

THE DEVELOPMENT OF PRIVATE INTERNATIONAL LAW: A NEW CONCEPT OF MOBILE EQUIPMENT UNDER THE CAPE TOWN CONVENTION 2001

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ABSTRACT

Private International Law is one of the subsidiaries in law subject which keep developing continuously, simultaneously with its international commercial transaction such as the applied law of the Mobile Equipment. Cape Town Convention 2001 as the legal instruments resulted from the International Institute for the Unification of Private Law (UNIDROIT) regulates the mentioned mobile equipment includes regulation concerned about aircraft. The role of UNIDROIT itself in regulating the convention lays as an international institution with a purpose to harmonize and unify private international law, stipulating progressive development in a way on holding initiations for international convention arrangement. Aircraft as one of the related objects in the convention categorized as a Mobile Equipment as it has fulfilled several characteristics provided by the convention. Aircraft's ability to be able in one jurisdiction and also another's, arising interest from the international society to make a new legal concept, in a matter to provide protection for whoever has part of it including the funder of aircraft-acquirement. This article would have further elaboration and discussion concerning scopes of Cape Town Convention 2001 which also in its way comprehend the stated development of Private International Law and also embodied with its international commercial transaction scope. In this Article, the discussion will also review the implementation of one of the convention's parties, Indonesia in also comparing the implementation to several other parties, in particular to discuss the development of mobile equipment under private international law.

Keyword: Development, Private International Law, Mobile Equipment.

INTRODUCTION

Lack of uniformity on international law's implementation shall also become a pitfall for an international commercial transaction. The impediment happens generally caused by the pluralism of regulation among national laws, such as regulations concerned about the mobile equipment. Furthermore, when it comes to the needs of mobile equipment's legal protection from whom it deserves, it would hard to be provided arising from the mentioned problem. The impediment is also found in many international commercial transactions particularly related to the security interest in cross border transactions by UNIDROIT (Lorne, 2004).

The International Institute for the Unification of Private Law (UNIDROIT) is an international organization actively taking roles in conducting studies for modernization, harmonization, and coordination in the field of Private International Law. When the League of

Nations was dissolved, UNIDROIT has also experienced a rearrangement in 1940 based on a multilateral agreement namely the UNIDROIT Statute. Parties of UNIDROIT are limited to the ratifying state of the Statute. Indonesia has ratified the UNIDROIT statute through the enactment of the President Regulation No 59 of 2008 concerning the Ratification of the Statute of the International Institute for the Unification of Private Law (Huala, 2009).

Private International Law has encountered significant development, particularly for the commercial transaction. Responding to the explained above, harmonization in the field is notably necessary to prepare regulations over trading development in practical aspects¹ (Danrivanto, 2014) Harmonization in the commercial transaction should consider that possibility of impediment over domestic laws is occurring as of in practice of trade and commerce including collateral insurance in the aviation industry.

Aircraft is one of transportation mode considered as high-value equipment hence, the procurement or purchase over aircraft needs the role from an institution or other legal subjects. The lessor is who can fund an aircraft procurement formed in leasing to purchase the aircraft. The funded aircraft will further be operated in the jurisdiction of the lessee's state with certain interest attached thereto. In another hand, aircraft's legal certainty is needed to be ensured whether or not the rights attached to it can still be recognized and protected in case of default, seeing the mobilization nature of the aircraft. Also to have put in mind, the national law among states is different, thereafter; there are needs for uniformity to give legal protection to the said lessor

In the scope of Private International Law, when occurred two or more different law be applicable in a certain condition, then it shall the Private International Law to determine the prevailing law to be applicated into the case. The UNIDROIT and The International Civil Aviation Organization (ICAO) had overcome the previous mentioned problems by arranged a legal institutions in a private law with respect to the security interest on mobile equipment, which is further become the object regulated under the Cape Town Convention on International Interest in Mobile Equipment and Protocol on International Interest in Mobile Equipment on Matters Specific to Aircraft Equipment 2001. By laying to the facts stated before, the Cape Town Convention 2001 is known as the most significant piece of Private International Law (Gopalan, 2003).

