrowing transactions because the process is considered simple, easy, and fast, but it does not guarantee legal certainty. Therefore, the presence of the Fiduciary Law is intended to accommodate the needs of the society rin fiduciary guarantees as a means to assist business activities and provide legal certainty to involved parties. However, so far this goal has not been achieved. The problem is, apart from legal uncertainty, other causes include conflicting norms, inconsistent, multiple interpretations, and non-operational (Bappenas, 2011), and this problem also occurs in the Fiduciary Guarantee Law.

In addition, after being carefuly reviewed, the Fiduciary Guarantee Law does not formulate its legal politics carefully and in detail. Legal politics after being formulated in the preamble, needs to be formulated in the (initial) articles of the Fiduciary Guarantee Act, in the form of articles that regulate the objectives, scope, and principles. As a comparison, for example the Trade Law (Law Number 7 of 2014 on Trade). In Chapter II, the Principles and Objectives are regulated. Article 2 emphasizes that trade policies are formulated based on the following principles are: national interests; legal certainty; fair and healthy; business security; accountable and transparent; partnership; benefit; simplicity; togetherness; and environment friendly. Furthermore, Article 3 stipulates that trade activities aim to: increase national economic growth i.e; increase the use and trade of domestic products; increase business opportunities and create more jobs; ensure the smooth distribution and availability of basic necessities and essential goods; improving the trade facilities, infrastructure; enhance partnerships between big businesses and micro, small and medium enterprises, as well as the government and the private sector; increase the competitiveness of national products and businesses; improve the images of domestic products, market access, and national exports; increase the trade in creative economy-based products; improve consumer protection; increase the use of *SNI*; increase the protection of natural resources; and increasing the control of trade goods and/or services. The details of these objectives, which are manifestations or elaborations of legal politics, are not contained in the Fiduciary Guarantee Act. Therefore, it is urgent to reform the Fiduciary Guarantee Law, especially in the legal politics section.

**Normative Aspect**

The Fiduciary Recognition in the Act does not provide legal certainty, this is proven by the inconsistency of the material security law. The understanding of guarantee law to date seems inconsistent. Civil law reform is carried out not through codification but through partial renewal. The legislators in this case are less careful because the partial reforms are dangerous. This level of danger is contained in some guarantee laws such as the Mortgage Law and the Fiduciary Guarantee Act which are not in one system, so it is possible that the rights and objects of the collateral object will clash. The Fiduciary Guarantee Law, which currently exists, still has weaknesses and shortcomings, namely in terms of: The normative juridical aspect and the sociological aspect or its effectiveness do not reflect legal certainty. Normative juridical, normative formulation in normative juridical aspects, legal uncertainty of the Fiduciary Guarantee Act can be seen from the formulation of norms which still lead to multiple interpretations and each article still contradicts one another. Example: Article 1 of the Fiduciary Guarantee Law concerning the meaning of fiduciary. In Article 1 of the Fiduciary Guarantee Law regarding the meaning of fiduciary, the legislators separate the meaning of fiduciary and fiduciary guarantee so that it can be confused, even though the title of the law is Fiduciary Guarantee. What needs to be formulated correctly is the meaning of Fiduciary Guarantee which includes the meaning of fiduciary and does not need to be elemented in the scope of objects because it will be explained separately in terms of objects. Furthermore, in Article 1 point 2 and Article 1 point 4 of the Fiduciary Guarantee Law, it is regulated that, what is meant by "immovable objects" are buildings that cannot be encumbered with the

Mortgage Rights, while in Article 1 point 4 what is meant by "immovable objects" are objects that cannot be encumbered with Mortgage or Mortgages. This creates uncertainty and inconsistency with the principles of national land law which only recognizes land and non-land objects. Article 1 point 2 of the Fiduciary Guarantee Law does not mention "registered" and "unregistered" while in Article 1 number 4 of the Fiduciary Guarantee Law it is stated "registered" and "unregistered", this can be seen in the inconsistency of the articles, there is no an explanation of "registered" (the object of which is registered or its fiduciary deed) as referred to in Article 5 paragraph (1) of the Fiduciary Guarantee Law. It is logically acceptable that what is registered is a Fuduciary Guarantee Deed to fulfill the principle of specialty as stated in Article 6 of the Fiduciary Guarantee Act.

**Empirical Aspect (Effectiveness)**

At the empirical level, or the effectiveness of the Fiduciary Guarantee Law, legal certainty is very dependent on the community who uses it, law enforcement (police, courts, notaries, lawyers) and legal instruments to implement the law such as government regulations, presidential decrees, and office decisions. Fiduciary registration and others. There needs to be a common understanding in accepting and interpreting the regulations on fiduciary guarantees.

