

# The Existence of Stage House as Fiduciary Guarantee: Perspective of Horizontal Separation Principle

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## Abstract

In principle, in horizontal separation principle, objects as a unity with land according to the law is not a part of the concerned land. Therefore, every act the law of the rights of land by itself includes such objects. This research is a normative research in supported by socio-legal research. Determination of the locus of research is arranged according to sampling unit in ordering that seen to represent the sample in Sulawesi South and West Sulawesi, Indonesia. The results show that the stage house as objects of fiduciary guarantee because have a function as owner-asset; it has economic-value that can be assessed with money, so that a house can be used as debt collateral. If that be used as debt collateral is house not along with the right to the land, then its guarantee institution is fiduciary. House that be used as debt collateral with burdened fiduciary guarantee is owned-house not rented. The horizontal separation principle can be applied to fiduciary guarantee of stage house with the mechanism of fiduciary guarantee is house by the agreement of debt receivables between home-owners as a debtor with the other party (Bank) as a creditor, the deed the imposition of fiduciary made by the notary, and registration of fiduciary guarantee to fiduciary registry office. As a sign of evidence of fiduciary guarantee is published fiduciary guarantee certificates by fiduciary registry office.

**Keywords:** Fiduciary; Guarantee; Horizontal Separation Principle; Stage House

## 1. Introduction

Every human is confronted with 3 (three) basic needs, namely food, clothing, and shelter. As one of the basic human needs, ideally the shelters (house) have to be owned by each family, inhabit decent house in healthy environment, safe, and harmony. House serves as assets for the owner; it means has economic value for owners. It can be used as collateral in debt accounts.<sup>1</sup>

Normatively, in the explanation of Act No. 1 of 2011 regarding Housing and Settlement Area, stated that as part of the international community which also signed the declaration of *Rio de Janeiro*, Indonesia always been active in the activities initiated by *the United Nations Center for Human Settlements*. Soul and spirit as contained in the agenda 21 and the Declaration of Habitat II is that the house is a basic human need and be right for everyone to occupy adequate and affordable shelter for all. In the agenda 21 emphasized the importance of the house as human rights. It complies also with the spirit of 1945 Constitution of the Republic of Indonesia.<sup>2</sup>

By the enactment of UUPA happen fundamental amendments in the agrarian law in Indonesia, especially the law in the land sector and called as land law or agrarian law. The amendment is fundamental because both on the structure of the law device, its underlying conception, or content as stated that UUPA must be in accordance with the Indonesian people's interest and meet the necessity as the demand of age.<sup>3</sup>

In principle, in horizontal separation principle, objects as a unity with land according to the law is not a part of the concerned land. Therefore, every act the law of the rights of land by itself includes such objects. This horizontal separation principle is the opposite of attachment principle as adopted in the Cook of Civil Law (hereinafter abbreviated 'KUHPperdata'). The principle of attachment (*vertical accessie beginsel*) is a principle which states all what is attached to an object or which is one part with the material and it is considered to be one with the object. In the principle that also known as *vertical e accessie beginsel* is no separation between land-ownership rights and objects-ownership or existing buildings on it. By embrace the principle of attachment (*accessie vertical*) in KUHPperdata, then land would constitute main objects while other objects and everything is attached to it is an integral part of main object. If someone will buy a plot of land and on the land stand a building, then the selling of land by itself should include the building.<sup>4</sup>

<sup>1</sup> Urip Santoso. 2014. *Hukum Perumahan*. Kencana Prenadamedia Group. Jakarta. Page 272

<sup>2</sup> Bola, Mustafa. (2017). Legal Standing of Customary Land in Indonesia: A Comparative Study of Land Administration Systems. *Hasanuddin Law Review*, 3(2), 175-190. doi:<http://dx.doi.org/10.20956/halrev.v3i2.1132>

<sup>3</sup> Boedi Harsono, 2008, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya*. Djambatan. Jakarta, Page 1.

<sup>4</sup> Djuhaenda Hasan. 2011, *Lembaga Jaminan Kebendaan Bagi Tanah dan Benda Lain Yang Melekat Pada Tanah Dalam*

Lately, as for the development of banking law in Indonesia already progress. The role of banking have a function as agent of development, intended to support the implementation of the national development and to provide benefits for whole people and in order to improve the economic growth, even distribution and its yield, so it creates a national stability leading to the increase in the welfare of the people. In reducing the risk of loss in this credit lender, it needed the guarantee (collateral) in order to provide beliefs on the ability of the debtor to repay debts as in the agreement.

