

THE LEGAL PROBLEM OF AIRCRAFT MORTGAGE IN INDONESIA

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ABSTRACT

Since the issuance of the Indonesia Aviation Law No. 1 of 2009, the provisions regarding aircraft mortgage as debt collateral were actually removed from the previous Aviation Law that is the Act No. 15 of 1992. Article 12 sub article no. (1) of The Aviation Act No. 15 of 1992, regulated that aircraft could be a subject to mortgages, however, this provision was abolished by the new Aviation Act No. 1 of 2009. This is due to the Article 465 of the Act which explicitly states that all provisions in the Act No. 15 of 1992 no longer applies, meanwhile, the Aviation Act No. 1 of 2009 in no way regulates aircraft mortgages. In practice, this legal vacuum has become a problem for airline companies to put their registered aircrafts as collateral in form of mortgage. Particularly in the Covid 19 pandemic, which until the beginning of 2021 has not ended, it has caused severe damages to the financial balances of many airlines due to the absence of passengers and restrictions to fly by the Government. Actually, aircraft can be used as collateral or security interest for working capital loan. This research is a normative study which will discuss and analyze the possible types of collateral over aircraft that are most likely to be carried out by airlines in Indonesia, in the midst of the in-availability of aircraft mortgages regulation.

Keywords: Aircraft, Mortgage

INTRODUCTION

Nowadays, Indonesia has no any regulation regarding mortgage over an aircraft. The Indonesia Aviation Act No. 1 of 2009, which has been in effect since January 2009, does not contain provisions regarding debt collateral over aircraft as a mortgage. The provision which states that an aircraft can be burdened with mortgage actually was contained in the Article 12 sub article no. (1) of the previous Indonesia Aviation Act, that is the Aviation Act No. 15 of 1992. Article 12 Aviation Act No. 15 of 1992 states that mortgage on aircraft must be registered, and the implementation of the aircraft mortgage will be regulated by Government Regulation. Unfortunately, until the issuance of the new Indonesia Aviation Act in 2009, the Government Regulation mandated by the Act No. 15 of 1992 had not granted yet, meanwhile the Aviation Act No. 1 of 2009 has no any provision governing aircraft mortgage. In addition, Article 465 of the Act No. 1 of 2009 states explicitly that the entire provisions of Aviation Act No. 15 of 1992 are repealed and declared no longer valid. This has resulted uncertainty and legal vacuum on aircraft mortgage as debt collateral.

An aircraft clearly is a tangible object that has a specific function and high selling value, therefore it could be used as collateral for the fulfillment of a debt payment obligation. The Act No. 15 of 1992 used the term of 'hipotik' for aircraft mortgage. It means that aircraft is categorized as fixed object (Immovable Object) such as ship with size of 20 Metric ton and above. Article 1162 of the Indonesia Civil Code defines a mortgage as "a material right over immovable objects to take compensation from it for the settlement of a debt agreement." Thus, based on the norm contained in the Article 12 of Act No. 15 of 1992, it can be interpreted that aircraft is categorized as fixed object or immovable object. However, with the revocation of the Aviation Act No. 15 of 1992 and it declared no longer valid since the existence of the Aviation Act No. 1 of 2009, there is no a single legal provision that can be used as a basis for categorizing an aircraft as immovable object.

The absence of legal norm to regulate aircraft as collateral for a security interest actually is stark contrast to the Indonesia commercial air transport industry which has been developing very rapidly in the last decade. Moreover, the new aviation law regime demands bank guarantees to obtain commercial air transport business license, hence the business relationship between airlines and banks should be very close. Financial institutions or banks as a source of financing urgently need a legal instrument to protect their interests in channeling loans and receiving collateral. The principle of prudence in running a business in the financial sector is a non-negotiable imperative. Therefore, the legal instrument regulating safeguards for guarantee rights holders is very crucial for the financial industry. Several parties have taken several ways to charge aircraft as collateral for debt in practice in Indonesia, despite in international business practices there are 3 (three) types of security in aircraft, those are Pledge, Hipoteca and Chattel Mortgage. However, the application will depends on legal system in each country and the fact that all the advantages and disadvantages are considered. This practice clearly reflects that air transport industry requires for international and domestic financial sources to meet working capital needs. This research will explain and discuss the problem of Indonesia airlines to obtain loan from the financial industry by placing their aircrafts as debt collateral, in the midst of a legal vacuum regarding aircraft mortgage in Indonesia.

