

Criminal Liability against Distracting Offenders Fiduciary Guarantee



Dwi Tatak Subagiyo¹, Delycia Revita², Noer Chalim³, Samsul Arifin⁴

¹Faculty of Law, Wijaya Kusuma Surabaya University

^{2,3,4} Student Magister of Law, Faculty of Law, Wijaya Kusuma Surabaya University

ABSTRACT: This This research aims to find out whether there are cases in criminal cases that violate Law Number 42 of 1999 concerning Fiduciary Guarantees, so that readers can find out about the regulation of fiduciary guarantees in terms of Law Number 42 of 1999 concerning Fiduciary Guarantees. And so that you can find out about the criminal liability of renting out goods that are the object of fiduciary collateral without written permission from the fiduciary recipient. And also so that it can be a lesson for all of us. And also the results of research files pekara I meticulously and from several sources or literary I read. Sehubungan with the use of the juridical normative research type, then approach the problem using an approach case case approach. Statutory approach used by the research because this research focuses on the study of norms in a rule of law especially those associated directly with the fiduciary guarantee legislation. The use of case approach in this research aims to study the application of legal rules or norms that are done in the practice of law. In such cases it is clear that in the docket which I read was already plain to see that the perpetrators are found guilty and has been deliberately doing acts that violate the Law Number 42 in 1999 about the Fiduciary Guarantee. And also the results of this research confirms the fiduciary banned Givers turn, mortgaged, or meyewakan to any other objects into the object fiduciary guarantee that cannot be an inventory object, except with the consent of the recipient of the first tertukis fiduciary. as stipulated in article 36 Jo Article 23 paragraph (2) of ACT No. 42 of 1999 RI about the Fiduciary Guarantee. It is intended, in order to give legal certainty to the fiduciary guarantee.

KEYWORDS: Fiduciary liability, Guarantee of criminal against the offender.

I. INTRODUCTION

In everyday life, we often encounter or know that someone buys a motor vehicle using a credit system. It is already familiar to hear, the increasing need for transportation and the lack of awareness about using public transportation is the main reason someone buys a motor vehicle on credit. The conditions are not difficult, just go to the nearest motorbike or car dealer provided you bring a photocopy of the electricity and water payment letter, a photocopy of the PBB, and also a photocopy of your KTP. In just 1 day we can have a survey with the Leasing party and only a few days later the motorized vehicle that we bought can arrive at our house.

Apart from that, we often encounter several problems regarding bad credit payments or motor vehicle installments. Until now, there have been many problems with people starting to be naughty or dishonest when motor vehicles are confiscated by leasing parties. One of the reasons for confiscation which is usually explained by the Leasing party is bad credit or bad installment payments by the debtor or person who bought the motor vehicle on credit. An example of debtor delinquency is that before the due date for confiscating a motor vehicle there are several debtors who deliberately replace spare parts for the motor vehicle. Some examples of spare parts that are replaced are carburetors, rims, tires, etc. Since the promulgation of Law Number 42 of 1999 concerning Fiduciary Guarantees on September 30 1999, the Indonesian nation has had its own regulations regarding fiduciary guarantees in national positive law. Previously, the existence of fiduciary guarantees in daily practice was known as "Fiduciare eigendomsoverdracht" which was subsequently abbreviated as FEO.¹

This custom was born based on the jurisprudence implemented in the Netherlands, by Arrest Hoge Raad on January 25 1929, known as "*Bierbrouwerij – Arrest*".² FEO means the transfer of property rights in trust. FEO guarantee regulations arise in connection with the provisions of article 1152 paragraph 2 B.W. which regulates pawning cannot be used for fiduciary institutions. The emergence of Law Number 42 of 1999 concerning Fiduciary Guarantees, apart from being created to stimulate

¹ Andi Prajitno, *Hukum Fidusia*, Cetakan Pertama, Bayu Media Publishing, Malang, 2009, p. 3.

² *Ibid.*

Criminal Liability Against Distracting Offenders Fiduciary Guarantee

economic activity with guarantees of legal certainty, especially for small entrepreneurs to face the global economy, so that they can be expected to be more resilient and not easily affected by facing very rapid and increasingly complex economic changes. Others are caused by delays in the growth of law towards the needs of society. Thus, to fill this void, people look for other alternatives to fulfill these needs outside of existing laws. Fiduciary institutions were created because of the needs of practice and developments in society which are known in banking operational practices, as well as in notarial practice.

In maintaining administrative order, every time a receivable is paid in full, the creditor can request a guarantee in accordance with the provisions of the law. This fiduciary law has been equipped with a registration agency that has never been regulated in previous law. The legal act of encumbering fiduciary collateral followed by registration is mandatory, it should be carried out in one package, because the birth of material rights over fiduciary collateral as intended in this law is when the encumbrance of collateral is registered at the fiduciary registration office (KPS), it can be interpreted as if This law wants to say "No Encumbrance Without Registration". In contrast to the method in FEO, the matter of registration is not an obligation that is as hot as a burden, the FEO deed of surrender of collateral has been accepted by the public and the judiciary as a new form of law which is very popular and can help trade and banking activities, the need for this is stated in Law Number 42 of 1999 concerning Fiduciary Guarantees in its implementation is equipped with:

1. Government Regulation Number 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making a Fiduciary Guarantee Deed (State Gazette of 2000 Number 170, State Supplement Number 4005);
2. Government Regulation Number 87 of 2000 concerning Amendments to Government Regulation Number 26 of 1999 concerning Tariffs for Types of Non-Tax State Revenues that apply to the Department of Justice (State Gazette of 2000 Number 171, Supplement to State Gazette 4006);
3. Presidential Decree Number 139 of 2000 concerning the Establishment of a Fiduciary Registration Office in every Provincial Capital in the Territory of the Republic of Indonesia;
4. Decree of the Minister of Justice and Human Rights of the Republic of Indonesia Number M.01-UM.01.06-Year 2000 concerning Forms and Procedures for Registration of Fiduciary Guarantees;
5. Decree of the Minister of Justice and Human Rights of the Republic of Indonesia Number M.08-PR.07.01-Year 2000 concerning the Opening of the Fiduciary Registration Office; And
6. Circular Letter from the Directorate General of General Legal Administration, Ministry of Justice and Human Rights of the Republic of Indonesia Number C.HT.01.10-22 concerning Standardization of Fiduciary Registration Procedures.³

