The Urgency of Establishing Provisions of Laws and Regulations Concerning Aircraft Mortgages

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Abstract
Until now, it is known that there are no specific regulations that specifically regulate aircraft mortgages. If this situation continues, it will maintain legal uncertainty due to legal vacuum demonstrated by the absence of legal norms that specifically regulate the imposition of aircraft mortgages. This research aims to examine and comprehend the arguments which justify for the urgency of establishing the provisions of laws and regulations on aircraft mortgages. This research approaches the topic from legal perspective, using the normative juridical method. This research will closely examine several relevant the provisions of laws and regulations to identify and analyze the legal issues. Research has shown that the arguments which justify for the urgency of establishing the provisions of laws and regulations on aircraft mortgages is to create legal certainty. Likewise, there are several benefits obtained if legal norms have provided certainty and clarity about the imposition of aircraft mortgages.

1. Introduction

Aircraft is faster than other modes of transportation, allowing passengers to get from one airport to another in less time. This is because aircrafts are equipped with high technology that is operated by carriers or air transportation business entities. E. Saefullah Wiradipradja, as quoted by Hasim Purba, shares a similar view, emphasizing that despite the advanced technology employed in aircraft, every civil and state aircraft operation carries inherent risks for both the operator and other parties involved.[1] From these explanations, it is known that only air transportation business entities

[1] Hasim Purba, "Mewujudkan Keselamatan Penerbangan dengan Membangun Kesadaran Hukum Bagi Stakeholders Melalui Penerapan Safety Culture", Jurnal Hukum Samudra Keadilan, Vol. 12 No. 1, January-June 2017, p. 96.

who have capital with a high value have the opportunity to enter the relevant market related to air transportation.[2] Therefore, it is known that the number of domestic commercial air transportation business entities in Indonesia is only handful, including PT Garuda Indonesia (Persero) Tbk, PT Lion Mentari Airlines, PT AirAsia Indonesia Tbk, PT Trans Nusa Aviation Mandiri, PT Pelita Air Service, and several related subsidiaries.

Furthermore, commercial air transportation business entities certainly need sufficient capital support in order to carry out their activities in the field of air transportation. It is also well-known that financing for aircraft procurement requires a significant amount of capital.[3] Therefore, from a business perspective, which argues that capital is a fundamental requirement for business entities who will carry out their business activities.[4] From this perspective, of course, commercial air transportation business entities who do not have sufficient capital support will not easily or even be able to carry out their activities in the field of air transportation.

The importance of the availability of adequate capital in the procurement of aircraft was also stated by Donald H. Bunker as quoted by Constance O'Keefe. According to Donald H. Bunker, there are three major assets associated with air transportation, including aircraft fleet, air transportation routes, and its human resources.[5] Therefore, the procurement of aircraft fleet certainly requires the capability of air transportation business entity in financial planning.[6] Thus, the procurement of aircraft is made appropriately.

In a situation like the current one, the main obstacle for commercial air transportation business entities is the procurement of adequate capital for aircraft procurement. As is known, the capital required for the procurement of

[2] Daniel Agustino, "Karakteristik Harga dan Pengawasan KPPU Terhadap Industri Oligopoli", Jurnal Persaingan Usaha Komisi Pengawas Persaingan Usaha, Vol. 3 No. 0, July 2010, p. 5.
[3] Ari Munisami, 2010, *Aircraft Financing: Perspectives for Small and Emerging Economies*, Montreal: Institute of Air and Space Law McGill University, p. 37.
[4] Ngatemin Ngatemin, et.al, "Faktor-Faktor yang Mempengaruhi Struktur Modal (Studi Empiris Pada Perusahaan Industri Pariwisata yang Terdaftar di Bursa Efek Indonesia)," Jurnal Riset Akuntansi dan Bisnis, Vol. 19 No. 1, March 2019, p. 43.
[5] Constance O'Keefe, "Book Review: Aviation Law: Cases and Materials," Journal of Air Law and Commerce, Vol. 71 No. 4, 2006, p. 745.
[6] O'Keefe.

a new aircraft can reach 1 trillion rupiah, depending on the type of aircraft.[7] Although commercial air transportation business entities can choose the option of procuring used aircraft, the maintenance costs of these used aircraft are even greater than the maintenance costs of new aircraft.[8] Moreover, it is known that the operation of aircraft, fraught with risks, which could result in aviation security and safety risks, shows that air transportation business entities must comply with the aviation security and safety standards.[9]