The Cape Town Convention has the aim to promote legal uniformity over the funding transaction related to movable properties (mobile equipment) universally. The ICAO along with UNIDROIT up to this date is cooperating to initiate the execution of the convention with 79 states and 1 regional economy organization has signed the convention (UNIDROIT, 2001; Prita, 2016). International organizations began in 1997 when ICAO joined the UNIDROIT to jointly formulate the convention. Previously, the convention was initiated in 1990 by the UNIDROIT. As a state actively participating in the aviation industries, Indonesia has also ratified the convention through President Regulation No. 8 of 2007².

As it is a legal subject (rechtsobject) an aircraft must be registered to a state subject to its national law. The aircraft which referred in this discussion are the ones used in commercial or civil aviation and not referred to the state aircraft neither for military purposes or other state aircraft³. Pursuant to the Chicago Convention 1944 on international civil aviation. The status of aircraft shall include with the status of the aircraft before the public or private law, arising from the legal conduct with certain legal subject/legal person (Mieke, 1989).

The Convention on the International Recognition of Rights in Aircraft or best known as the Geneva Convention 1948, signed in Geneva on 19th of June 1948 regulates the civil rights or

security interest rights attached to an aircraft. However, at the time the convention was arranged and signed the international society considered the civil rights or security interest of an aircraft were not yet needed and was not deemed as an urgent necessity, and also the aviation industry at that time was not yet valued as a developed industry which the aviation activities were only advanced in several states (Mieke, 1989). This particular occurrence was led the convention to the absence of ratification and implementation by several states at the time⁴ (Giulia, 2005)

The Cape Town Convention 2001 is a convention or an international agreement established with a new method of law's regulation arrangement. Several issues were found when comes to the arrangement of related multilateral international agreement related to the commercial transaction, typically regulations related to the commercial transaction were arranged with the nature of soft law which customarily more acceptable for states to regulate the related issues even the ones with the Private International Law. The Cape Town Convention 2001 is an international agreement arranged with the nature of hard law in its manner on regulating commercial transaction issues. The Convention was an umbrella convention auspicing several other protocols or another form of international agreements which are inseparable from the former⁵. With this method, it is expected that the convention is more acceptable among states which Mark J Sundahl, called it as "*The Cape Town Approach*" (Mark, 2006).

The Convention on International Interest of Mobile Equipment, granted as an umbrella convention which shall generally be subjected from the other provisions related to the internationally recognized security interest of movable properties (mobile equipment) which usually formed in separate protocols. The convention shall prevail and be subjected among regulations which regulate properties with fulfilled characteristics for such as airframe, mobile engines, helicopter, railway rolling stock⁶, space assets⁷, and also prevail to the other characteristics properties related to Mining, Agriculture, and Construction (presently still in on-going drafting process)⁸. Regulations on the airframe, engine, and helicopter, were specifically regulated on a separate protocol, namely the Aircraft Protocol or Protocol to the Convention on International Interest in Mobile Equipment on Matters Specific to Aircraft Equipment which has been ratified by 75 States and 1 regional economy organization (UNIDROIT, 2001).

In general, the purpose of the Cape Town Convention 2001 is to ease the funding related to the movable properties or to issue an efficient funding framework for mobile equipment which in a way arranged by UNIDROIT in order to harmonize the law of the security interest. This purpose arise when the Canadian Government sent a recommendation to the UNIDROIT with attached the report of which found that there are many approaches related to the recognition of the security interest of movable properties. And which also affect the legal status of the said legal object. At the time, the legal status of movable properties, particularly related to the legal subject shall subject to its national law. This kind of approach will be resulting in hardship for the creditor to obtain recognitions over the security interest and its execution. Particularly the transaction process, involved a foreign element involved, such as in having another legal subject in a matter of funding issue. This is kind of issue is exactly what were needs to be harmonized, in order to achieve harmony and also give legal protection to the deserved legal subject.

In terms of implementation and harmonization, the Private International Law is one of the laws which have been continuously developed with especially related to the implementation of the Cape Town Convention 2001. Otherwise, the understanding and further discussion on the development and implementation of the Private International Law particularly on the applicable law for the mobile equipment shall become very important. This Article is aiming to give early depiction on the scope of the Cape Town Convention 2001, as well as the aspects of the Private

International Law regulated thereto. This article shall also discuss how is Indonesia as one of the parties implement the convention on their domestic law and other related conduct.