With the existence of laws, statutory regulations or *perpu*, presidential decrees or presidential decrees as well as the decree of the Minister of Justice and Human Rights of the Republic of Indonesia or the Republic of Indonesia's Human Rights Ministerial Decree Number C.HT.01.10-22, it should be able to be utilized as well as possible by the community, both by individual entrepreneurs and legal entity entrepreneurs, especially financial institutions in the fields of finance and banking. Views on fiduciary guarantees, especially regarding the imposition and registration of fiduciary guarantees, can be observed from several things and are regulated in law number 42 of 1999 concerning fiduciary guarantees and are new things, in addition to several things that have been known and implemented in the practice of handing over guarantees by FEO. . It is clear that Law Number 42 of 1999 concerning Fiduciary Guarantees has the following privileges or characteristics: 1. The nature of the assessor or *accessoir* is referred to by law as a subsidiary agreement to a main agreement, as stated in article 4, for the purpose of repayment of debts in the main agreement, including the consequences, collateral rights arising from the delivery of fiduciary guarantees cannot be written off, including if the debt transferred to another creditor. 2. The form of the deed must be authentic, the general formalities of the collateral object agreement are made in the form of a notarial deed in Indonesian which is a fiduciary guarantee deed, stated in article 5 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees. The form of notarial deed encumbrance means that the fiduciary guarantee is made before an authorized official, who has been appointed by law to obtain the value of "Authenticity" and has binding legal force as strong evidence for the parties and third parties including heirs and the person who continues this right, as stated in Articles 1868, 1869, 1870 B.W. On this basis, the fiduciary guarantee certificate is also made to have executorial power. Before Law Number 42 of 1999 concerning Fiduciary Guarantees was promulgated as a fiduciary institution regulated in the form of FEO, parties could choose the formality of handing over collateral, either notarially or privately. - Eyes for collateral purposes that guarantee debt repayment, as stated in Article 1 point 2 jo. Article 27, and according to this as something that gives rise to collateral rights as a transfer of collateral. 3. Must be registered and recorded at the fiduciary registration office, this is something new from what has been mandated by law and its own procedures and problems. The time of registration is when the guarantee is issued and gives the fiduciary recipient material rights or collateral rights which have pre-emptive or preferential rights. 4. Contains criminal elements, threatened with parties with bad intentions who intend to deliberately enter, change, omit, or in any way provide misleading information to make the delivery of fiduciary guarantees invalid or invalid, as stated in article 35 of Law Number 42 1999 concerning Fiduciary Guarantees, including those who transfer, pawn, rent objects that are fiduciary objects except inventory objects, listed in Article 23 paragraph (2) and Article 36 of Law

³ *Ibid.*

Criminal Liability Against Distracting Offenders Fiduciary Guarantee

Number 42 of 1999 concerning Fiduciary Guarantees. 5. Having Preferential Rights, fiduciary recipients have rights that take precedence over other creditors, including not being erased due to the bankruptcy of the fiduciary, based on Article 27 of Law Number 42 of 1999 concerning Fiduciary Guarantees.⁴

From the case files that researchers obtained, there was a criminal act involving the fiduciary transferring, pledging or renting out items that were the object of the fiduciary without written permission from the fiduciary recipient. With the suspect named Agusry Mahendra. By registering the object which is pledged as a fiduciary guarantee, legal ownership of the object which is the object of the fiduciary guarantee has legally transferred to PT. Astra Sedaya Finance is the recipient of the fiduciary, even though the object that is the object of the fiduciary is still controlled by the party giving the fiduciary, namely Mr. Agusry Mahendra. Because in this case Mr. Agusry Mahendra is not legally the owner of the object which is the object of fiduciary guarantee, but only controls it economically. This also violates the provisions of article 36 of Republic of Indonesia Law No. 42 of 1999 concerning Fiduciary Guarantee.

Agusry Mahendra as the fiduciary giver only has economic power and does not have juridical power over the objects that are the object of the fiduciary guarantee. He has transferred to another party (third party) the objects that are the object of the fiduciary guarantee. Transferring, pawning or renting out the ownership rights of objects that are the object of fiduciary guarantees to third parties without being based on rules that can be properly and legally accounted for. Objects that are encumbered with fiduciary guarantees before they are registered at the fiduciary registration office, even though a notary deed has been drawn up regarding the imposition of fiduciary guarantees, cannot yet be said to be objects of fiduciary guarantees. The basis is article 14 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees, which states "Fiduciary guarantees are born on the same date as the date the Fiduciary guarantee is recorded in the Fiduciary register book." Violates Law Number 42 of 1999 concerning Fiduciary Guarantees. In this case, the person responsible is the party giving the fiduciary, the legal basis is Article 23 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees, based on Case File Number B/146/II/2013/Satreskrim. From the explanation of the problems above, the author can formulate several problems, namely: 1. How are Fiduciary guarantees regulated in terms of Law No. 42 of 1999. 2. What is the criminal responsibility for perpetrators who transfer, pawn or rent out goods without written permission from the Fiduciary recipient.

II. LITERATURE REVIEW

1. Regarding Fiduciary Guarantees

Before discussing fiduciary guarantees, the author first explains the meaning of the words Fiduciary and Guarantee, what is meant by Fiduciary is: "The transfer of ownership rights to an object based on trust, provided that the object whose ownership rights are transferred remains in the control of the owner of the object." The meaning of Fiduciary and Guarantee is clearly different, according to article 1 point 2 of the Fiduciary Guarantee Law, what is meant by fiduciary guarantee is: "Guarantee rights over movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be encumbered with rights." Collateral as referred to in Law Number 4 of 1996 concerning Collateral Rights, which remains in the control of the fiduciary, as collateral for the repayment of certain debts, which gives the fiduciary recipient a preferred position over other directors."⁵

From the definition contained in the fiduciary law, it is clear to us that fiduciary is distinguished from fiduciary guarantee. Fiduciary is a process of transferring ownership rights, and fiduciary guarantees are guarantees given in the form of fiduciaries. From the provisions of Article 1 number 2. Fiduciary Guarantee Law, it can be concluded that Fiduciary guarantees are: a. It is a security right for repayment of debt (credit). b. Can be imposed on tangible and intangible movable objects and immovable objects, especially buildings which cannot be encumbered with mortgage rights. c. The collateral remains in the control of the fiduciary. d. Gives priority to other creditors. Based on the principle of horizontal separation, the building and the objects on it are separated from the land. Therefore, these buildings and objects need to have their own identity which is independent of the identity of the land, so that the building will be a registered object and have its own proof of ownership. As a consequence of the principle of horizontal separation, buildings that have been registered and have proof of ownership are separate from the land. For buildings listed above, they can be bound or encumbered with fiduciary guarantees. In providing bank credit, ratification of this principle can accommodate credit seekers, especially business actors who do not own land but have rights to buildings or houses. The legal relationship between the land owner and the building owner is a rental agreement.