It is clear that business entities in the air transportation are reluctant to choose cash purchase transactions as a method of procuring aircraft fleet.[10] The air transportation business entities often choose to carry out lease transactions or sale-leaseback transactions in order to procure aircraft fleet.[11] This option becomes an alternative to cash payment for aircraft. From a number of transaction choices in order to procure aircraft fleet, it is known that commercial air transportation business entities can get financing from financing institutions by encumbering the aircraft as collateral.[12]

In this situation, it is beginning to be known that the existence of financing facilities in aircraft procurement has an important benefit that provides convenience to business entities in the air transportation. The existence of these financing facilities really reduces the obstacles of capital shortages experienced by air transportation business entities in procuring aircraft. However, to get financing from financing institutions to procuring aircraft, air transportation business entities must comply with the financing institution's terms and conditions. These terms and conditions are necessary because situations can occur where the air transportation business entities do not fulfill their

[7] Denon Prawiraatmadja, July 16th, 2021, "*Menguatkan Jembatan Udara yang Mulai Rapuh*", Available on website: https://money.kompas.com/read/2021/07/16/140825026/menguatkan-jembatan-udara-yang-mulai-rapuh?page=all, Accessed November 1st , 2023.
[8] Prawiraatmadja.
[9] Andrew Rose, "Aviation/Measuring Safety and Controlling Risk," Measurement and Control, Vol. 38 No. 8, October 2005, p. 239.
[10] I Nyoman Ganang Bayu Weda, I Made Sarjana, and Suatra Putrawan, "Pengaturan Pesawat Udara Sebagai Obyek Jaminan Kredit," Kertha Semaya, Vol. 2 No. 6, October 2014, p. 3.
[11] Frederick Simanjuntak, Tesalonika Barus, and Anastasia Anggita, "Aircraft Finance and Leasing in Indonesia", In-House Community, 4th February 2020.
[12] Annalisa Y, et.al., "Aircraft Mortgage in Indonesia: Alternative Object of Material Guarantee as a Debt Settlement," International Journal of Recent Technology and Engineering (IJRTE), Vol. 8 No. 2S9, September 2019, p. 604.

performance to the financing institution as agreed in the financing agreement for the procurement of aircraft.

As is known, the concept of prudential principles underlies the existence of terms and conditions in financing agreements, including financing agreements for the procurement of aircraft. The application of the principle of prudence provides confidence to financing institutions about the ability of debtors to make payments for financing as agreed upon.[13] If these financing facilities are not managed on the basis of prudence, the risk can result in economic loss for financing institutions due to the debtors's breach of contract.[14] From this perspective, however the circumstances, the terms and conditions in financing agreements are needed with the intent as a consideration for financing institutions to assess the risks of providing financing facilities to debtors.

From the existing literature, it is known that the principle of prudence is applied through the five C's of credit which including Character, Capacity, Capital, Condition, and Collateral.[15] In brief, Character demonstrates the customer's willingness and determination as a candidate for financing facilities, Capacity shows the managerial and financing capability of the customer, Capital shows the comparison of the customer's asset ownership with how much the probability of providing financing to the customer, Condition shows the customer's financial as a candidate for financing facilities, and Collateral shows what assets pledged which will be used by the customer in applying for financing facilities.[16]

The existence of guarantees cannot be avoided in the application of financing facilities by customers, including also in the application of financing facilities for the procurement of high-value aircraft. This situation is the application of one of the indicators of the five C's of credit, namely Collateral. The aircraft industry, known as a capital-intensive industry, certainly shows how much protection is needed for lenders to air transportation business entities

[13] Etty Mulyati, "The Implementation of Prudential Banking Principles to Prevent Debtor with Bad Faith," Padjadjaran Jurnal Ilmu Hukum, Vol. 5 No. 1, April 2018, p. 90.
[14] Debora Damanik and Paramita Prananingtyas, "Prudential Banking Principles dalam Pemberian Kredit Kepada Nasabah," Notarius, Vol. 12 No. 2, March 2019, p. 720.
[15] Prananingtyas.
[16] Prananingtyas.

as debtors.[17] Lenders require debtors to pledge collateral over the aircraft itself.[18]

The law now recognizes the importance of the existence of a guarantee in providing financing facilities in aircraft procurement. Based on Articles 71 to 82 Law of the Republic Indonesia Number 1 of 2009 Concerning Aviation (hereinafter referred to as the Aviation Law) as the general provision that regulates what is related to air transportation from the procurement of aircraft, where it is known that there are legal norms that allow for the pledging of guarantee on the aircraft itself. However, what guarantees are allowed have not been specifically regulated in the Aviation Law. It is necessary to find out what types of guarantees are allowed on aircraft collateral according to the law.