The Scope of the Cape Town Convention 2001

The increasing use of aircraft as the mode of transportation nowadays, simultaneously arising aircraft's revitalization as an important necessity, since the needs on the safety aspect must be ensured as the requirements by the commercial aviation company. An aircraft is deemed as a pricey mode of transportation, and also it is extremely rare to have direct purchase for an aircraft, usually, the methods of purchase known as hire-purchase or leasing are customary used by companies. The legal relationship between the lessor and lessee for the said lease is comprised under the convention, as well as the rights attached to the particular aircraft which shall become the incurred legal consequences.

The Cape Town Convention 2001 has consisted of 62 Articles, which divided into fourteen chapters. Besides, the convention's protocol namely the Aircraft Protocol has consisted of 37 Articles and divided into 6 chapters. Article 6 of the convention clearly stipulates the relationship between the convention and the protocol, which stated that both the convention and the protocol must be read and interpreted as one single instrument⁹.

The scope of Cape Town Convention 2001 regulation consisting of 4 main points, namely the international interest, international registration, priority rules and remedies. This becomes the regulated object of the convention besides other inseparable provisions such as jurisdiction, choice of forum and other related matters which also important to achieve the purpose.

In case of discrepancy between the convention and the protocol occurred, the protocol shall prevail. The scope of this convention shall be applied towards a transaction lays under an agreement subjected to the "*international interest*", and shall also prevail to any the debtor originated from the parties of the convention. Thereafter, the implementation of the convention also prevails when the agreement occurs from which the creditor was not originated from the state party. From the above elaboration, the status of the "*customer's state*" as a state party is more important than the position of the producer's state. It shall be indirectly beneficial for the role of both states by the enactment of the convention.

The minimum requirements for application which must be fulfilled stipulated on the convention are (Gopalan, 2003):

1. There is an existence of international interest arising from a legal relationship stated in security interest agreement, reservation agreement or an agreement entered by the lessor under the leasing agreement.
2. The fulfillment of the formal requirements over the agreement for the international interest must be submitted in a written form, it must be correlated with the object owned by the lessor who bound the contract, and the object itself of the agreement must be clearly stated in line with the rights and duty of the parties.

According to Roy Goode, there are five purposes over the creation of this convention, (Goode, 2013) which are:

1. To create a recognized international interest by the parties;
2. To provide assistance to the creditor, in case of failure of payment, which also determines the possible actions to be conducted in such occurrences;
3. To establish an international electronic registration for international interest;

4. To have pledged through the protocol to ensure any necessity for a certain sector of the industry;
5. To give assurances the creditor in having decisions for credit, by increasing the grant of credit towards the equipment and also by reducing fees of the particular funding.

By looking up to the characteristic of international interest, the creditor shall have a tightened position rather than the domestic interest. One of the examples is the existence of an international registration mechanism. The registration is the main object of the convention that gives a general point of view over the basis of the international interest which allowing the creditor to perform its right as a priority. The international registration will be managed by a registrar under auspices of the supervisory authority. The convention rules the authority of an institution with personal identity and immunity. ICAO which also one of the organizations initiated the convention has the role in performing the function of Supervisory Aircraft Objects. The registration can be done in a way electronically and also online, thereafter, it shall ease the process of checking, application submission, registration and responses, and it shall all be done automatically without any human intervention.

The convention secures a namely priority rules which the internationally registered interest shall be prioritized compared to the unregistered interest and compared to the interest which later registered. In a legal relationship, it is possible that there is a condition where a party cannot fulfill their obligation which the rights and obligations of the parties already regulated in the agreement. In case of such condition occurs, and then it shall arise the obligation to the other party to give a certain form of remedy. The infringed party has right to take authority or power over the particular object such as the right to sell or to rent, as well as the right to obtain revenue or benefit from the use of the particular object. The above-mentioned concept can occur over an aircraft's funding agreement, the conduct on the remedy that can be done as the creditor's right at the time of default is the registration of the aircraft and request to export and transfer the aircraft from the location of the aircraft into the state where it has been registered (Prita, 2016).

The convention in article 48 regulates the ratification mechanism that can be done separately by the regional economic organization. The above regulation had been implemented by The Regional Economy Organization from the European Union which had deposited its accession instrument on 28th of April 2009 towards the Cape Town Convention 2001. This Accession will give implication towards the transportation transaction involving the member of the organization or lessor which is originated from European Union states unless for the states which already ratified the convention separately.