Binding of building guarantee in fiduciary as in principle that adopted by the law of national land is horizontal separation principle, based on UUHT, as expressed in the general explanation in figure 6 paragraph 1, that the law of national land based on the customary law, using a horizontal separation principle. Related to that, then in relation to the buildings, plants, and the results of the work, expressed that the objects which is unity with land according to the law is not a part of the concerned land. Therefore, every act the law of the rights of land not by itself includes such objects.

As described above, become a question that how the position of the building of stage houses that built on land of other rights? How the stage house is reviewed from the perspective of customary law and civil law, in which in the law of collateral is still using the differentiation of objects according to civil law. In addition, need to be questioned that the use of horizontal separation principle in UUPA, which then underlie the provisions of UUHT and UUJF, what can be applied to banking credit guarantee on house including stage house?

Generally, rural communities have stage house with economic high value, and in principle can be used as collateral debt. But in fact that the stage house is allegedly never be used as collateral by banks. This is because there are generally most rural communities that have a stage house, both constructed on the land right or the stage houses that constructed on land right of other. It is considered to be at risk for the banking so it not used as collateral. This is a noteworthy in relation to the horizontal separation principle.

Based on phenomenon that has been described above, then this research will not discuss comprehensively these problems, but will restrict on measures to search the existence of the stage house as fiduciary collateral in the perspective of horizontal separation principle, which recently the stage house cannot verified by the credit institutions as credit guarantee.

## 2. Method of the Research

This research is a normative research in supported by socio-legal research. Determination of the locus of research is arranged according to sampling unit in ordering that seen to represent the sample in Sulawesi South and West Sulawesi, Indonesia. Populations of research were all banking including Islamic Banking. Sample of research at Indonesia People Bank branch Jenepono, Sulselra Bank branch Jenepono, Sulselra Bank branch Barru, and Maybank Bank branch Mamuju, and the stage house owner community in these area. In this research we uses *non-random sampling* technique, it means that not all elected individuals to interviewed, but only the parties related to the problem studied.

## 3. Law Perspective of the Stage House as a Fiduciary Object

House is a building construction serves as a decent shelter, means of family development, a reflection of the dignity of occupants, and asset for owners. In addition to the house as a place to stay as well as owner-asset because it has economic value that can be assessed for money. Thus, a house by the owner can be used as debt collateral.<sup>1</sup>

Objects that can be used as guarantee object is qualified objects that has economic value and transferable.<sup>2</sup> Object (*zaak*) has broad sense as everything that can be owned or as a right of the people. In article 499 KUHPerdara give a sense of the objects that “material or object is each goods and each right that can be controlled by the property rights.” Hence, its scope is very large because the term of objects (*zaak*) in it there is a term of goods and the rights (*recht*). Goods have a sense is concrete (tangible) and it can be seen, palpable for example the book, the table and others, while the right refers to a sense of intangible objects for example, receivables such as receivables on name, intellectual property rights as copyright, brand right and patents.

Classification of objects within the framework of the legal system of objects in the institution of fiduciary guarantee was deemed necessary in order to provide legal certainty of the fiduciary guarantee object. From the classification of the object, according to the Author; the stage house can be categorized as unmovable objects for

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*Konsepsi Penerapan Asas Pemisahan Horizontal*. Nuansa Madani, Jakarta. Page. 53

<sup>1</sup> Urip Santoso. *Op.Cit.* Page 272

<sup>2</sup> Titik Triwulan Tutik. 2008. *Hukum Perdata dalam Sistem Hukum Nasional*. Jakarta. Kencana, Pages 141-142

purposes intended, because the new stage house can be used if it is attached to the permanent objects like soil. Stage house is not categorized as movable objects therefore if moved, and then at the time the moved house (lifted) cannot be used as a house or to do activities on it.

Based on this, according to the author that the stage house that categorized as unmovable objects for purposes intended it, it can be used as fiduciary object; based on the principle of horizontal separation of stage house not along with its land can be done deeds law a separate with fiduciary guarantee.<sup>1</sup> In addition to these reasons, according to the author that the stage house is not along with the land is not including the object rights of guarantee as specified in section 3 letters (a) UUJF.