Because the type of guarantee that is allowed on aircraft collateral depends on the categories of the aircraft, it is necessary to examine the categories of aircraft, whether aircraft are movable and immovable objects.[19] Based on Article 509 of the Civil Code, aircraft can indeed be classified as movable objects because of their nature. However, there are opinions that suggest that aircraft are actually appropriately classified as immovable objects because they must be registered and have a nationality.[20] This legal obligation of registration and nationality of aircraft is known from what is regulated in Article 24 of the Aviation Law.

Also, based on Law of the Republic Indonesia Number 42 of 1999 Concerning Fiduciary Guarantee (hereinafter referred to as the Fiduciary Guarantee Law), where fiduciary is a guarantee on movable objects, where no legal basis is obtained for the fiduciary guarantee on aircraft. Even more, Article 3 of the Fiduciary Guarantee Law explicitly excludes aircraft from objects that can be pledged with fiduciary guarantees. If so, it is reasonable if aircraft are indeed appropriately classified as immovable objects. One thing to be aware of here, indeed from what is regulated in Article 3 letter c of the Fiduciary Guarantee Law, explicitly shows the existence of a mortgage on the aircraft.

[17] Erlisa Akhlakul Kharimah, "Sewa Guna Usaha Pesawat Udara Menurut Konvensi Cape Town 2001 dan Implementasinya dalam Hukum Nasional," Jurist-Diction, Vol. 2 No. 5, September 2019, p. 1676.
[18] Annalisa Yahanan, et.al., "Urgency of Regulation: Aircraft as Object of Credit Guarantee," Diponegoro Law Review, Vol. 5 No. 1, April 2020, p. 27.
[19] Yahanan.
[20] Sarjana, p. 7.

However, a contrasting situation is clearly seen when examining what was agreed upon in the Convention on International Interests in Mobile Equipment (Cape Town Convention) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment. The existence of these convention and protocol is actually aimed at a set of internationally applicable laws in the context of aircraft, both of which have been ratified by Indonesia through Presidential Regulation of the Republic Indonesia Number 8 of 2007 Concerning Ratification of Convention on International Interests in Mobile Equipment and Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment.

The convention and protocol referred to above classify aircraft as moveable objects. The difference in perspective is not particularly significant, but what is certain is that these convention and protocol concerning the international interest as a result of the existence of guarantee on the aircraft. Because Indonesia has ratified the Cape Town Convention and its protocol, Indonesia is legally obligated to comply with all the provisions contained therein. The fact that Indonesia has ratified the Cape Town Convention and its protocol is one of the reasons why the Aviation Law allow lenders to require debtors to pledge collateral over the aircraft itself.

From the above explanation, it appears that what is stipulated in the Aviation Law is not yet a regulation that specifically addresses the guarantees on aircraft. Therefore, the aircraft mortgage, as it is currently known, still refers to the regulations on mortgage as stipulated in Articles 1162 to 1232 of the Civil Code. Based on Article 1171 of the Civil Code, mortgage of aircraft must be carried out by an authentic deed made before a notary. Article 1179 of the Civil Code also affirms the necessity for the registration of the mortgage to confer legal validity.

Indeed, the absence of specific regulation regarding aircraft mortgages appears to be at the root of the ongoing problem. This is because there is another legal problem associated with aircraft mortgage: there is no official who is specifically authorized to make *grosse* (the first duplicate) of the aircraft mortgage deed, and there is no specific registration office to facilitate the

registration of aircraft mortgages. The current legal situation in Indonesia makes it difficult to execute aircraft mortgages. Current situation give rise to a plethora of discourses examining the problems associated with the aircraft mortgages.