Indonesia and the Implementation of the Cape Town Convention 2001

Indonesia has ratified the convention along with one of the protocols from the convention under the President Regulation No. 8 of 2007 included with the Aircraft protocol. Since Indonesia had ratified this convention, then the Cape Town Convention 2001 along with the Aircraft Protocol has already become the part of Indonesian national law.

The next discussion shall be related to the implementation of regulations concerning aviation law in Indonesian national law subject Indonesian ratification over the protocol related thereto. Besides the attachment as an inseparable part of a protocol, Indonesia is also adopting and regulates the principles arranged in the convention onto the Law No. 1 of 2009 concerning the Aviation, which in the Chapter IX Articles 71-82 with the title of International Interest over Aircraft Object. The Aviation Law 2009 is attempting to arrange several important matters from the convention, particularly the ones related to the international interest. International interest is

an internationally recognized warranty arising from security agreement, conditional seller based on reservation agreement or arising from the existence of leasing agreement.

One of the interesting provisions on the Indonesian Aviation Law 2009 related to the implementation of the Cape Town Convention 2001 is the provision in Article 82 which stipulated as follow (translated):

"The provision in the international convention on the international interest in the movable equipment and the protocol especially on regard of the aviation equipment's, whereas Indonesia is a state party, has legal force in Indonesia specifically (lex specialis)."

Provisions in the articles of the Aviation Law 2009 which regulate the international interest are certainly not equivalent to the substances regulated in the convention and protocol. However, the existence of Article 82 has become a legal force as binding law. In any event, there are no regulations or provisions related to one of the aspects of the convention in the aviation law 2009, and then the convention shall still be applicable without the necessity of separated national law.

Besides the 2009 Law, at the time of ratification of Cape Town Convention 2001, Indonesia had made a declaration as a form of different reservation. Several types of declaration formed as the new approach in the field of international law divided into opt in, opt out and mandatory. Opt-in is a term for adopting or enacting certain provisions, Opt-out means as a term for not adopting or excluding certain provisions and mandatory is the enforced provisions (Prita, 2016).

Another regulation arising formed by the implementation of the Cape Town Convention 2001 is the Regulation of the Minister of Transportation Number KM 49 of 2009 concerning Civil Aviation Safety Regulation Part 47 concerning Aircraft Registration. This provision usually called as CASR 47. However, the Minister of Transportation has recently stipulated the Regulation of Minister of Transportation Number 52 of 2018 concerning Civil Aviation Safety Regulation Part 47, concerning the aircraft registration, which has been enforced since 21st of June 2018. The existence of this regulation has revoked the Regulation of the Minister of Transportation Number 82 of 2004 concerning the Procedure of Aircraft and Helicopter Procurement (KM 82/2004) and the Regulation of the Minister of Transportation Number KM 49 of 2009 concerning Civil Aviation Safety Regulation 47 concerning Aircraft Registration. The provision regulated in this regulation of minister of transportation is specifically related to IDERA (Irrevocable Deregistration and Export Request Authorization) as an aircraft registration removal mechanism due to default, which thereafter the export must be done to the creditor.

With the applicability of the convention, then shall a new aircraft be imposed with two different regimes with respect to its registration? The first regime shall be related to the nationality of the aircraft as the public aspect. While according to the private aspect it shall be subjected to the rights attached on the aircraft through the International Registration mechanism and it shall raise the rights deriving from the transaction over the particular aircraft to be internationally recognized.

The Development of Private International Law under Cape Town Convention 2001

The differences among national laws of the states from one another in arranging regulation on the mobile equipment, with especially towards certain issues on the cross-border law, become the main reason to harmonize the law in the field of security interest. The law

which regulates the rights attached to properties in several states shall comply with the principle of the law of *lex situs* or the law on the location of the particular property. The principle of *lex situs* shall not raise any problem when it comes to the fixed property. The implementation will vary if the principle of *lex situs* is applied to movable property. Some of the problems which likely to arise are whether or not the interest obtained from the former location shall be recognized and executable on the latter state. It shall become a legal issue if there is none of recognition nor executions that can be done on the latter state (second state), which occurs differently such as the recognition of interest in the first state.