This writing method will use a normative legal research which is based on the legal norm, provisions of laws and regulations as a primary sources, legal concept, theory and opinions of experts and legal practitioners through books, articles and journals as a secondary source and other media as a tertiary sources.

RESEARCH METHODS

The study uses qualitative research to investigate, discover, describe, and explain qualities or privileges or is described through normative legal research approaches with descriptive analysis specifications (Abadi, 2021; Aliyyah & Prasetyo, 2021; Aliyyah & Siswomihardjo, 2021; Endarto, Taufiqurrahman & Suhartono, 2021; Endarto, Taufiqurrahman & Kurniawan, 2021; Indrawati, 2021; Juanamasta, 2019; Kalbuana & Prasetyo, 2021; Kalbuana & Suryati, 2021; Luwihono, 2021; Prabowo, 2020; Prasetyo, 2021; Prasetyo, Aliyyah, Rusdiyanto & Chamariah, 2021; Prasetyo, Aliyyah, Rusdiyanto & Nartasari, 2021a, 2021b; Rusdiyanto & Agustia, 2020; Rusdiyanto & Hidayat, 2020; Rusdiyanto, 2021; Rusdiyanto & Karman, 2020; Shabbir, 2021; Susanto, 2021; Utari, 2021; Bahtiar Prabowo, 2021; Prasetio, 2021; Prasetyo & Endarti, 2021). This study describes the norms that govern Indonesia with regard to the type of normative research that is the reference, it is used for statutory and conceptual approaches.

DISCUSSION

Guarantee Agreement Under the Indonesian Law

The definition of 'Guarantee' or "Security Interest" that is given by some experts in Indonesia generally has the same meaning even though it is a different word. Mariam Darus Badruzaman provides the definition of guarantee as a liability provided by a debtor to a creditor to guarantee his obligations in an agreement. Hartono Hadisoeparto stated that a guarantee is something that is given to a creditor to create confidence in the creditor that the debtor will fulfill his obligations. Under these definitions, it is evident that the creditor has a right over the collateral object, which is referred to as Material Rights. According to van Apeldoorn, material rights are property rights that provide direct power over an object.¹ Thus it can be concluded that the Guarantee Agreement for a debt is a material right given by the debtor to the creditor to take the repayment from the sale of the collateral object for the debtor's debt payment. From this

understanding, it can be seen that the provision of guarantees arises from a debt agreement and aims to secure the repayment of the debt.

As a security for repayment of debt, the guarantee agreement does not stand alone, but follows the main agreement, that is Loan Agreement or Lending-Borrowing Agreement. Therefore, the guarantee agreement in legal theory is also known as accessory agreement or additional agreement. As consequence, this accessory agreement depend the main agreement. When the main agreement ends, the accessory agreement will be automatically ends. Regarding this accessory agreement, Professor Hartkamp uses the term 'assistance agreement' or 'additional agreement' instead of 'accessory agreement' which the main characteristic is to have dependence over the main agreement with the intention of preparing, affirming, strengthening, regulating, stipulating, changing or settling a legal relationship that underlies it.²

Prior to 1996, Indonesian law used the term of 'hipotek' to refer a Collateral Agreement for an immovable object which pledged as collateral for debt. The term '*hipotek*' follows the Dutch legal term adopted by the Indonesian Civil Law. The definition of 'hipotek' is given in the Article 1162 of the Indonesia Civil Code. Since the enactment of Act No. 4 of 1996 concerning the Mortgage on Property in Indonesia (Mortgage Act), the term 'hipotek' has been replacing to 'Mortgage Rights'. In substance, the definition of mortgage is the same as hipotek. In principle, the terms 'hipotek' and 'mortgage' have the same meaning. However, Professor Remy Syahdeni considered that the Mortgage Right in Indonesia provides a better definition than the definition of hipotek provided by Article 1162 of the Indonesia Civil Code.³ As for the description of the Mortgage itself, Article 10 sub article no. (1) of the Mortgage Acts explains that "Granting of Mortgage Rights is preceded by a promise to provide Mortgage Rights as a guarantee for repayment of certain debts, which are contained in and are an integral part of the debt agreement concerned or other agreements that give rise to the debt." This article is sufficient to explain that the position of a mortgage right is an additional agreement that follows the main agreement.