A review of previous research conducted by others, such as I Nyoman Ganang Bayu Weda, I Made Sarjana, and Suatra Putrawan in their paper titled "Pengaturan Pesawat Udara Sebagai Obyek Jaminan Kredit" and Feri Wirsamulia in his paper titled "The Legal Problem of Aircraft Mortgage in Indonesia" which examines the issue of aircraft mortgages, revealed mutual consensus on the necessity for the establishment of regulation specifically concerning aircraft mortgages.[21] Therefore, this research aims to unveil ignorance relating aircraft mortgages: What justification for the urgency of establishing the provisions of laws and regulations on aircraft mortgages? Consequently, this research aims to examine and comprehend the arguments which justify for the urgency of establishing the provisions of laws and regulations on aircraft mortgages.

2. Research Method

This research approaches the topic from legal perspective, using the normative juridical method.[22] This research will closely examine several relevant the provisions of laws and regulations to identify and analyze the legal problems. Data collection for this research was carried out by reviewing, such as primary legal materials, including the Civil Code, the Fiduciary Guarantee Law, the Aviation Law, Presidential Regulation of the Republic Indonesia Number 8 of 2007 Concerning Ratification of Convention on International Interests in Mobile Equipment and Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, and Financial Services Authority Regulation of the Republic Indonesia Number 35/POJK.05/2018 Concerning Implementation of the Financing Institutions. Correspondingly, data was collected from secondary legal materials including

[21] Feri Wirsamulia, "The Legal Problem of Aircraft Mortgage," Journal of Legal, Ethical and Regulatory Issues, Vol. 24 No. 6, 2021, p. 8.
[22] Sulistyowati Irianto and Shidarta, *Metode Penelitian Hukum: Konstelasi dan Refleksi*, Jakarta: Yayasan Pustaka Obor Indonesia, pp. 121-122.

books, scientific journals, and articles related to the research. The method of data analysis used in this study was the descriptive analytical with deductive thinking criteria.

3. Results and Discussion

In this situation, the provision of financing facilities for the procurement of aircraft is shown as a convenience for air transportation business entities. The existence of these financing facilities reduces the obstacles faced by these business entities in the procurement of aircraft, namely the obstacles resulting from insufficient capital resources. Regardless of any circumstances, providing financing facilities must fulfill several terms and conditions, which adheres to prudential principles. One of the applications of prudential principles through the five C's of credit is the collateral, as explained above.

It is common practice to require aircraft mortgages when providing financing to the air transportation business entities for the procurement of aircraft. The Cape Town and its protocol require lenders to obtain aircraft guarantees in order to protect their interests. Hence, both international agreements jointly urge for the immediate implementation of the aircraft guarantees. No wonder that several countries chose to ratify the two international agreements, 4 (four) of which are Singapore, the United Arab Emirates, Nigeria, and Indonesia.[23]

Furthermore, the countries ratifying these two international agreements must implement the provisions agreed upon in the agreements as legal norms in their national laws. To comply with these two international agreements, Indonesia has fulfilled this legal obligation into Articles 71 to 82 of the Aviation Law. However, the norms stipulated in Articles 71 to 82 of the Aviation Law are indeed only limited to regulating international interests that arise as a result of guarantee agreements, title reservation agreement, and/or leasing agreement. The Aviation Law is not intended as a regulation that specifically regulates aircraft mortgages.

[23] ICAO, "*Cape Town Convention and Protocol*", Available on website: https://www.icao.int/sustainability/Pages/Capetown-Convention.aspx, Accessed November 2nd, 2023.

Based on this, it is known that the practice of mortgaging aircraft in Indonesia still refers to the regulations on mortgage as stipulated in Articles 1162 to 1232 of the Civil Code. One thing that should be realized here, what is stipulated in the Civil Code also still leaves a legal void due to the lack of regulations regarding which official who is specifically authorized to make *grosse* (the first duplicate) of the aircraft mortgage deed. As a result, the Civil Code does not address the issues that arise in the creation of *grosse* (the first duplicate) of the aircraft mortgage deed. Furthermore, currently, there is still an ongoing problem with related issues in registering aircraft mortgages.[24] This aircraft mortgage registration is necessary to make the said aircraft mortgage legally validity.