2. Definition of Fiduciary and Contents of Fiduciary Agreement Procedures

Fiduciary guarantee law is basically not just a collection or number of legal norms, each of which stands alone, but fiduciary guarantee legal regulations have an important meaning in relation to other legal norms of guarantee law and are part of the

⁴ Gunawan Widjaja dan Ahmad Yani, *Jaminan Fidusia*, Raja Grafindo Persada, Jakarta, 2001, p. 27-31.

⁵ www.sultanahmadjambe.blogspot.com/masalahhukumjaminanfidusiadanpertanggungjawabanparapihak, *Masalah Hukum Jaminan Fidusia dan Pertanggung Jawaban Para Pihak*, diunduh pada 19 Juli 2023 pukul 13.00 wib.

Criminal Liability Against Distracting Offenders Fiduciary Guarantee

material guarantee law as a whole.⁶ Thus, Law No. 42 of 1999 concerning Fiduciary Guarantees is a subsystem of material guarantee law which must be in sync and not conflict with other rules in the material guarantee legal system. In other words, the legal norms contained in Law No. 42 of 1999 concerning Fiduciary Guarantees must be a unity consisting of elements in the subsystem that interact with each other in harmony. In order to achieve the objectives of fiduciary guarantees as a legal subsystem of material guarantees, it must be applied to a set of juridical elements such as fiduciary guarantee legal regulations, legal principles and legal meanings. In general, general norms can be found in Law No. 42 of 1999 concerning Fiduciary Guarantees which form a set of building norms intended to provide legal certainty and protection for interested parties. What is explained based on Article 1 of Law No. 42 of 1999 concerning Fiduciary Guarantees is explained: 1. Fudisia is the transfer of ownership rights to an object on the basis of trust with the condition that the object whose ownership rights are transferred remains in the control of the owner of the object. 2. Fiduciary Guarantee is a security right over movable objects, both tangible and intangible, and immovable objects, especially buildings, cannot be encumbered with mortgage rights as intended in Law No. 4 of 1996 concerning Mortgage Rights which remain in the control of the fiduciary, as collateral for the repayment of certain money, which gives the fiduciary recipient a preferred position over other creditors. 3. Fiduciary provider is an individual or corporation who owns the object that is the object of fiduciary collateral. 4. Fiduciary Recipient is an individual or corporation who has receivables whose payment is guaranteed by a fiduciary guarantee. 5. Creditors are parties who have receivables due to agreements or laws. 6. A debtor is a party who has a debt due to an agreement or law.⁷

3. Nature of Fiduciary Guarantee

The provisions of Article 1 number 2 of the Fiduciary Guarantee Law can be interpreted to mean that fiduciary guarantees expressly state that fiduciary guarantees are: collateral for property or material guarantees that give a priority position to the fiduciary recipient, namely priority rights over other creditors. This right is not removed due to bankruptcy and/or liquidation of the fiduciary as formulated in article 27 paragraph 3 of the Fiduciary Guarantee Law. Article 4 of the fiduciary law is an assessor agreement for a main agreement which creates an obligation for the parties to fulfill an achievement in the form of providing something, doing something, or not doing something, which can be valued in money.⁸ As an assessor agreement, a fiduciary agreement has 3 characteristics, namely:

- a. The nature of dependence on the main agreement.
- b. Its validity is determined by whether the main agreement is valid or not.
- c. As a conditional agreement, it can only be implemented if the conditions required in the main agreement have or have not been fulfilled.

Fiduciary guarantees adhere to the Droit de Preference principle, in accordance with the provisions of article 28 of the Fiduciary Guarantee Law, this principle applies from the date of registration at the Fiduciary Registration office. What is meant by pre-emptive right is the fiduciary recipient to collect repayment of his receivables for the proceeds of the execution of the object which is the object of the fiduciary guarantee and the right to collect this repayment before other creditors. The fiduciary guarantee remains with the object that is the object of the fiduciary guarantee in the hands of whoever the object is in. Except for the transfer of inventory objects which are the object of collateral, there are cases where the objects which are the object of fiduciary collateral are inventory objects. In accordance with article 21 of the Fiduciary Guarantee Law, fiduciary providers can transfer inventory items to become fiduciary collateral objects in the manner and procedures that are common in trading businesses, including selling or renting, in the context of their business activities. So that the object which is the object of fiduciary security which has been transferred in the form of inventory must be replaced by the fiduciary with an equivalent object.⁹

4. Object of Fiduciary Guarantee.

With reference to article 1 numbers 1, 2, and 4, article 3, article 9, article 10, and article 20 of law number 42 of 1999 concerning fiduciary guarantees, the objects that are the objects of fiduciary guarantees are: a. These objects must be able to be legally owned and transferred. b. Can be on tangible objects. c. It can also be for intangible objects, including receivables. d. Moving objects. e. Immovable objects that cannot be secured by mortgage rights. f. An immovable object that cannot be attached to a mortgage. g. Neither for existing objects nor for objects that will be acquired later, a separate fiduciary encumbrance deed is not required. h. Can be based on a unit or type of object. i. It can also involve more than one type or unit of object. j. Including proceeds from objects that have become the object of fiduciary collateral. k. This also includes insurance claims from objects that are the object of fiduciary guarantees. l. Inventory objects (inventors) can also be the object of fiduciary collateral.¹⁰

⁶ Tan Kamelo, *Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan*, Cetakan Kedua, Alumni, Bandung, 2006, p. 72.

⁷ *Ibid*.

⁸ Andi Prajitno, *Hukum Fidusia*, Cetakan Pertama, Bayu Media Publishing, Malang, 2009, p. 202.

⁹ J. Satrio, *Hukum Jaminan Hak Jaminan Kebendaan Fidusia*, Citra Aditya Bhakti, Bandung, 2002, p. 64-65.

¹⁰ Andi Prajitno, *Hukum Fidusia*, Cetakan Pertama, Bayu Media Publishing, Malang, 2009, p. 77-78.

Criminal Liability Against Distracting Offenders Fiduciary Guarantee

By referring to article 3 of the Fiduciary Guarantee Law, fiduciary guarantees do not apply to:

- a. Mortgage rights relating to land and buildings, as long as the applicable laws and regulations determine collateral for these objects, must be registered.
- b. Mortgage on Vessels with gross contents of 20m³ or more.
- c. Mortgage on an airplane.
- d. Pawning/pawning.

Definition of Rent - Renting:

A lease is an agreement in which one party binds himself to give the other party the enjoyment of an item, for a certain period of time with the payment of a price which the latter party is willing to pay. Leasing, like sale and purchase and other agreements in general, is a consensual agreement. This means that it is legal and binding at the moment an agreement is reached regarding the main elements, namely goods and prices. One party's obligation is to hand over the goods for the other party to enjoy, while the latter party's obligation is to pay the rental price. So the item is not handed over to be owned, but only to be used and enjoyed. Thus, the handover is only a transfer of power over the rented item. If someone is entrusted with goods for their use, without the obligation to pay for something, it will be a loan-to-use agreement.¹¹

As has been explained, all kinds of items can be rented. The renting party is required to: 1. Hand over the rented item to the renter. 2. Maintain the rental items in such a way that the items can be used for the intended purposes. 3. Give the renter a peaceful enjoyment of the rented item during the rental period.