The legal principle of a Guarantee Agreement is that creditor may not ask for a clause which entitles the creditor to own the collateral object.⁴ In the event that this kind of provision is contained in the agreement, then the agreement is null and void by law. This principle is strictly regulated in several provisions regarding Guarantee Agreements for both movable and immovable objects. In immovable objects, it can be seen in Article 12 of the Mortgage Acts which states *that* "The promise that gives authority to the holder of the Mortgage to own the object of the Mortgage when the default of the debtor, is null and void". Against moving objects, Article 33 of the Act No. 42 of 1999 concerning the Fiduciary Law also affirms that "Any promise that authorizes the Fiduciary Recipient to own the fiduciary object when the debtor default, is null and void." Likewise to Article 1178 of the Indonesia Civil Code, which states that "All promises by which the debtor is authorized to have the objects given in the Mortgage, are null and void." This provision is basically intended to provide protection for debtors. This is due to the bargaining position of the debtor is generally weaker than the creditor. The imbalance of the position of the debtor and creditor allows the creditor to force his will to take the collateral object into his property despite the value of the collateral is still higher than the amount of the debt. In practice, collateral over a property, some parties are often made in other forms such as sale and purchase agreement with buy back option based on article 1519 to 1532 of the Indonesia Civil Code. This method is actually a legal smuggling of a guarantee agreement. In Court, sale and purchase agreement with the option to repurchase as guarantee of debt surely will be cancelled or declared null and void by law.⁵

Under the Indonesia Civil Law, goods or assets those are object to debt collateral may be categorized as movable and immovable object. The Indonesian law provides different treatment for movable and immovable objects as collateral. For collateral of movable objects such as cars, equipment, machinery and others, there are two types of guarantee institutions that are enforced, those are Fiduciary and Pawn. The Fiduciary Guarantee is regulated by Act No. 42 of 1999. Under fiduciary guarantee, the existence and control of the collateral remain in the hands of and

may be utilized by the debtor. The debtor does not lose the benefits of the movable object which is put as collateral. Another collateral institution for movable objects is Pawn, in which control of goods subject to collateral is handed over to the creditor as the holder of the pawn rights.

Under fiduciary, despite the collateral object is categorized as movable object and the object is not in the hands of the creditor, it must be registered in the Fiduciary Registration Office to comply with the principle of transparency and publicity which aims to bind third parties.⁶ This provision is the same treatment with immovable object. Mortgage Rights over land and buildings shall be registered at the local Land Registration Office. The form of Guarantee Agreement which has to be registered must be in notarial deed.

Providing guarantees to creditors through the mortgage, fiduciary or pawn as discussed above, gives a more privilege position to obtain payment in advance of his debt compared to other creditors. It is common when one debtor has several creditors, or he owes to several parties. Thus, one mortgage collateral object can be mortgaged for several times as long it commercial value is still sufficient to cover all of the debt. The first mortgage holder certainly takes privilege over the second holder, and so on. For mortgage holders, this right is a privilege for them not to be treated the same as other common creditors. This privilege avoiding the provisions contained in Article 1132 of the Indonesia Civil Code which regulates the equal position among creditors and determines a proportionate share of the proceeds from the sale of debtor's assets. Therefore, a holder of fiduciary, pawn and mortgage have prioritized for settlement among other creditors.

From the description regarding the privileges of creditor position as the holder of pawn, fiduciary or mortgage as abovementioned, it is clear that those guarantee agreement provide privilege for the holder in an effort to recover their bad debt. Particularly in banking sector and other financing institutions, a privilege position in taking repayment of collateral object is essential, and it provides legal certainty in the event that a debtor neglects his obligations. Moreover, those guarantee institutions provide simple procedure to execute a collateral object. Execution of collateral objects that are charged with mortgage or fiduciary rights is relatively easier. If the debtor breaks his promise or defaults, Article 20 of the Mortgage Acts regulates that the collateral right holder may sell the collateral object at a public auction in ways that have been determined by law. This execution can still take place despite there are objections from the debtor, as long as the conditions that the debtor has defaulted are proven. Sales by means of this public auction, the winner will be determined through the highest bid. Sales can also be made without going through a public auction but through an agreement between the creditor and the debtor.

The Problems in Placing Aircraft as Debt Collateral Objects

Article 1 of Aviation Act No. 1 of 2009 provides a definition of Aircraft, that is, "Any machine or device that able to fly in the atmosphere due to the lift force from the reaction of the air, but not due to the reaction of the air to the surface of the earth be used for flight". Under this definition, aircraft have various types such as airplane (fixed wing), helicopter (rotor) or motorized air balloon. However, the discussion of this research will only for aircraft/airplane.