In relation to the article 3 UUJF Rachmadi Usman,<sup>2</sup> argues that in translating and interpreting its understanding, would anyone who read the terms of this will feel a discrepancy in which the need for law to determine that the fiduciary law does not apply to the guarantee right, mortgage and pledge. If the parties selected other guarantee institution as mentioned in section 3 of fiduciary law, certainly it is not possible provisions of fiduciary law applied to the agreement which aims to burden objects with the guarantee right, mortgage and pledge. An excessive provision, because by itself provisions of the fiduciary law does not apply if objects that will be charged using guarantee institution of guarantee right, mortgage and pledge.

Adding that the fiduciary, although the object can be the same as the fiduciary, but the way of guarantee are different. On the pledge no submission property rights in the trust. In particular event will be applicable pledge or fiduciary provisions, depending on the parties' intentions at the time to close agreement assurance. If they had to choose a pledge, which will appear on the characteristics, then by itself could not applicable fiduciary provision.<sup>3</sup>

Different opinion as expressed by Handoko Priyo<sup>4</sup> that a sense of "could not be charged guarantee rights" in the intended article is not in a sense that the land owners do not want to burdened guarantee rights, but its sense is there is no laws that can be used to set the binding to the buildings standing on the land. One aspect of other judicial to note is about the provisions of the obligation to registering a building or an object to meet the principle of publicity, namely legal certainty to know who the owner of a building or objects. If in juridical, an obligation to register is attached to the buildings or the object, then there is no way other than burden building or objects with assurance institution of guarantee right.

As explained above, according to the author the stage house that categorized as unmovable objects for purposes intended, it can be used as fiduciary object, because based on the horizontal separation principle that the stage house not along with land can be done deeds law a separate with fiduciary guarantee.<sup>5</sup> In addition to these reasons, according to the author the stage house not along with the land is not the object of guarantee rights.

#### 4. Stage House in the Perspective of Customary Law

The position of house can be distinguished into "custom house" and "ordinary house." The construction of custom house or traditional house is a common property of the unity of relatives. Hadikusuma,<sup>6</sup> said that house in its form as a dwelling place or "store house" and not inheritance, but *suarang* property (search property) can be sold. Especially if the building of the house is located outside the village, in the abroad foreign, where the influence of customary is small.

From various properties as right object and obligations in the relationship of social and economic in customary law in the rural communities is the land and plants, animals and livestock, and the building and equipment. For building, all objects which is located on land or water, built by human to the needs of life. Like house building, shop, granary, home or custom hall, building for religious ceremonial places, such as the temple, churches, mosque, Buddhist temple and so on.

House building there is permanent and strong and inherent on land, it is made from stone or stage, could not be lifted, with flat shape on land, or stage-shaped as there are in Malays rural, and there is also a simple house and easy to be lifted and moved to another place as there are in java People rural. And also, there is a house located on the raft called "boat house" or "raft house" (*poton*) as there are in large river at the edges of the sea.

The division of objects in KUHP data is relatively more and detailed when compared with the division of

<sup>1</sup> See Article 15 paragraph (1) Act No. 4 of 1992

<sup>2</sup> Rachmadi Usman. 2009, *Hukum Jaminan Keperdataan*, Sinar Grafika, Jakarta. Page 178

<sup>3</sup> *Ibid*, compare to J. Satrio. 2002. *Hukum Jaminan Hak Jaminan Kebendaan Fidusia*. Citra Aditya Bakti. Bandung

<sup>4</sup> Trisadini Prasastinah Usanti. (2012). Lahirnya Hak Kebendaan. *Jurnal Perspektif*, Vol. 17(1), 44-53. Retrieved from: <http://jurnal-perspektif.org/index.php/perspektif/article/view/93>

<sup>5</sup> See Article 15 paragraph (1) Act No. 4 of 1992

<sup>6</sup> Hilman Hadikusuma, *Hukum Perekonomian Adat Indonesia*, Citra Aditya Bakti, Bandung, 2001, Page. 10-12

objects as in customary law that simple such as land and non-land objects. The division of objects in the customary law only share objects in 2 (two) are land and non-land objects, then in the context of customary law the stage house is categorized as non-land object. As non-land objects, then it should if the stage house can be used as credit guarantee object in banking. In line with the argument of John Rawls that in essence there are 2 justices namely formal and substantive justices where both have same importance. According to author, substantive justice should be achieved through procedural justice and also procedural justice should be formed in accordance with the goal of substantive justice.