The imposition of a fiduciary guarantee in the Fiduciary Guarantee Law stipulates that it must be carried out by a notary deed. This provision is different from the implementation of fiduciary before the Fiduciary Guarantee Act which allowed it with an underhand deed or notarial deed. The background for the formulation of the norm is theoretically, the function of the deed is for the perfection of legal acts (*formality causa*) and as evidence (*probationis causa*). For the strength of the proof of the deed, the notary deed has the power of proving birth in accordance with the principle of *acta publica probantseseipsa*, while the private deed does not have any power of proving birth because the signature on the underhand deed can still be denied, so the notary deed has greater legal power and certainty. than the private deed. The reasons why the Fiduciary Guarantee Law stipulates the form of a fiduciary guarantee agreement with a notary deed are *first*, a notary deed is an authentic deed so that it has perfect evidentiary power; *second*, the object of fiduciary security is generally movable objects; *third*, the law prohibits re-fiduciary, on the basis of which an executive title is made on the fiduciary certificate. The legislators did not explain the legal consequences (there are no firm sanctions) if the parties deviate from the norm in order to avoid costs. Fiduciary guarantees that are not made with a notarial deed, the agreement has no existence and cannot be registered to fulfill the principle of publicity, On the other hand, if it is registered, it will get a fiduciary guarantee certificate in which there are "For the sake of Justice Based on God Almighty" which has the same executive power as a court decision that has permanent legal force. With this provision, if the debtor defaults, the creditor has the right to sell the fiduciary collateral.

It can be seen that there is a conflict of norms, namely between the facilitative norm (Article 2 of the Fiduciary Guarantee Law) and the regulatory norm (Article 38 of the Fiduciary Guarantee Act). Article 2 of the Fiduciary Guarantee Law which states: "This law applies to the every agreement that aims to be burdening objects with fiduciary guarantees, is expected to provide more certainty and legal protection for interested parties, but in Article 38 Fiduciary Guarantee Act instead it stipulates: "as long as they do not conflict with the provisions of this law, all fiduciary laws and regulations remain in the effects until they are revoked, replaced, or renewed" which still follows the existence of the *Fiducia Eigendom Overdracht (FEO)* which it replaces, which should be the *Fiducia Eigendom* is revoked and deleted because there has been a strong legal basis to replace it. Article 38 of this UUJF Instead, it is widely open to avoid legal regulations that have been standardized, back to regulations that are only based on jurisprudence which are admittedly weak in legal basis. This is further strengthened by the rules in Article 37 paragraph (1) to paragraph (3) of the Fiduciary Guarantee Law.

Article 15 paragraph (3) with Article 29 paragraph (1) b, (1) c and Article 31, is emphasized in Article 32 of the Fiduciary Guarantee Law concerning the implementation of executions. Article 15 paragraph (3) states that the execution is carried out by the creditor himself *(parate executie)* while Article 29 paragraph (1) b, (1) c which regulates the execution through a public auction, underhand sales based on an agreement between the debtor and creditor and Article 31 the execution is carried out on the stock exchange for the object of fiduciary

security in the form of trading objects or securities, and Article 32 confirms that the execution of the object of fiduciary security a manner that is contrary to the provisions of Article 29 and Article 31 is null and void. The articles are mentioned above are out of sync, contradicting each other, giving rise to a conflict of norms that must be avoided.

Vague norms will result in empirical/sociological norms that are not or less applicable in society. Norms like this can be found in the regulation of Article 11 paragraph (1) of the Fiduciary Guarantee Law which stipulates that: "objects burdened with Fiduciary Guarantees must be registered". Meanwhile, Article 12 paragraph (1) stipulates: "registration of Fiduciary Guarantee as referred to in Article 11 paragraph (1) shall be carried out at the Fiduciary Registration Office". There is confusion between the so-called Fiduciary Guarantee "object" registration as referred to in Article 11 paragraph (1) and the Fiduciary "guarantee" registration as referred to in Article 12 paragraph (1). The vague norm raises the question, the purpose of registering a certain "thing" or the registration of a certain "guarantee". The ambiguity of these norms in practice will leads to legal uncertainty and even legal conflicts.

Online fiduciary guarantees have not been regulated in the Fiduciary Guarantee Act. Online fiduciary arrangements need to be added in the content of the Fiduciary Guarantee Law in a complete, clear and comprehensive manner regarding effective and efficient fiduciary service procedures including loading, registration, transfer, change or deletion, deletion, prevention of fiduciary re-enactment, damage and or destruction of fiduciary objects, the economic value of fiduciary guarantees, executions and sanctions.