In a state with a common law system (Goode, 2013), the law of movable properties was applied continuously before any other new status is granted to the particular properties under the national law of the second state. While in European continental system countries, the law is applicable to movable properties shall depend on the national law which accommodates the former status of the particular movable property, and in general, shall be based on the national law of the particular country. In this European continental system, there is an absence of certainty of law that can be provided over the movable properties or in another word there is an existence applied to the non-recognition principle in the second state (Gopalan, 2003).

The object of law regulated under the Cape Town Convention 2001 is mobile equipment or movable properties with the characteristic of possibility to change location, to move and to exist in the different region over legal jurisdictions. Several mobile equipment's regulated under the Cape Town Convention 2001 has also private law aspects consisted based on the national law, which the framework are among others Aircraft consisting of Aircraft frames, Machines and Helicopter, Train Facilities, Space Properties and equipment for Mining, Agriculture, and Construction activities. However, in the process of mobile equipment's procurement or purchase, it is possible for it's to obtain foreign elements or factors particularly related to the legal subjects involved in the funding. Hereafter, within its commercial transaction process, it is possible to become a scope of Private International Law, expressly related to the status of the particular movable properties, the law applicable consist of the existing legal relationship as well as the choice of jurisdiction or forum in case there comes a dispute arising in the future. On the development, of the Cape Town Convention 2001, the convention has become an international agreement sufficiently important in the scope of air law and Private International Law.

In order to give depiction on the Private International Law aspect in the Cape Town Convention 2001, this article will provide a discussion, particularly on the aircraft. Considering the legal aspects of the other protocols which have not yet consist a legal force to be bound, henceforth, the implementation of the aircraft protocol has become an object of study and comparison matter to develop further and to affirm other states to be bound to other protocols.

The legal of aircraft in the scope of private law deemed as movable property. Nonetheless, for special purposes, as line as a ship, national rules and regulations, deemed an aircraft as immovable property. This understanding raises arguments and differences of a point of view, among the air law experts, hence, we can conclude that special regulation or exceptional status as immovable properties should have been given and be specially regulated to aircraft to be deemed as movable property *sui generis*¹⁰ (Mieke,1989). Several reasons on why the aircraft must be granted a special legal status are:

1. That an aircraft is a legal object that has state-based nationality and it must be registered to the relevant country.
2. That it is possible to consider an aircraft as a security interest over legal consequences arising from certain legal relationship related to funding.

With respect to the legal status of an aircraft which has a nationality from a certain state, then it has legal consequences arising from the applicability of law from the flag state particularly in the context of Private International Law, it has become utterly important. This issue was also related to the rights of properties attached to the aircraft.

As elaborated previously, in the scope of Private International Law, the law applied to the movable and immovable properties are regulated under the principle of *lex rei sitae*. There are several criticisms upon this principle of regime applied to the aircraft, which that it is impossible to determine the position of aircraft particularly towards the one undergone international flight. An aircraft is a property that must have already had its own purpose to move from one place to another. Hence, the actual site of the aircraft is the countries it has passed by or transit upon under certain short period of time and does not have any connectivity at all. Aircraft is a property specifically made to fly and it is considered as the most movable of all movables in legal sense.

The next issue that might arise is the question on which law that will be applied if, in the future, there is a dispute of Private International Law arises, individually related to the ownership of the aircraft or another kind of possible private law dispute. Particularly, related to the status of the particular aircraft which already become a legal object, as the consequence of a legal relationship, it arises security rights imposed upon properties on the particular aircraft (security interest).

The existence of the differences between in arranging the legal status of the aircraft has met some pitfalls related to which law shall be imposed thereto¹¹ (Prita, 2016). Customarily states will impose the legal status of an aircraft based on the nationality of the aircraft. Several difficulties will be met when a case which the legal status be implemented comes based on the site of the aircraft are:

1. The sites will be discovered depends on the flight routes made by the related aircraft and it would constantly change.
2. With the occurs of uncertain sites, it shall not provide security or stability towards the existing legal relationship.

With the above considerations, the creation of an international agreement becomes urgent as the solution particularly to provide protection towards the rights occurred in a certain legal relationship, including the relationship between the lessor and the lessee in a leasing agreement. The Lessor needs to be protected and needs certain legal certainty which the right can be recognized wherever the aircraft is located.

The Cape Town Convention 2001 has provided a legal concept for mobile equipment, with the equipment characteristic as an aircraft; it is to be able to cross from one jurisdiction to another, in a very fast manner. Through international registration, then the rights attached to an aircraft as movable property shall be internationally recognized as international interest. This will also become a solution for the in-uniformity of the implementation of law either in common law or in European continental.