As for legal theory that underlie this stage house is John Rawls' theory that outlines the theory of justice as *fairness* as follows: "I then present the main idea of justice as fairness, a theory of justice that generalizes and carries to a higher level of abstraction the traditional conception of the social contract." Then, Rawls continues, "the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantage from social cooperation" because "its effects are so profound and present from the start" since as a starting point. In concrete, the influence of "the basic structure of society" was great to be able to determine how the justice.<sup>1</sup>

An institutional in society can be understood as follow: *the first*, as an abstract thing is a form of behavior is manifested in a legal system; and *the second*, the realization of mind and deeds of certain people at the specific time and place on the formulation of behavior (act) that has been set in the rules. In other words, Rawls concluded that "the basic structure of the society" is a "public system of rules" that can be seen in 2 (two) forms "system of knowledge" (or set of public norms) and as a "system of action" (or set of institutions). Therefore, it can be argued, when "the basic structure of the society" is made up a just system of institution and a just system political constitution then justice as a fairness will can be achieved.<sup>2</sup>

Rawls also suggested that the term of formal justice replaced by the term justice as regularity. This term is considered to be more precise than "formal justice."<sup>3</sup> Rawls continues that formal justice can increase into substance justice (material), when formal justice is solely abiding to the legislation system, and then it was one aspect of any of the rule of law, a concept that will support and ensure legitimate expectation of the community for justice.

Rawls is one advocate of formal justice. Its consistency in put a law as the base of the implementation of individual rights and obligations in the social interaction can be a signal for this. Rawls believes that regulation-based justice, even in formal administrative though still important because basically it provides a minimum guarantee that everyone in similar case should be treated fairly. In short, formal justice demands minimum equality for all the community. Also, Rawls believes that the existence of a community greatly depending on the settings formal through the law and its support institutions.

If the rules and law is very important, then the consistency of the law enforcement in the implementation of the unfair rules and legal will be very helpful citizens to study protect from various bad consequences caused by unfair law.<sup>4</sup> Rawls see that although requires justice formal is could not fully and encourage the creation of a well-ordered society. Rawls believes that a concept of justice only acceptable in general, while formal justice tend forced unilaterally by the authorities. However, the importance of formal justice, Rawls is not wants to stop at this level.

By his emphasis so strong on the importance of provide equal opportunities for all parties, Rawls trying to justice not stuck in the extreme capitalism in one hand and socialism on the other hand. Justice must be understood as fairness, in the sense that not only those who have talent and better ability are entitled to enjoy various social benefits, but the advantage that should also opportunities for those less fortunate to improve the prospect of their life.

In relation to it, moral accountability "excess" of them are fortunate should be placed on "interest frame" of their group are less fortunate. The different principle do not require equal benefits for everyone, but the reciprocal benefits, for example a skilled worker is more appreciated compared with unskilled workers. Here, justice as fairness is very emphasizes the principle of reciprocity, but it does not mean "simply reciprocity," where the distribution of wealth is done without see objective differences among community members.

In this context, the author is consentient with a view of John Rawls that essentially there are two a justice formal and substantive justice, where both have equal importance. According to author substantive justice should be achieved through procedural justice and also procedural justice should be formed in accordance with the goal of

<sup>1</sup> John Rawls. 1999. *A Theory of Justice (Revised Edition)*. The Belknap Press of Harvars University Press: Cambridge, Page 73-74

<sup>2</sup> *Ibid*

<sup>3</sup> *Ibid*.Page.76.

<sup>4</sup> Amstrong Sembiring. *Energi Keadilan*. Masyita Pustaka Jaya. Medan, 2009. Page. 32.

substantive justice. According to author, substantive justice ideals that guarantee substance in the form of guarantee right it is intended for those who have the property rights, building right and land right for business, and those who have the land use rights on the state land, which they generally considered the upper and middle class, which can use the credit facilities by using the guarantee right. In relation to procedural justice, it is needed a rules that supports fiduciary of house including stage house which not along with the right to the land. And also house with its land, where the land not including the category of guarantee right object.

##### 5. Implementation of horizontal separation principle to make stage house as fiduciary guarantee

Since 30 September 1999, applied Act No. 42 of 1999 regarding fiduciary guarantee. Fiduciary guarantee is collateral right for movable objects both tangible and intangible and unmovable objects especially the building that cannot be charged with guarantee rights. During this, other guarantee right that widely used today is pledge and fiduciary guarantee. It is very influential, and each other contrary, it is known as “vertical attachment principle (*verticale accessie beginsel*) and “horizontal separation principle (*horizontale scheideng beginsel*).

The vertical attachment principle is a principle based on land ownership and any objects attached to it as a whole plugged into one.<sup>1</sup> While, the horizontal separation principle is precisely separate the land of all objects attached to the land. An important aspect in the land law is the relationship between land and other objects that attached to it. Legal certainty of legal position of the objects attached to the land is very important because it has a broad influence of all law relationship concerning the land and objects attached to it.