Prior to the enactment of Aviation Law No. 1 of 2009, under Aviation Act No. 15 of 1992, airplanes are categorized as immovable objects. This could be concluded from the provisions of Article 12 which states that "Indonesian aircraft which already have a registration certificate could be mortgaged". Due to mortgage is actually for collateral over an immovable object, and therefore an airplane can be categorized as immovable object. Under this article, an aircraft that may be charged with a mortgage is only has been registered in the Indonesia Aviation Authority (Directorate General Civil Aviation). As known, every aircraft that operates and has the Indonesian nationality must obtain the registration certificate issued by the Directorate of Airworthiness and Aircraft Operations which is under the Directorate General of

Civil Aviation, Ministry of Transportation of the Republic of Indonesia. This registration obligation is an international provision that provides an aircraft with nationality identification. After the enactment of Aviation Act No. 1 of 2009, the *first* problem is, no any legal basis that can be used to classify aircraft as immovable objects, and subsequently, mortgage could not be applied over aircraft as debt collateral. In practice, this legal vacuum raises several problems. There are no provisions able to define aircraft with it various of types as movable or immovable object. Categorizing aircraft to be movable or immovable object subsequently will have a different law implementation.

Some legal practitioners assume that all aircraft are categorized as immovable objects by analogizing it to the same obligation between ship and aircraft such as the obligation to register in order to have a nationality mark.⁷ On Indonesia ships registration, the ship can fly the Indonesian flag as the national identity of the ship. Whereas on an aircraft, its registration is also provide national identity as an Indonesia national aircraft. It is understandable that the mandatory registration of these two types of transportation is intended to provide national identity for aircraft and ships. This is due to both types of transportation able to cross the international territory and enter to the other countries. However, the nature of the registration of the two is different. Registration on ships is regulated through the Minister of Transportation Regulation No. 13 of 2012, where the registration includes Ship Ownership, Mortgage Charges and registration for other material rights on the ships. Registration letters on ships also serve as evidence the ownership of the ships. The registrar office will also record the transfer of ownership of the ship and record the new owner. Meanwhile, registration on an aircraft does not reflect or relate to the ownership of the aircraft. The obligation to register on aircraft is stipulated by the Convention On International Civil Aviation Done at Chicago On The 7th day Of December 1944 or commonly known as the Chicago Convention 1944.⁸ Registration of aircraft must be carried out by the airline in the country where the airline operates, whether the aircraft that own or lease. Accordingly, the registration on an aircraft does not relate to the ownership of the aircraft.

The second problem is, with the need to place an aircraft as collateral for debt, different interpretations and opinions have emerged regarding which regulation may be implemented for debt collateral over aircraft. This situation created uncertainty over the Indonesia aviation industry to place its aircrafts as collateral of debt settlement. One of the opinions stated that aircraft could be a subject to guarantee rights with fiduciary based on Fiduciary Act No. 42 of 1999, however, it is limited only to engines, frames, turbines, propellers and other parts partially, not as complete aircraft.⁹ There is no doubt that this practice arose with the back ground that legal practitioners are usually thought to find a way out when meet the business need in the midst of legal vacuum. However, this practice was happened due to the need of creditors to hold collateral to ensure repayment of the debt. The most important thing in holding a collateral object for debt settlement is the privilege position over other creditors and the sufficient value of the collateral object. An example for this case is the bankruptcy of Batavia Air in 2013. Batavia Air was one of the Indonesia airlines. The curator in charge of liquidating Batavia Air's assets sold auctions for aircraft engines that were charged with fiduciary guarantee to be paid to the creditors. Sales were for the engines only, and do not include the airframe. In essence, when fiduciary is placed on an aircraft, it is not easy to execute the aircraft by fiduciary guarantee. The creditor who have a fiduciary guarantee does not have the power to deregister the aircraft or alter the name of the ownership, therefore it is difficult to auction or sell the aircraft without de-registration mark of the aircraft. That is why a fiduciary on aircraft is generally carried out only for the aircraft's engine. The aircraft engine allows to be removed from the airframe and it sold separately.

The third problem in this legal vacuum is that the Banks as a loan provider will close their door to financing airline companies for aircraft as debt collateral. Moreover, the policy of prudently principle that applies to the financial industry, collateral over aircraft are difficult to be implemented.¹⁰ Domestic banks actually have a great potential capability to channel loans for

the national airlines in Indonesia. However, the financial industry needs legal tools and certainty to ensure the settlement of loan by taking repayment from the collateral auction. If there is no legal instrument that able to guarantee debt repayment, the banking community surely will avoid providing loans.