The above-mentioned elaboration will cause an outcome for the ratifying state of the convention, which the parties will obtain economic benefits. For example, the Export-Import Bank in the United States will decrease the fees in the purchase of commercial aircraft, which shall be one third for foreign buyer originating from ratifying states implemented the Cape Town Convention 2001. In this regard, the Export-Import Bank of the United States has become a legal subject in the particular legal relationship or taking the role as lessee after obtaining security in doing a transaction with the ratifying countries. Indonesia is one of many countries which obtain

this economic benefits by the ratification of the convention, henceforth, many aviation companies could conduct a mass amount of aircraft purchases. Indonesia's position as the aircraft buyer gives a determination as an aircraft buyer state¹².

As previously elaborated that a security right over properties can only occur on the basis of agreement legal relationship between legal subjects, such as in particular conduct consist an aircraft procurement obtained through a leasing agreement. A legal relationship made by an agreement must also consist a regulation of mechanism of the choice of law and choice of a forum if in case a dispute between the parties arises in the future.

The provision on the choice of forum in the Cape Town Convention 2001 is arranged in Article 42. In this article, it is stipulated that in case there is a legal dispute between the parties, then they will determine the authorized court, based on consensus, the court with the closest relation with the parties in the transaction will have exclusive nature thereto unless the parties determine otherwise. Towards the particular choice, a written agreement must be made and the formal requirements must be applied based on the regulation in the chosen forum. In principle, the convention is also regulated in its Article 43, that the parties should make sure that the relevant court decision is enforceable.

Pursuant to the illustration above over a transaction made by an Indonesian aviation company and other parties deriving from the aircraft producer countries along with the lessor, and hypothetically the agreement between the parties and there is a dispute arising, the parties had agreed to use the forum of the aircraft producer countries, then the issues shall be settled in the court of another country.

According to the agreement between the parties when comes a dispute and which they had agreed to use the forum in the aircraft producer country, Then such legal dispute will be resulting into a decision of the court outside of Indonesia and it shall be called as a foreign judgment. The next issue that would likely to arise is consisted when an execution towards certain assets located in Indonesia the question shall arise, whether or not such foreign judgment enforceable in Indonesia and recognized to have to be fulfilled of the requirement of enforceability. The foreign judgment certainly has to differ from foreign arbitral award which already has its own mechanism of enactment in a country based on Enforcement and Recognition Foreign Arbitral Award (New York 1958).

Considering the provisions in the Cape Town Convention 2001 and that Indonesia has already done the ratification, and then there is an international obligation attached to Indonesia to perform all rules of the convention in accordance with the delivered declaration. In scope, According to Brian Havel, the absence of enforcement of the international obligations of a state party to the convention should also become the issue of state responsibility¹³.

Indonesia is one of many countries with the potential and concerned to become a country with the less optimum implementation of the convention. One of which, is on how Indonesia recognize foreign judgement that should have given legal certainty particularly towards other legal subjects functioned as a partner. In principle, a state cannot refuse to enforce the foreign judgement, unless there is a consideration of public policy or fraud. However, it is possible for a state to enforce a foreign judgement by implementing several requirements. In the implementation of the convention, it is possible for two form of judgement to exist, namely the Final Judgments and Interim Judgements¹⁴. Currently, Indonesia is certainly has a position and role as a customer state, which means as a country that purchases aircraft from other countries. However, this norm surely works as a firm evaluation for further study, namely on the effectivity

of the enforcement of the foreign judgement. This also makes Indonesia prepare to become a producer country in the future with its own potential¹⁵.

CONCLUSION

The Cape Town Convention 2001 and its Protocols are an international agreement in the commercial transaction with the purpose to create an efficient mechanism in terms of funding for mobile equipment. With its own characteristic owned by movable properties, specifically with international high value, an instrument with the purpose of harmonization is needed in terms of recognition towards the rights attached to the particular properties. There are so many differences in practices occurs in lots of states related to the law regulating the movable properties, particularly for the private rights occurred, it is concerned that it shall impede the international commercial transaction activity. It is expected that the existence of the convention with its own regulating objects, that consisted from international interest, international registration, priority rules, and remedies can become the solution and give comfort to the creditor. Besides, the regulation in the Cape Town Convention 2001 has given a new legal concept related to the mobile equipment, and this is a development in the field of the Private International Law.