Objects that can be charged with fiduciary guarantee is objects which is everything is owned and transferred, both tangible and intangible, registered or unregistered, movable or unmovable that cannot be charged guarantee rights or mortgage. As known, in terms of object guarantee, an engagement it can cause a relative-rights (*ius ad rem*), here people who have the right obtain right protection but only dealing with a specific person bound in the engagement. Unlike to the object right absolutely (*ius in rem*), where the owner got a disturbance protection from anyone, because the object right is absolute power on objects.

In UUPA, as in articles and its elucidation, there is no formulation that explicitly determines that the embracing of horizontal separation principle, but due to customary law adheres to the horizontal separation principle, then logically it is acceptable that UUPA recognize the principle and certainly it also apply for guarantee right to the land. Thus, UUPA is only regulate the problem of land as guarantee object, while the issue of objects not land must be placed in separate issue in the field of guarantee legal.

Land and objects not land are two different object each other because each have separate character. UUPA is not regulates objects not land as guarantee object or building status/house on the land and as a unity with the land.<sup>2</sup> In fact that UUPA and implementing regulations is not associate the land and other object attached to the land, which regulate building/house or plants status.<sup>3</sup>

Such division of objects means national object legal have absorbed as a base is customary law and assimilated with the division of objects in KUHPerdara system as well as the division of objects in Anglo Saxon legal system. Hence, the central of the object of law in object law is land as also known as object legal system universally. By a distinct framework in the division of the object is very influence and determines the legal institutions of material guarantee in general and fiduciary guarantee in particular.

The horizontal separation principle is contained in article 44 paragraph (1) UUPA state: a person or legal object has a right for land rent, if he has the right to use other land for building purposes, by paying to the owner, a number of money for rent. The implementation of horizontal separation principle is rent right to the building, that a person or entity hire other land property rights is empty or no building by paying a number of money as rents are the magnitude of set on the basis of the agreement, to a certain period, and the renter has authority to use the building in a certain period as agreed by both parties.

In the right of rent for building, there is separation horizontally between the land ownership and existing buildings on it, as property right of landowners, while the renter is owned by and renter. Land law recognizes 2 (two) kinds of the principle of land and giver influence in the form of authority and land ownership. First principle is known as attachment (*accessie*) principle which means the land is not only limited to the surface of

<sup>1</sup> Djuhaenda Hasan. (1996). *Lembaga Jaminan Kebendaan Bagi Tanah dan Benda Lain Yang Melekat pada Tanah Dalam Konsepsi Penerapan Asas Pemisahan Horisontal*. Bandung: Cintra Aditya Bakti, pp. 23-24

<sup>2</sup> Sri Soedewi Masjchun Sofyan, 1980. *Hukum Jaminan di Indoensia pokok-pokok Hukum Jaminan dan jamiian Perorangan*. Yogyakarta : Liberty, Page 16

<sup>3</sup> Djuhaenda Hasan, “Hak Tanggungan Implikasinya terhadap Benda-benda yang berkaitan demgan Tanah”, *Jurnal Hukum Bisnis*. vol 9. (1), Page 47

the earth but what are under and on because all is unity attached and cannot be separated.<sup>1</sup> The owner of land rights obtain authority in line with the understanding the authority and land ownership rights is not only limited to the surface of the land only but also contained under it and also attached and stand on it.

The second principle is horizontal separation principle. In this principle, the sense of land is only include land surface only so what is attached or standing on it and what contained underneath not the unity of it forms a separate.<sup>2</sup> The holder of land rights only master limited to the surface of the land only as a building or any inherent in the land of the different right ownership and it is open the possibility that the holder of the right to objects inherent is different from that holds the right to the land.

It is to be different if refer to the land law as contained in UUPA that applicable is horizontal separation principle, as separation between the land and everything on it. In this case is true that the party who growing plants or builds a building is the owner of the plant or the building. By horizontal separation principle that someone who have the land is not necessarily have everything on the land. Land owners should not be assumed that the plant or existing buildings on it by itself belongs to the owner of the land.