5. Criminal Threats for suspected perpetrators of crimes related to Fiduciary.

In CHAPTER VI of Law no. 42 of 1999 concerning Fiduciary Guarantees is the chapter that regulates the legal provisions contained in Article 35 and Article 36.

- a. In Article 35 UU No. 42 of 1999: Every person who deliberately falsifies, changes, omits or in any way provides misleading information, which if this is known by one of the parties does not give rise to a Fiduciary Guarantee agreement, shall be punished with a minimum imprisonment 1 (one) year and a maximum of 5 (five) years and a fine of at least Rp. 10,000,000,- (ten million rupiah) and a maximum of Rp. 100,000,000,- (one hundred million rupiah).
- b. In Article 36 UU No. 42 of 1999: Fiduciary Givers who transfer, pawn or lease objects that are the object of Fiduciary Guarantee as intended in Article 23 paragraph (2) without prior written approval from the Fiduciary Recipient, shall be punished with a maximum imprisonment of 2 (two) years and a maximum fine of IDR 50,000,000 (fifty million rupiah).

Fiduciary is the transfer of ownership rights to an object based on trust, provided that the object whose ownership rights are transferred remains in the control of the owner of the object. Fiduciary Guarantee is a security right over movable objects, both tangible and intangible, and immovable objects, especially buildings which cannot be encumbered with mortgage rights as intended in Law Number 4 of 1996 concerning Mortgage Rights which remain in the control of the Fiduciary Grantor, as collateral. for the repayment of certain debts, which gives the Fiduciary Recipient a preferred position over other creditors. Receivables are for receiving payments. Objects are anything that can be owned or transferred, whether tangible or intangible, registered or unregistered, movable or immovable that cannot be encumbered with security rights or mortgages. A Fiduciary Giver is an individual or corporation who owns the object that is the object of the Fiduciary Guarantee. A Fiduciary Recipient is an individual or corporation who has receivables whose payment is guaranteed by a Fiduciary Guarantee. Debt is an obligation that is expressed or can be expressed in amounts of money either in Indonesian currency or other currencies, either directly or contingently. Creditors are parties who have receivables due to agreements or laws. A debtor is a party who has a debt due to an agreement or law. Each Person is an individual or corporation. Fiduciary guarantees have been used in Indonesia since the Dutch colonial era as a form of guarantee born from jurisprudence. This form of collateral is widely used in lending and borrowing transactions because the imposition process is simple, easy and fast, but does not guarantee legal certainty. Fiduciary guarantee institutions allow fiduciary guarantee providers to control objects that are guaranteed, to carry out business activities financed from loans using fiduciary guarantees. Initially, the objects that became fiduciary objects were limited to movable assets that were tangible in the form of equipment. However, in subsequent developments, the objects that are the object of fiduciary collateral include assets that are immovable or immovable, as well as immovable objects. Before law number 42 of 1999 concerning Fiduciary guarantees was born, generally the objects that were the object of fiduciary guarantees were movable objects consisting of objects in stock (inventory), merchandise, receivables, machine tools and motorized vehicles. Fiduciary guarantees as collateral for a debt and receivable bond have a special appeal, because the owner or object being pledged as collateral does not need to hand over the object to the debt provider (creditor), so the item can still be used to support his business. This is a positive element in fiduciary guarantees. Fiduciary guarantees, as one of the material guarantees known in positive law, provide economic benefits for business actors when compared to pawnshop institutions. These benefits can be seen from the control of collateral objects, so that business activities can run and credit loans can be repaid smoothly. In law number 42 of 1999 concerning Fiduciary Guarantees, registration of Fiduciary Guarantees is

¹¹ Subekti, *Hukum Perjanjian*, Cetakan Ke-12, PT. Intermasa, Jakarta, 1990, p. 80.

Criminal Liability Against Distracting Offenders Fiduciary Guarantee

regulated in order to provide legal certainty. to interested parties and registration of fiduciary guarantees gives the Fiduciary recipient preferential rights to other creditors. Because fiduciary guarantees give rights to the party giving the fiduciary based on trust, it is hoped that the registration system regulated in this law can provide guarantees to the party receiving the fiduciary and parties who have an interest in the object.

III. RESEARCH METHODS

Answering the problems previously formulated, the type of research used by researchers in this research is normative juridical. Research based on a scientific research procedure to find the truth based on the logic of legal science from its normative side. The scientific logic in normative legal research is built on the basis of scientific discipline and the workings of normative legal science, namely legal science whose object is the law itself.

1. Problem Approach. In connection with the use of normative juridical research, the problem approach uses a case approach. A legislative approach is used in this research because this research focuses on studying the norms in a legal rule, especially those directly related to fiduciary guarantee laws. The use of a case approach in this research aims to study the application of legal norms or rules in legal practice.¹²
2. Sources of Legal Materials. Sources of research legal materials consist of primary legal materials and secondary legal materials with the following details: a) Primary legal materials, namely binding legal materials in the form of statutory regulations consisting of the 1945 Constitution, Law Number 42 of 1999 concerning fiduciary guarantees, Burgerlijk Wetboek (B.W.), Updated Indonesian Regulations (RIB), and also case file Number B/146/II/2013/Satreskrim. b) Secondary Legal Materials, namely legal materials that are closely related to primary legal materials because they are explanatory, which can help analyze and understand primary legal materials consisting of books, journals, magazines and other written materials.
3. Legal Material Collection Procedures. In this process the author uses techniques for collecting legal materials through library studies, studies at several universities, books, articles, magazines. And the author also conducted a case study of case file Number B/146/II/2013/Satreskrim at the Surabaya District Prosecutor's Office in order to obtain information for working on this thesis.
4. Analysis of Legal Materials. The analysis of legal materials used in writing this research is deductive analysis, namely using general statements to draw conclusions about specific matters.

