

## ABSTRACT

Fiduciary Institution is originally based on Jurisprudence, applicable only to movable objects, and a deviation from mortgage, which requires the submission of good as security ( *inbezistelling* ). Fiduciary derives from Roman law known as *Fiducia cum Creditore Contracta*. In Indonesian law Fiduciary Institution is considered appropriate to accommodate the practices of material security binding. This can be seen from the regulative development of Fiduciary Institution, originally based on Jurisprudence in Netherlands popularly known as *Bierbrouwerij Arrest*, and in Indonesia *Arrest Bataafse Petroleum Maatschappij* ( *Hoggerechthoof*, August 18, 1932 ). In its later development the object which is formerly only movable objects now include immovable objects ( *land and building* ). This provision can be found in certain articles of law No. 4 of 1992 regarding housing and settlement. Banking sector and economic players need simple, easy and safe security binding. The lawmaker respond this need by issuing law No. 42 of 1999 regarding Fiduciary, which is effective as of September 30, 2000. The positive and negative sides of the Fiduciary Law are discussed greatly by many banking professionals, notaries and legal practitioners. Article 1 point 2 of the Fiduciary Law provides that fiduciary is defined as security right over movable object, both tangible and intangible, and immovable object particularly building which cannot be put as security as referred to in Law No. 4 of 1996 regarding security right under the control of Fiducisry Provider, as collateral for settlement of certain debt which gives preferential right to fiduciary receiver than other creditors. Fiduciary Certificate has the same executorial force as court judgment with permanent legal force. Therefore, based on this executorial title Fiduciary Receiver can directly carries out execution through public auction on a security object without a court proceeding. The Fiduciary Law requires fiduciary provider to submit fiduciary object for the execution of fiduciary security. In the event Fiduciary Provider does not submit fiduciary object at the time of execution, fiduciary receiver is entitled to take fiduciary object and if required to request help from the relevant authority.