Comparison Aircraft Mortgage Models Applicable in Several Countries

To provide aircraft mortgage, there are two popular legal jurisdictions to apply the Aircraft Mortgage Agreement between the debtor and creditor, those are the mortgage laws that apply in the United Kingdom, and the mortgage laws that applied in the state of New York or known as New York Law. The New York Law also adds several provisions required by the US Federal Law for aircraft mortgages to take effect.

United Kingdom (English Law)

One of the countries that has arranged aircraft as collateral for debt for a long time is the Great Britain or the United Kingdom (UK). Mortgage on aircraft in the UK are regulated through Statutory Instrument No. 1268 of 1972 concerning Mortgaging of Aircraft Order 1972. According to this regulation, a guarantee is called a Mortgage, and this mortgage must be registered to the Civil Aviation Authority (CAA) which is known as the Aircraft Mortgage Register.¹¹ CAA is the body authorized to regulate civil aviation in the UK. Mortgage registration in CAA is an implementation of the openness principle or publication of such mortgage. Everyone is considered already known when a mortgage on an aircraft has been registered to the CAA.¹² The creditor who held the guarantee in the form of a mortgage on the registered aircraft has a privilege position compares to other creditors. The provisions regarding this matter are contained in article 14 of The Mortgaging of the Aircraft Order 1972. This provision is similar to the hipotek or fiduciary in the guarantee law in Indonesia. The guarantee law in Indonesia is also requires registration for both immovable and movable collateral object particularly in fiduciary, in order to comply the transparency and publicity and to ensure the privilege position for the registered creditor over the other creditors.

In the implementation of its law, the United Kingdom requires that the aircraft which is going to charging a mortgage physically shall be in British's airspace or in the territory of other countries which meets the requirements. This means that the English law may be applied in those countries. In 2015, the UK also has ratified the provision of the Convention On International Interest In Mobile Equipment signed at Cape Town on November 16, 2001, known as the Cape Town Convention 2001. Cape Town Convention 2001 is a convention that provides universal rules for countries in the world regarding international guarantees for aircraft financing. Therefore at present time, the UK also applies the provisions as stipulated in the Cape Town Convention 2001 regarding the de-registration of an aircraft (Irrevocable Deregistration and Export Request Authorization/IDERA) which registered to the CAA in order to protect the interests of foreign creditors.

The privilege of a creditor whose held registered aircraft mortgage to the CAA, if there any conflict between mortgage holder and the IDERA holder, the mortgage holder will be defeated unless the registration is carried out before 2015. This provision is a consequence of the superiority of international rules over domestic rules.

Mortgage under the English law also guarantees creditors from bankruptcy of the debtor. In other words, the mortgage is not affected by the debtor's bankruptcy. Mortgage that has been registered with the CAA, the aircraft will be under the control of the creditor in the event of bankruptcy to the debtor. With control over the aircraft, the creditor may execute the aircraft to remedy its damage. In conclusion, the interest of creditors on their receivables is protected from the liquidation process carried out by the liquidator (Curator).

United States (New York Law)

The difference of the implementation of aircraft mortgages between the laws of England and the United States is, Guarantee Agreement under American Law must be in writing, whereas in England the Guarantee Agreement may be valid despite made verbally. This provision is similar to Indonesian Law regarding the validity of contract under article 1320 of the Indonesia Civil Code. This article does not mention that a contract must be in writing. However, in accordance to the need of evidence, almost all agreements are currently made in writing. In America, however, a written Agreement is one of the requirements for validity of a Guarantee Agreement.¹³

Aircraft mortgages in America must be registered to the Federal Aviation Authority (FAA) as the body authorized to regulate civil aviation. Such registration is required in the Title 14 Code Federal Regulation Part 49.¹⁴ Aircraft mortgage registration also has a forceful effect on third parties or other creditors. This registration also serves as fulfillment of the principle of transparency to aircraft that are placed as debt collateral. In the event that any foreign interest in providing mortgage on an aircraft, the mortgage may also be registered at The International Registry (IR) which will grant the status as "foreign interest".¹⁵

Australia

Slightly different from the implementation in the United States and England, registration of Aircraft Mortgage in Australia is not done at the Australia Civil Aircraft Register. Under the Personal Property Security Act 2009, aircraft mortgage registration must be done on the Personal Property Securities Register (PPSR). From this registration placement, it appears that Australia treats the implementation of aircraft mortgage is not in the scope of aviation law, but in the scope of guarantee law (securities).