## Philosophical Aspect

Philosophically, the Fiduciary Guarantee Law can be said to have laid a fairly strong foundation or footing, namely by including the ***irah-irah*** "For the sake of justice based on the One Godhead" in Article 15 of the Fiduciary Guarantee Act. However, this is not followed by the establishment or normalization of firm and clear legal principles, which must exist for the basis of the power to bind a law, including the binding of the Fiduciary Guarantee Act. The principles that have existed so far in contract law, can still be maintained, for example the principle of freedom of contract, because it is a very fundamental principle, is part of Human Rights (HAM). Individuals in their use must have a social function, and do not violate the public interest. The principle of good faith, must be the basis when the parties transact in a fiduciary agreement, which must be honest, rational, and appropriate. Then, it is important to put forward the principle of agreement and the principle of trust. The agreement between the fiduciary giver and the fiduciary recipient must be intact, there should be no coercion, there should be no mistakes, let alone fraud. After the parties are bound by the agreement, in practice the parties are obliged to be the trust on each other (principle of trust), especially the fiduciary provider must be trusted not to transfer the fiduciary security object against the law, and treat the fiduciary security object according to its function, take good care of it so that economic value can be maintained. In the end, according to the early legal history, the institutionalization of fiduciary guarantees is benefit (the principle of benefit), which can be maximized in the process of implementing a fiduciary guarantee agreement, which cannot be given and obtained by the parties from other forms of material guarantee, namely pawning.

## Structure Problem

Fiduciary problems are not only government problems, the existence of the Ministry of Law and Human Rights, the Fiduciary Registration Office, judicial institutions, dispute resolution institutions, and supervision of financial institutions (Financial Services Authority), which currently exists. The police, which protects against the forcible or arbitrary withdrawal of fiduciary collateral from debtors on the orders of creditors, is also not a structure in the Fiduciary Security Law. Currently, it is still necessary to regulate structures whose existence is initiated by the community, arrangements regarding active participation by the community in terms of supervising, providing input, criticism, suggestions to the government to advance Fiduciary, and which is no less important in matters of this structure is the existence of various associations related to Fiduciary.

**Cultural Issues**

Indonesian culture is very good, including in business. There are jargons (Javaneese value) that show responsibility in business, for example ***"uwong utang iku kudu nyaur"*** (the debtor must return). This can be interpreted that the sanctions arrangements in the Fiduciary Law are not sufficient. Knowledge, understanding, honest, rational, appropriate and trustworthy business narratives must be conveyed. It is also important to be given competencies in the form of debriefing, training, assistance in terms of access to credit with fiduciary guarantees, so as to create a business culture using a healthy and dynamic fiduciary. Thus, the phenomenon of forced or arbitrary withdrawal of collateral does not occur in the community, when the debtor defaults. Also the phenomenon of the transfer of fiduciary collateral objects to other parties without the fiduciary recipient's permission, damage or reduced function of fiduciary collateral objects because they are not properly functioned and cared for by the fiduciary giver, will not occur. In the event of a dispute, the fiduciary giver and recipient will prioritize the resolution of the dispute amicably, with a win-win situation process with a *win-win solution*. Referring to the Decision of the Constitutional Court (MK) Number 2/PUU-XIX/204 this spirit can also be seen. In the Constitutional Court's Decision, page 83, it is stated that the execution of a fiduciary certificate through the District Court is only an alternative that can be done, not an obligation (MK, 2021). If it has all become a culture, in this case it has become a legal culture, and then the fiduciary will be a form of "*gotong-royong*" or mutual cooperation in the business development of the fiduciary giver and recipient. This mutual cooperation is one of the characteristics of Indonesian culture.

**CLOSING**

The renewal of the Law of the Republic of Indonesia Number 42 of 1999 on Fiduciary Guarantees needs to be carried out (urgency) because of the existing Fiduciary Guarantee Law still has shortcomings, namely the inconsistency of the guarantee law regulation which is still partial, the existence of legal uncertainty in the normative juridical aspect with sociological aspects, the existence of asynchronous in the articles, the existence of conflicts of norms, vague norms (vague norm), the existence of ambiguity or uncertainty of the object of fiduciary, there is no regulation on online fiduciary in the law. Therefore, the legal political reform that needs to be carried out is not only that the Fiduciary Guarantee Act only accommodates the needs of the community, but is directed as one of the important instruments in national economic development, which balances business interests with social interests, which is futuristic and capable of anticipating advances in information technology by becoming a part of *Teknologi Informasi Sistem Keuangan (ITSK)* or the Financial System Information Technology System.

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