Indonesia as one of the parties to the UNIDROIT has ratified the convention which is the result of cooperation between the UNIDROIT and ICAO through the President Regulation No. 8 of 2007 as well as has implemented several of its norms in the Law No. 1 of 2009 concerning Aviation particularly related to the aircraft as mobile equipment. With the ratification of this convention by Indonesia, thus, as a state, Indonesia is bound to the international obligations regulated under the convention to enforce all judgement resulted from a certain dispute arising from the executor of the convention. Other implications after Indonesia ratified the Cape Town Convention 2001 is that the Private International Law applied to the mobile equipment in Indonesia particularly the aircraft shall be the principles and norms regulated under this convention. Previously, the law applied to the movable properties according to the Private International Law in Indonesia is in accordance with the Article 18 AB, and it is under the *lex situs* principles.

ENDNOTE

1. The Convergence theory is one of many theories developed as a conceptual and theoretical comprehension from the convergence of technological, economic and legal variables against the relationship between human and the society, in the 4.0 industrial revolution, either in national, regional or international level. The paradigm of convergence of legal order can be understood further through the study of the conceptual approach towards the legal convergence and non-convergence. This approach is to seek for the interconnectedness and the similarity or the difference between two different legal systems enacted, this is expected to be able to explain the importance of legal convergence conception.
2. The cooperation between the said Ratified by Indonesia pursuant to the Law No. 24 of 2000 concerning International Agreement, it is regulated under Article 10 and Article 11. The implementations of the provisions in these articles are related to the ratification instruments of the international agreements, namely the laws and the president regulation. This Convention was ratified through President Regulation, taking into consideration the substance regulated in Article 11 of the Law of International Agreement in 2000.
3. In Indonesian national law, the matter regarding this aircraft is regulated in the Law of Aviation No. 1 of 2009 concerning the Aviation. In Article 1 of the Law of Aviation 2009, a threshold was given, that a civil aircraft means an aircraft used for the purpose of commercial or non-commercial air transportation. Meanwhile, state aircraft means an aircraft used by the Indonesian National Armed Forces, Indonesian