Australia PPSR was established in 2012 to receive registration for the interests of security rights not only for aircraft but also for other types of property. Prior to the existence of provisions of PPSR, registration of aircraft mortgages was carried out on the Register of Company Charges at the Australian Securities and Investment Commission under the Corporation Act 2001.¹⁶ Registration on this PPSR is also an implementation of the principle of transparency which grants privilege compared to other creditors. Particularly in aircraft mortgage, PPSR implements by dividing the aircraft into Aircraft Engine, Airframe, Helicopter and Small Aircraft. This means that the aircraft mortgage in Australia, it is possible that the mortgage is on the engine only.

From the three models of aircraft mortgage mentioned above, there are similarities regarding the importance of aircraft mortgage registration. In order to avoid uncertainty on debt collateral over aircraft, Indonesia needs to rearrange the provisions regarding the guarantees agreement on aircraft. It also may be taken by submitting a Judicial Review to the Constitutional Court of the Republic of Indonesia to re-enforce Article 12 of Aviation Act No. 15 of 1992. This is for the sake of legal certainty which will have a positive impact on the Indonesia air transport industry. This judicial review is an examination process of a legal norms in the legislation that has been in effect by the judiciary institution. Subsequently, the Government may issue a Government Regulation to regulate the implementation of aircraft mortgage. These efforts are intended to make it easier for airlines to access financial sources besides to provide legal protection for creditors to secure a privilege position against other creditors.

CONCLUSION

It is quite unfortunate that the provisions regarding aircraft mortgage contained in Article 12 (1) of the Indonesia Aviation Law No. 15 of 1992 was declared invalid by the new Aviation Act No.1 of 2009. In fact, all of implementing regulations under the Act No. 15 of

1992 were declared remain valid as long no any contrary with the provision of the new Aviation Act. Unfortunately, the Government Regulation for implementation of aircraft mortgages has not been issued yet. This condition created uncertainty in the aircraft mortgage in Indonesia. Some people believe that aircraft mortgage needs to be maintained due to the fact that this guarantee institution plays a very active role and supports credit services disbursed by banks. So, it deserves to be maintained in the Indonesia Guarantee Law.

Compared to the laws of other countries that regulate and implement aircraft as debt collateral, Indonesia is quite far behind. Establishment of this regulation should be homework for the Indonesia Government which must immediately be completed in order to encourage the growth of its commercial air transport industry. The existence of laws and regulations governing aircraft as debt collateral is believed will create opportunities for airlines to access financial sources to develop their working capital. Another benefit that airlines may have from bank financing is for maintaining cash flow. Often a company goes bankrupt not because runs out of its capital, but runs out of its cash. Cash flow in air transport industry is very crucial due to their obligation to make payments to other parties related to the airline's services. The use of airports, ground handling services, fuel and aircraft maintenance which must be carried out periodically are expenses that need a lot of money. If the payments are delayed or postponed, it will affect to flight operations. Moreover, if aircraft maintenance is being delayed due to lack of funds, the consequently is, the aircraft is not allowed to operate and it will not able to generate revenue. For the financial industry, the existence of regulation regarding the implementation of aircraft mortgage is clearly an opportunity to grow up its markets on commercial air transport industry. The growth of flight passengers every year is a very promising business opportunity not only for airlines but also for the financial industry. With financial stability of airlines, it will also have a positive impact on the competition among airlines, subsequently it will benefit for the public using air transport services. The improvement of aviation industry surely will make a significant contribution to other industries such as the tourism and the small or medium enterprises in Indonesia. It will also create new economic centers in the isolated areas due to the ease flow of goods.

The commercial air transport industry actually faces very strict flight rules for the sake of aviation safety itself. Operationally, the rules that must be obeyed and implemented do not only come from the rules made by the Government, but also from international rules made by international bodies.¹⁶ Compliance with these rules is imperative that cannot be postponed or neglected because it involves the safety of human life. In order to comply with all these rules in the operation of air transport services, airline requires a lot of funds. Therefore, the air transportation business needs easy access to low-cost financial sources to carry out all its business activities. This financial support is useful to optimize its fleets and to take all necessary actions to maintain¹⁷ the airworthiness of each aircraft it owns. One of the legal instruments that may able to create access to financial resources is the existence of regulation regarding the implementation of aircraft mortgage as collateral for debt¹⁸. This regulation is currently unavailable in the midst of the growing commercial air transport industry in Indonesia^{19,20}.

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