IV. DISCUSSION

1. FIDUCIARY ARRANGEMENTS REVIEWED FROM LAW NO. 42 OF 1999 CONCERNING FIDUCIARY GUARANTEES

A. Fiduciary Security Arrangements

In its regulation, fiduciary guarantees are explained in Law Number 42 of 1999 concerning Fiduciary Guarantees, in which each article clearly explains the rules or meanings relating to fiduciary guarantees themselves. Fiduciary guarantees can be given to the attorney or representative of the Fiduciary recipient, based on Article 8 of Law Number 42 of 1999 concerning Fiduciary Guarantees. The procedures and conditions for issuing a fiduciary guarantee certificate are as regulated in PP No. 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making a Fiduciary Guarantee Deed, article 2 states, among other things, "Applications for registration of fiduciary guarantees are submitted in writing in Indonesian through the office by the fiduciary recipient, proxy or representative", accompanied by: 1. Fiduciary guarantee registration statement. 2. Original copy of the Notarial deed regarding the imposition of fiduciary guarantees. 3. Power of attorney or letter of delegation of authority to register fiduciary guarantees. 4. Proof of payment of fiduciary registration fees. The procedures regarding registration of fiduciary guarantees are contained in Articles 11 to Article 18 of the Fiduciary Guarantee Law, where in essence it is stated that the procedures for registering fiduciary guarantees are as follows: a. Registration of fiduciary guarantees is carried out at the Fiduciary Registration Office with a working area covering the entire territory of the Republic of Indonesia and is within the scope of duties of the Department of Justice and Human Rights; b. The application for registration of fiduciary guarantees is made by the fiduciary recipient, their proxy or representative by attaching a fiduciary guarantee registration statement; c. The fiduciary guarantee registration statement as referred to above, contains: The identity of the party providing and receiving the fiduciary; Date, fiduciary guarantee deed number, name and location of the notary who made the fiduciary guarantee deed; Data on the principal agreement guaranteed by fiduciary; Description of the objects that are the object of fiduciary collateral; The value of collateral; The value of the object that is the object of fiduciary collateral. d. The fiduciary registration office records the fiduciary guarantee in the fiduciary register book on the same date as the date of receipt of the registration application; e. The fiduciary registration office issues and hands over to the fiduciary recipient a fiduciary guarantee certificate on the same date as the date of receipt of the registration application; f. The fiduciary guarantee is born on the same date as the date the fiduciary guarantee is recorded in the fiduciary

¹² Peter Machmud Marzuki, *Penelitian Hukum*, Prenada Media, Jakarta, 2005, p. 93.

Criminal Liability Against Distracting Offenders Fiduciary Guarantee

register book; g. Fiduciary givers are prohibited from re-fiduciating objects that are the object of registered fiduciary collateral.¹³

Transferring, pawning or renting out the ownership rights of objects that are the object of fiduciary guarantees to third parties without being based on rules that can be properly and legally accounted for. Objects which are encumbered by fiduciary guarantees before they are registered at the fiduciary registration office, even though a notary deed has been drawn up regarding the imposition of fiduciary guarantees, cannot yet be said to be objects of fiduciary guarantees.

The legal basis is Article 14 paragraph (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees, "Fiduciary Guarantees are born on the same date as the date the fiduciary guarantee is recorded in the fiduciary register book", based on Article 14 paragraph (3) of the Law Number 42 of 1999 concerning Fiduciary Guarantees. Of course, fiduciary as a type of debt guarantee must also have these fast, cheap and certain elements. This is what has been complained about for a long time in practice. Because, so far (before the issuance of Fiduciary Law No. 42 of 1999), there has been no clarity regarding how to execute fiduciaries. So because there are no provisions governing it, many people interpret that fiduciary execution is by using the ordinary lawsuit procedure (via court using the usual process) which is long, expensive and also tiring. However, despite the tough requirements, the underhand fiduciary execution version of the condominium law certainly only applies to fiduciaries related to condominiums. Therefore, in legal practice, underhand fiduciary execution is very rarely used. This was realized by the makers of the law on fiduciaries no. 42 of 1999. Therefore, one of the breakthroughs made by the law on fiduciaries was the mortgage which was developed by the law on mortgage rights no. 4 of 1996, namely by regulating the execution fiduciaries vary, so the parties can choose which execution model they want. The Fiduciary Guarantee execution modes according to Fiduciary Law no. 42 of 1999 are as follows:

1. By executive fiat (using the title executorial), namely through a court order.
2. By execution parate, namely by selling (without the need for a court order) at public auction.
3. Sold privately by the creditor himself.
4. Even though it is not stated in the Fiduciary Law no. 42 of 1999, of course the creditor can take the normal procedure through a normal lawsuit to court.

B. Fiduciary Guarantee in Law Number 42 of 1999 concerning Fiduciary Guarantee

Based on the discussion and findings in the previous chapter, this chapter provides a reflection on legal certainty regarding the provision of fiduciary guarantees to support transactions carried out by business actors in their daily business. This is intended as an effort to provide legal certainty regarding fiduciary guarantees. For this reason, the regulatory framework for Law no. 42 of 1999 concerning Fiduciary Guarantees is explained as follows.

1. Registration of fiduciary guarantee deed

The process of registering a fiduciary guarantee deed is regulated in articles 11 to 18 of law no. 42 of 1999 concerning fiduciary guarantees and government regulation no. 86 of 2000 concerning how to register fiduciary guarantees and the costs of making a fiduciary guarantee deed. The government regulation consists of 4 chapters and 14 articles. Matters regulated in government regulations include fiduciary registration, procedures for repairing certificates, changing certificates, canceling registration and replacing certificates.¹⁴ In Article 11 of Law No. 42 of 1999 concerning fiduciary guarantees, it is stipulated that objects, whether within the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia, which are encumbered with fiduciary guarantees, must be registered. Registration is carried out at the fiduciary registration office (KPF). The fiduciary registration office records fiduciary guarantees in the fiduciary register book (BDF) on the same date as the date of receipt of the registration application. Paying fiduciary registration fees is regulated in Government Regulation Number 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and Fees for Making Fiduciary Guarantee Deeds. The fiduciary registration fee is adjusted to the amount of the guarantee. If the guarantee value is less than Rp. 50,000,000,- then the maximum registration fee is IDR 50,000,000,-. The fiduciary registration fee is per mile of collateral value (credit value). Even though the cost of making a guarantee deed has been determined in government regulations, notaries have also determined their own rates to be determined or charged to customers. The rate charged by notaries is 2% of the collateral value. Therefore, it is hoped that notaries can collect fees from customers in accordance with what is outlined in government regulations. Fiduciary guarantees or fiduciary guarantee certificates are issued on the same date as the date the fiduciary guarantee is recorded in the fiduciary register book (BDF). In technical terms, it is difficult to implement the applicant's application date and the certificate issuance date on the same day.

The objects that are the object of the fiduciary guarantee are:¹⁵ The object must be able to be legally owned and transferred; Can be on tangible objects; Data also on intangible objects, including receivables; Moving objects;

¹³ Andi Prajitno, *Hukum Fidusia*, Cetakan Pertama, Bayu Media Publishing, Malang, 2009, p. 56-58.