- National Police, Customs and other governmental institutions, to run the function and the authority of law enforcement and other tasks in accordance with the rules and regulations.
4. Cape Town Convention 2001 and Protocol are not the first conventions which try to regulate the funding of high-value equipment, particularly for aircraft. Geneva Convention 1948 is a leading convention tries to regulate international financing. Nonetheless, the discussion on this convention arising conflicts and it was not able to be generally accepted.
 5. Relation between conventions and protocols are regulated in the Article 6 of the Cape Town Convention 2001, it stated that the conventions and protocols must be read and interpreted as single instruments. However, in case of discrepancies between the two, then the provisions in the protocol shall prevail.
 6. This Protocol is called Luxembourg Protocol to the Convention on International Interest in Mobile Equipment on matters Specific to Railway Rolling Stock. It is still not in force since it has not met the amount of states to conduct ratification depository instrument required in the Article XXIII, which should be 4 states. Two states which already conduct such deposit are Germany and Italy. <https://www.unidroit.org/status-2007luxembourg-rail>, accessed on 15th of February 2019.
 7. This protocol is called Protocol to the Convention on International Interest in Mobile Equipment on Matters Specific to Space Properties and made in Berlin in 2012. The status of this protocol up until now is still not in force, in accordance with the Article XXXVIII, it shall be in force with the deposit from 10 states. <https://www.unidroit.org/instruments/security-interests/space-protocol>, accessed on 15th February 2019.
 8. It is a prepared draft as the form of development from the Cape Town Convention; it is to raise productivity related to the mining, agriculture and construction sectors activities. This Protocol shall regulate the matters related to the MAC equipment funding. <https://www.unidroit.org/work-in-progress/mac-protocol#a1>, accessed on 15th of February 2019.
 9. Cape Town Convention 2001 regulates the general principles for all mobile equipment which shall be further elaborated in the protocol. The protocol has a controlling function towards the implementation of convention. The drafters of the convention realize that this project is a quite vast project which can only be restricted by internationally high-value equipment's.
 10. Sui Generis, this refers to the sole character of the aircraft existences, since the classification of an aircraft deemed as the immovable property will occur as a legal fiction. Other matters related to the classification of the type of property, considering that the determination of legal status of aircraft in European continental and Anglo Saxon law system of law are no longer suitable with the current development, which the division of type of properties tends to be regulated based on its registration, whether it is a registered property or an unregistered property.
 11. In several jurisdictions, except for North America which the applicable law towards properties is under the principle of *lex situs* which also applied towards the fixed properties. However, for movable properties, it cannot be implemented, since the particular property has a possibility to have existed in one jurisdiction to another. Another problem that shall occur is the question on the security rights attached to the particular aircraft, whether it can be operated and legally provided in the other state or not.
 12. <https://tirto.id/why-lion-air-industrious-of-expenditure-aircraft-with-abigger-scale-chBE>, accessed on 15th of February 2019. Also <https://www.cnbcindonesia.com/news/20180927151410-4-35049/lion-air-is-a-bigger-consumer-of-boeing-aircraft-in-the-world> accessed on 15th of February 2019.
 13. The relation between the recognition of the foreign judgement in the national law of a state and the possibility of breach of international obligation performed by a court, it is a legal act that can rise state responsibility Leiden University, Mc Gill University, University of Oxford, Head of Institute of Air and Space Law. His elaboration is delivered in the Cape Town Convention Conferences held on 12th-13th of September 2018 in University of Oxford.
 14. This elaboration on the "*foreign judgement*" is a part of Prof. Gilles Cuniberti's presentation; he is a Professor from the University of Luxembourg in the Cape Town Convention Conferences held on 12th-13th of September 2018 in University of Oxford.
 15. <https://id.beritasatu.com/home/prospect-of-aircraft-industry-96134>, accessed on 17th of February 2019. Indonesia has a quite huge potential particularly with the existence of PT Dirgantara Indonesia which is up until now still producing aircraft. Besides, there is Ilham Habibie who makes Regio Prop 80 as the future generation of N 250. R80 will attract other states to buy, since it has the technology to safe fuel while still also use propeller shaft as the aircraft drive. Also, <https://finance.detik.com/news-economic-business/d-3335501/onsale-rp-286-m-aircraft-pt-in-export-to-thailand-until-senegal>, accessed on 17th of February 2019.

REFERENCES

- Danrivanto, B. (2014). *Legal theories of convergence*. Bandung, Refika Aditama Publishing.
- Giulia, M. (2005). The Cape Town convention on interest in mobile equipment as applied to aircraft: Are lenders better off under the Geneva Convention. *European Review of Private Law*, 13(5), 641-655.
- Goode, R. (2013). *Official commentary convention on international interests in mobile equipment and protocol thereto on matters specific to aircraft equipment*. Rome, UNIDROIT Publishing.
- Gopalan, S. (2003). Harmonization of commercial law: Lessons from the Cape Town convention on international interest in mobile equipment. *Law and Business Review*, 9(2), 255-270.
- Gopalan, S. (2003). Securing mobile properties: The Cape Town convention and its aircraft protocol. *North Carolina Journal of International Law and Commercial Regulation*, 29(1), 59-82.
- Huala, A. (2009). The implications of ratification statute UNIDROIT. *Padjadjaran Journal of Law*, 33(1), 1-11.
- Lorne, S.C. (2004). The 2001 Cape Town convention on international interest in mobile equipment and aircraft equipment protocol: Internationalizing asset based financing principles for the acquisition of aircraft and engines. *Journal Air Law and Commerce*, 69(2), 1-11.
- Mark, J.S. (2006). The Cape Town approach: A new method of making international law. *Columbia Journal of Transnational Law*, 44(2), 339-358.
- Mieke, K.K. (1989). *Security forms of object aircraft in Indonesia based on air law*. Bandung, Alumni Publishing.
- Prita, A. (2016). *Airlines industry in Indonesia: Legal aspect post-cape town convention 2001*. Bandung, Refika Aditama Publishing.
- UNIDROIT. (2001). *Convention on International Interests in Mobile Equipment*. Retrieved from <https://www.unidroit.org/status-2001capetown>.
- UNIDROIT. (2001). *Protocol to the convention on international interests in mobile equipment on matters specific to aircraft equipment Article XXVIII (1)*. Retrieved from <https://www.unidroit.org/status-2001capetown-aircraft>