The history of land and the right to everything on it, not regardless setting the law of land before 1960, Indonesia has dualism in the field of the law of land for inheritance of Netherland colonial period. At that time, there is a division of group based on the division of class of population. The horizontal separation principle as adopted by the customary law is later adopted in the law of land in Indonesia and embodied in the formation of Act Number 5 of 1960 on the Principal Regulation of Agrarian and then referred to as the principal law of agrarian.<sup>3</sup>

A principle in the law of land has amended in its regulation, after the birth of UUPA especially on the vertical attachment principle and horizontal separation principle. The vertical attachment principle, which regulates that any ownership of land is automatically prove also ownership over everything is located on it, such as the building, trees and so on. This principle changes into horizontal separation as a principle to separate the ownership of land with everything on it, thus evidence of land rights is not necessarily be ownership evidence everything on it.

Also, the establishment of UUPA is an unification in the field of agrarian law that finalize dualism in the law of land/agrarian by establish customary law as a basis of the establishment of the law of agraria in Indonesia as contained in chapter 5 of UUPA that reads: the law of agrarian applicable on earth, water, and space is customary law along not conflict with the interests of the national and State, which is based on the unitary of nations, with Indonesia socialism as well as with regulations listed in these laws and regulations and other legislation, everything with regard to the elements of religious law.

However, customary law is selected as the basis of the setting of agrarian law in Indonesia because it is an original law from Indonesian people that living and formed from the development of the Indonesia native people. Pursuant to article 5 UUPA above, it can be known that customary law applicable in UUPA is not customary law purely but customary law that should not be contrary to the national interest as listed in UUPA and other legislation.

The horizontal separation principle is principles that divide, limit, and separate the possession of a plot of land of everything with regard to the land horizontally.<sup>4</sup> The implementation of the horizontal separation principle in agrarian law of Indonesia give separation between the land ownership to what inherent under and located on it, just directly related to the land use only that can be used. This case limiting the authority of land-owner in the use of land owned, because the use of everything as contained in the land and attached on it should be able to prove that it and only a related to the use of the land.

It is consistent to the context of the enforcement of criminal law against destruction crime of grow planting that can be attributed to the right ownership of land and everything on it. Supreme Court<sup>5</sup> ruled that in the case of the destruction of plant, based on customary law not necessarily that land owner by itself to be the owner of the plants on it, there are times the owner of land is other else than the owner of plants on the land.

As a result, according to the authors, a discussion about the fiduciary on stage house is related to the legal theory of development. Due to the economic development in Indonesia requires loan and guarantee, especially fiduciary guarantee. It is in line with the legal theory of development as argued by Kusumaatmadja,<sup>6</sup> that the function of

<sup>1</sup> Boedi Harsono, *Hukum Agraria Indonesia*, Jakarta, Djambatan, 2003, Page.20

<sup>2</sup> *Ibid*

<sup>3</sup> Maria S.W. Sumardjono, *Kebijakan Pertanahan (Antara Regulasi dan Implementasi)*, Penerbit Buku Kompas, Jakarta, Page. 28

<sup>4</sup> Boedi Harsono, *Hukum Agraria Di Indonesia; Sejarah Dan Pembentukan Undang-Undang Pokok Agraria; Isi Dan Pelaksanaannya*, Djembatan, Jakarta, 1997 Page.50

<sup>5</sup> Delik-Delik Tertentu di Dalam KUHP, Sinar Grafika, Jakarta, 2014, Page. 197

<sup>6</sup> Mohtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan:Kumpulan Karya Tulis*, Alumni, Jakarta, 2006,

law in the community as a means for the development and renewal of the community. However, in line with the legal function want to analyze about what is the purpose of the law. Main objective of the law if will be reduced at one thing only is order, in addition other objective is the achievement of different justice and its size according to the public and its age.

## 6. Conclusion

Stage house as objects of fiduciary guarantee because have a function as owner-asset; it has economic-value that can be assessed with money, so that a house can be used as debt collateral. If that be used as debt collateral is house not along with the right to the land, then its guarantee institution is fiduciary. House that be used as debt collateral with burdened fiduciary guarantee is owned-house not rented. The horizontal separation principle can be applied to fiduciary guarantee of stage house with the mechanism of fiduciary guarantee is house by the agreement of debt receivables between home-owners as a debtor with the other party (Bank) as a creditor, the deed the imposition of fiduciary made by the notary, and registration of fiduciary guarantee to fiduciary registry office. As a sign of evidence of fiduciary guarantee is published fiduciary guarantee certificates by fiduciary registry office.

As a result, the research recommends to the property right of house can be used as debt collateral with the imposition of fiduciary guarantee, the local government must implement Act No. 28 of 2002 in conjunction with the Government Regulation No. 36 of 2005 to issue local regulations that regulates a sign of evidence of building ownership.

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