¹⁴ *Ibid.*

¹⁵ Gunawan Widjaya dan Ahmad Yani, *Jaminan Fidusia*, Raja Grafindo Persada, Jakarta, 2001, p. 102.

Criminal Liability Against Distracting Offenders Fiduciary Guarantee

Immovable property that cannot be secured by mortgage; Immovable property that cannot be tied to a mortgage; Both for objects that already exist and for objects that will be obtained later. In the case of objects to be acquired later, a deed of encumbrance is not required; Can be based on one unit or type of object; Can also involve more than one type or unit of object; Including the results of objects becoming fiduciary objects; This also includes the results of insurance claims from objects that are the object of fiduciary guarantees; Inventory and trading stock can also be the object of fiduciary collateral, except for commercial goods or agricultural commodities.

2. The nature of the Fiduciary Guarantee deed as Accessory Guarantee with Material Rights

As a consequence of the *accessoir* agreement, if the main agreement or main agreement is invalid or due to any reason it loses its validity or is declared invalid due to the end of the main agreement, then legally the fiduciary agreement as an *accessoir* agreement also becomes void or also ends.¹⁶ After receiving the request for security of execution, the Regional Police Chief forwarded the request to the head of the Regional Police's legal section to carry out research on the completeness and validity of the equipment. After carrying out orders from the Regional Police Chief, the Kabidkum Polda is obliged to provide written information to the Regional Police Chief regarding whether or not the requirements for the request for execution security have been fulfilled. As an *accessoir* agreement, a fiduciary guarantee deed agreement has the following characteristics: a. The nature of dependence on the main agreement. b. Its validity is solely determined by whether the main agreement is valid or not. c. As a conditional agreement, it can only be implemented if the conditions required in the main agreement have been fulfilled.¹⁷

2. CRIMINAL RESPONSIBILITY AGAINST PEOPLE WHO TRANSFER, PURCHASE, OR RENT ITEMS THAT ARE FIDUCIARY OBJECTS WITHOUT WRITTEN PERMISSION FROM THE FIDUCIARY RECIPIENT

A. Criminal Liability of Suspected Perpetrators of Crimes Fiduciary Guarantee

This problem is very basic and very important, considering that many parties intentionally or through negligence do not register fiduciary guarantees at the Fiduciary Registration Office. It is said to be very basic because the Fiduciary Recipient is in a very weak position, if the burden on the object of the fiduciary guarantee and the registration of the fiduciary guarantee is not carried out by the Notary due to negligence, or there is cooperation between the Fiduciary Giver and the Fiduciary Recipient and the Notary not to burden the object of the fiduciary guarantee and register the fiduciary guarantee.

In the case file that I examined, case file Number B/146/11/2013/Satreskrim. According to the testimony of the first witness (Kristiyantarso) and the second witness (Slamet Suwarsono), the suspect (Agusry Mahendra) rented it out without PT's permission. Astra Sedaya Finance, goods in the form of 1 unit of Toyota Avanza in Black Metallic with License Number L-1796-PI, year of manufacture 2010, Chassis Number: MHFM1CA4JAK033691 and Engine Number: DBN3758. On Friday 21 January 2011 on Jl. Rajawali No.98 Surabaya, which is the car rental business owned by the suspect (Agusry Mahendra). The third witness (Bungaran Siahaan) confirmed that the suspect (Agusry Mahendra) rented it out without PT's permission. Astra Sedaya Finance. The object of the fiduciary guarantee is 1 unit of Toyota Avanza, Metallic Black, Pol No.: L-1796-PI, No. Engine: MHFM1CA4JAK033691, No. Order: DBN3758 for rent at the car rental office located at Jl. Rajawali No.68 Surabaya since November 2010. From the testimony of the fourth witness (Ade Prihandyah Cahyoko Alias Koko) around January 21 2011, Br. Feby Trianto came to Rent Car Angkasa Jl. Rajawali No.68 Surabaya intended to rent a car, then an agreed price was Rp. 250,000 per day for 10 days from 21 to 31 January 2011. The witness handed over 1 unit of a metallic black Toyota Avanza with license plate number L-1796-PI, chassis number: MHFM1CA4JAK033691, engine number: DBN3758. And according to the testimony of an expert witness (Sutrisno, SH., MH), with the registration of the object which is the object of fiduciary guarantee, ownership of the object which is the object of fiduciary guarantee has legally been transferred to PT. Astra Sedaya Finance is the recipient of the fiduciary, even though the object that is the fiduciary guarantee is controlled by the party giving the fiduciary (Agusry Mahendra). Because in this case the suspect is not legally the owner of the object that is the object of the fiduciary guarantee, but only controls it economically, this also violates the provisions of Article 36 of the Republic of Indonesia Law Number 42 of 1999 concerning Fiduciary Guarantees.

From this case, evidence was found that was confiscated from several parties.

1. Evidence that can be confiscated from the first witness (Kristiyantarso), is as follows: 1 copy of the PN legalized photocopy of Financing Agreement Letter with Fiduciary Guarantee dated April 6 2010; 1 photocopy of PN legalized Joint Statement Letter dated April 6 2010; 2 photocopies of PN legalized Power of Attorney dated April 6 2010; 3 bundles of legalized photocopies of PN Fiduciary Guarantee Certificate Number: W10-21876.AH.05.01.TH.2001/STD, dated 18 November 2010
2. Evidence that can be confiscated from the suspect (Agusry Mahendra), namely 3 pieces of note number 002456 Angkasa Rent a Car dated January 21 2011.

¹⁶ J. Satrio, *Hukum Jaminan Hak Jaminan Kebendaan Fidusia*, Citra Aditya Bhakti, Bandung, 2002, p. 87.

¹⁷ Oey Hoey Tiong, *Fidusia Sebagai Jaminan Unsur Unsur Perikatan*, Dahlia Indonesia, Jakarta, 1985, p. 120.

Criminal Liability Against Distracting Offenders Fiduciary Guarantee

According to the suspect's statement (Agusry Mahendra), around January 21 2011, at Rent Car Angkasa Jl. Rajawali No. 98 Surabaya, a person named Feby Trianto came with the intention of renting the suspect's car, then after agreeing on a price of Rp. 250,000 per day for the next 10 days from 21 to 31 January 2011. So the suspect handed over 1 unit of a metallic black Toyota Avanza car with plate number L-1796-PI to Feby Trianto. However, after the maturity date of January 31 2011 until now (February 18 2013) for 1 unit of 2010 black metallic Toyota Avanza brand car with License Number: L-1796-PI, Chassis Number: MHFMICA4JAK033691, Engine Number: DBN3758 which is rented by Feby Trianto was not returned, so the suspect reported it to the Surabaya Police for further legal proceedings, based on Case File Number B/146/II/2013/Satreskrim, p.13.

Based on the results of the examination of witnesses, experts, suspects and confiscated evidence, investigators are of the opinion that there is sufficient evidence against Agusry Mahendra that he is suspected of having deliberately committed a criminal act "who transfers, pawns, rents objects that are the object of fiduciary guarantees as intended in article 23 paragraph (2) which is carried out without prior written consent from the fiduciary recipient, is punished by imprisonment with a maximum imprisonment of 2 years and a maximum fine of Rp. 50,000,000,-. Fiduciary givers are prohibited from transferring, pawning or renting to other parties objects that are collateral for fiduciary objects which cannot be inventory items, unless with prior written approval from the fiduciary recipient. as referred to in Article 36 in conjunction with Article 23 paragraph (2) Republic of Indonesia Law Number 42 of 1999 concerning Fiduciary Guarantees.¹⁸ Therefore, this law can provide legal certainty and justice, especially for parties who make credit agreements or binding fiduciary agreements or also for third parties when the fiduciary or debtor defaults on their debt. Several theories in this research include the agreement theory, because the Debtor or Fiduciary Giver and the Creditor or Fiduciary Recipient enter into a credit binding agreement or fiduciary guarantee binding before a Notary.

Fiduciary guarantee is an individual guarantee, where the Fiduciary Giver and Fiduciary Recipient trust each other, the Fiduciary Giver hands over ownership rights to the Fiduciary Recipient, but the Fiduciary Recipient does not directly own the object that is the fiduciary guarantee which is handed over by the Fiduciary Giver, so that fiduciary guarantee is a theory guarantee. In the discussion regarding fiduciary guarantees which are linked to the theory above, it is guided by a legal system. The legal system is the entire legal order that is supported by a number of principles.¹⁹ In law number 42 of 1999 concerning Fiduciary Guarantees, it regulates the registration of Fiduciary Guarantees in order to provide legal certainty to interested parties and registration of fiduciary guarantees gives the Fiduciary recipient preferential rights over other creditors. Because fiduciary guarantees give rights to the party giving the fiduciary based on trust, it is hoped that the registration system regulated in this law can provide guarantees to the party receiving the fiduciary and parties who have an interest in the object. Fiduciary guarantees can be given for one or more units or types of objects, including receivables, either existing at the time the guarantee is given or acquired later. The imposition of security for goods or receivables obtained later as intended in paragraph (1) does not need to be carried out with a separate security agreement. Fiduciary Guarantee is removed due to the following reasons: a. Elimination of debt guaranteed by fiduciary. b. Release of rights to Fiduciary Guarantee by Fiduciary Recipient. c. Destruction of objects that are the object of Fiduciary Guarantee.

B. Legal Protection When Default Occurs

Based on the previous discussion and description, the question arises whether Law No. 42 of 1999 concerning fiduciary guarantees can provide legal protection in the event of a default by the fiduciary debtor? The answer to this question can be explained as follows.

- a. That the registration of security bonds for unregistered objects is actually not enough to protect the interests of creditors towards third parties.
- b. In the case where collateral is an inventory item, the position of the creditor is very weak because the collateral, whether the quantity, movement or position or whereabouts of the item, is difficult to detect so that compliance with the principle of publicity is only a decorative fulfillment of a legal rule. Specifically regarding fiduciary goods objects in the form of inventory, metered commodities have been regulated in Law No. 9 of 2006 concerning the warehouse receipt system.
- c. From a practical perspective, the registration system in Law No. 42 of 1999 concerning fiduciary guarantees is temporarily only useful for large creditors with collateral that has a large value. It is very difficult for debtors from the small and medium-sized sectors (SMEs) to take advantage of the existence of this law for the development of their businesses.
- d. The existence of a fiduciary registration office (KPF) in the provincial capital makes it very difficult to carry out fiduciary registration, because not all provinces have adequate transportation facilities so it does not provide benefits in terms of practicality.

¹⁸ Widjaya, Gunawan dan Ahmad Yani, *Jaminan Fidusia*, Raja Grafindo Persada, Jakarta, 2001, p. 130-132.

¹⁹ Munir Fuady, *Jaminan Fidusia*, Cetakan Pertama, Citra Angkasa, Jakarta, 1991, p. 46.

Criminal Liability Against Distracting Offenders Fiduciary Guarantee

e. Fiduciary guarantee deeds which have a small value are used by lower middle class entrepreneurs and must be utilized or registered. In reality, most of them are not registered with the fiduciary registration office (KPF).²⁰

This description is evidence of poisoning in the regulation of norms in Law No. 42 of 1999 concerning fiduciary guarantees which are not based on legal principles which are the basis for the formation of laws to support the existence of these norms in statutory regulations. One of the reasons why many regulations that have been made recently, including Law No. 42 of 1999 concerning fiduciary guarantees, have defects in forming norms is because these regulations were made hastily and did not undergo adequate academic study. As explained in previous chapters, Law No. 42 of 1999 concerning Fiduciary Guarantees. It can be said that fiduciary guarantees only fulfill the juridical aspect since it was promulgated on September 30 1999 and included in State Institution of 1999 Number 168.

C. Legal Basis for the Executorial Power of the Fiduciary Guarantee Certificate

Nowadays, banking institutions in the process of providing credit facilities are mostly carried out with private credit agreements and then delegated or registered by notaries in accordance with the provisions of Article 1338 paragraph (1) BW., which states that: "All agreements made legally are valid as law. for those who make it" except in the case of binding collateral, the services of a notary are required. Law No. 42 of 1999 concerning Fiduciary Guarantees in its implementation will contain deeds and registration letters which have definite legal force and executorial force such as a judge's decision. This can be seen from the making of debt acknowledgment deeds, fiduciary guarantee deeds, registration of fiduciary deeds, and the issuance of fiduciary certificates. According to the law, these four legal acts contain the power of execution, this is very excessive legal protection. It is a legal principle that if a law through its provisions is intended to protect a certain party or person, then the law gives a certain right to the person or party concerned in such an event, then it is up to the party or person who wants to be protected whether or not to use that right. . However, the law may stipulate that if the rights given to him are not used, then he cannot enjoy the benefits that the law intends to provide by granting these rights. The regulations in articles 11 to 18 of Law No. 42 of 1999 concerning fiduciary guarantees are clearly intended to provide legal protection to parties receiving fiduciaries. Therefore, the law places an obligation on fiduciary recipients to register a fiduciary guarantee deed (AJF).²¹

In practice, most fiduciary recipients cannot register a fiduciary guarantee deed (AJF) for the following reasons:²² a. The nominal guarantee is small, even though the registration fee is quite large, and therefore it is not in accordance with the principle of benefit. b. Procedures and processes take longer, and this is closely related to bureaucracy and location. Failure to register a fiduciary guarantee deed means that it has no executorial power and the criminal element is lost. The law was clearly created to create justice and prosperity through legal order and certainty with simple implementation and based on low costs.

V. CLOSING

A. Conclusion

Based on the conclusions put forward by the author, the author provides several conclusions including:

1. Fiduciary guarantee is an individual guarantee, where the Fiduciary Giver and Fiduciary Recipient trust each other, the Fiduciary Giver hands over ownership rights to the Fiduciary Recipient, but the Fiduciary Recipient does not directly own the object that is the fiduciary guarantee which is handed over by the Fiduciary Giver, so that the fiduciary guarantee is a collateral theory. In its regulation, fiduciary guarantees are explained in Law Number 42 of 1999 concerning Fiduciary Guarantees, in which each article clearly explains the rules or meanings relating to fiduciary guarantees themselves. Fiduciary guarantees can be given to the attorney or representative of the Fiduciary recipient, based on Article 8 of Law Number 42 of 1999 concerning Fiduciary Guarantees. The procedures and conditions for issuing a fiduciary guarantee certificate are as regulated in PP No. 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making a Fiduciary Guarantee Deed.
2. Based on the results of the examination of witnesses, experts, suspects and confiscated evidence, the investigator is of the opinion that Agusry Mahendra has sufficient evidence to be suspected of having deliberately committed a criminal act "The transfer, pawning, rental of objects which are the object of fiduciary security as stated in as intended in article 23 paragraph (2) which is carried out without prior written approval from the fiduciary recipient, shall be punished by imprisonment with a maximum imprisonment of 2 years and a maximum fine of Rp. 50,000,000,-. Fiduciary givers are prohibited from transferring, pawning or renting to other parties objects that are collateral for fiduciary objects which cannot be inventory items, unless with prior written approval from the fiduciary recipient. as referred to in Article 36 in conjunction with Article 23 paragraph (2) of Republic of Indonesia Law Number 42 of 1999 concerning Fiduciary

²⁰ Gunawan Widjaya dan Ahmad Yani, *Jaminan Fidusia*, Raja Grafindo Persada, Jakarta, 2001, p. 130-132.

²¹ Andi Prajitno, *Hukum Fidusia*, Cetakan Pertama, Bayu Media Publishing, Malang, 2009, p. 165.

²² *Ibid.*

Criminal Liability Against Distracting Offenders Fiduciary Guarantee

Guarantees. This is intended as an effort to provide legal certainty regarding fiduciary guarantees. In the process of providing credit facilities, banking institutions mostly carry out private credit agreements and then delegate or register them by notaries in accordance with the provisions of Article 1338 paragraph (1) B.W, which states that: "All agreements made legally apply as law for them. who made it" except in the case of binding a guarantee, the services of a notary are required. Law No. 42 of 1999 concerning Fiduciary Guarantees in its implementation will contain deeds and registration letters which have definite legal force and executorial force such as a judge's decision.

B. Suggestions

Based on the conclusions put forward by the author, the author provides several suggestions, including:

1. In order to provide legal certainty in guarantee law, it is felt that it is very necessary to create regulations that do not cause conflicts between regulations regarding the object of guarantee so as not to create gaps in legal uncertainty, especially in the guarantee legal system. In order to overcome juridical problems regarding the implementation of Law Number 42 of 1999 concerning Fiduciary Guarantees, it is recommended that this law be socialized. Infrastructure and human resources must be prepared steadily.
2. It is necessary to establish or create an institution or agency that supervises and places information on Fiduciary Guarantee goods, for example appointing a trade inspector, along with the rules for the relationship between these institutions in the form of government regulations. Fiduciary providers who default are punished in the form of forced fines or mandatory social work, imprisonment, and announced in print and television media in order to minimize and prevent debtors who do not have good intentions, abuse loopholes and regulatory weaknesses in Law Number 42 of 1999 concerning Fiduciary Guarantee, as well as educating the business community to be honest, obedient and aware of the law.

REFERENCES

- 1) Undang-Undang Dasar Republik Indonesia Tahun 1945.
- 2) *Burgerlijk Wetboek*.
- 3) Reglemen Indonesia yang Diperbarui (RIB).
- 4) Undang-undang No.42 Tahun 1999 tentang Jaminan Fidusia.
- 5) Keputusan Presiden No.139 Tahun 2000 tentang Pembentukan Kantor Pendaftaran Fidusia Di Setiap Ibukota Provinsi Di Wilayah Negara Republik Indonesia.
- 6) Keputusan Menteri Kehakiman dan Hak Asasi Manusia RI No.M.01-UM.01.06 Tahun 2000 tentang Bentuk Formulir dan Tata Cara Pendaftaran Jaminan Fidusia.
- 7) Peraturan Kapolri Nomor 8 Tahun 2011 tentang Pengamanan Eksekusi Jaminan Fidusia.
- 8) Andi Prajitno, *Hukum Fidusia*, Cetakan Pertama, Bayu Media Publishing, Malang, 2009.
- 9) Gunawan Widjaja dan Ahmad Yani, *Jaminan Fidusia*, Raja Grafindo Persada, Jakarta, 2001.
- 10) J. Satrio, *Hukum Jaminan Hak Jaminan Kebendaan Fidusia*, Citra Aditya Bhakti, Bandung, 2002.
- 11) Munir Fuady, *Jaminan Fidusia*, Cetakan Pertama, Citra Angkasa, Jakarta, 1991.
- 12) Oey Hoey Tiong, *Fidusia Sebagai Jaminan Unsur Unsur Perikatan*, Dahlia Indonesia, Jakarta, 1985.
- 13) Peter Machmud Marzuki, *Penelitian Hukum*, Prenada Media, Jakarta, 2005.
- 14) Subekti, *Hukum Perjanjian*, Cetakan Ke-12, PT. Intermasa, Jakarta, 1990.
- 15) Tan Kamelo, *Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan*, Cetakan Kedua, Alumni, Bandung, 2006.
- 16) Widjaya, Gunawan dan Ahmad Yani, *Jaminan Fidusia*, Raja Grafindo Persada, Jakarta, 2001.
- 17) www.sultanahmadjambe.blogspot.com/masalahhukumjaminanfidusiadanpertanggungjawabanparapihak, *Masalah Hukum Jaminan Fidusia dan Pertanggung Jawaban Para Pihak*, diunduh pada 19 Juli 2023 pukul 13.00 wib.
- 18) www.sultanahmadjambe.blogspot.com/masalahhukumjaminanfidusiadanpertanggungjawabanparapihak, *Masalah hukum jaminan fidusia dan pertanggung jawaban para pihak*, diunduh pada 9 Januari 2024 pukul 13.00 wib



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.