To address the problem of the lack of specific regulations governing aircraft mortgages, several studies have been conducted that agree with the widespread view that such regulations are urgently needed. The study conducted by previous researches often highlighted the obstacles in executing aircraft mortgages, such as the absence of a registration office to facilitate the registration of aircraft mortgages. However, the necessary studies should not only focus on the problems and solutions related to aircraft mortgages. Therefore, it is necessary to explore the justifications for the urgency of establishing the provisions of laws and regulations on aircraft mortgages.

Consequently, it is necessary to know legal concepts needed to provide understanding of what is meant by a mortgage. Based on Article 1162 of the Civil Code, a mortgage is defined as a property right on immovable objects, for replacement from these objects for the fulfillment of an obligation. From this perspective, the existence of a mortgage is predicated on an obligation, which is a legal relationship between the parties.[25] The source of the obligation intended in Article 1162 of the Civil Code is an agreement. Therefore, in principle, the position of the mortgage agreement is a subsidiary agreement from the main agreement, in the form of a credit agreement.[26] Without a main agreement, a

[24] Wirsamulia.
[25] Tim Hukumonline, December 12th, 2022, "*Hipotek: Pengertian, Objek, dan Dasar Hukumnya*", Available on website: https://www.hukumonline.com/berita/a/hipotek-lt619ee64b0d84b, Accessed November 3rd, 2023.
[26] Rodrico Agustino Renee, "Hipotek Sebagai Jaminan Hak Kebendaan Setelah Berlakunya Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan," Lex Et Societatis, Vol. 9 No. 1, January 2021, p. 146.

mortgage agreement cannot be formed.

From legal literature, there are views that provide a definition of the term "mortgage", which aligns with the definition in Article 1162 of the Civil Code. According to Vollmar as cited by Dimas Hadi Prastya, I Nyoman Putu Budiartha, and Desak Gd. Dwi Arini, a mortgage is a property right on an immovable object, which is intended to give the entitled person, a pleasure of a property, but it only provides a guarantee of the fulfillment of a debt with priority.[27] According to Hartono Hadisoeprapto as cited by Dimas Hadi Prastya, I Nyoman Putu Budiartha, and Desak Gd. Dwi Arini, a mortgage is a form of credit guarantee that exists because of an agreement, i.e., a form of guarantee that must indeed be pledged first.[28] Therefore, both the above views reveal that the existence of a mortgage agreement is aimed at protecting the interests of lenders from risks.

If this concept is elaborated in the context of providing financing facilities to air transportation business entities, it is first known that the aircraft is appropriately classified as immovable objects. Therefore, aircraft can be mortgaged. The mortgage needs an agreement based on the obligation that stems from a financing agreement in procuring the aircraft. Meaning, both the lender (financing institution) and the debtor (the air transportation business entity) must have agreed to bind each other in a financing agreement. Hence, the lender of the financing facility is positioned as the creditor, whereas, the air transportation service business entity, as the debtor.

Furthermore, since anything agreed in the financing agreement could expose risks, primarily to creditor, creditor must conduct risk mitigation. The said risk arises due to unpaid debts by the debtor. The law necessitates the risk mitigation to become a legal obligation for the creditor, in this case, the financing institution. Based on Article 26 Paragraph (2) letter c of the Financial Services Authority Regulation of the Republic Indonesia Number 35/POJK.05/2018 Concerning Implementation of the Financing Institutions, a financing institution is obliged to undertake risk mitigation in financing, and one method of risk

[27] Dimas Hadi Prastya, I Nyoman Putu Budiartha, and Desak Gd. Dwi Arini, "Pembebanan Hipotek Atas Kapal Laut dalam Perjanjian Kredit Bank," Jurnal Analogi Hukum, Vol. 2 No. 2, July 2020, p. 157.
[28] Arini.

mitigation is to impose fiduciary or mortgage on the assets of the financing transaction. From this perspective, financing agreements in aircraft procurement must also be accompanied by an agreement on the imposition of collateral on the aircraft itself, which in this case is a mortgage.

Following on, it is recognized that there are benefits to the mortgage institution where the mortgage certificate has the same legal force as a court ruling. Thus, the existence of the mortgage institution will certainly facilitate lenders/creditors to carry out execution due the debtors breach of contract. From this point of view, the creditor has legal certainty on the guarantee object.

Further, it is known that in pledging a mortgage guarantee it requires a mortgage agreement with an authentic deed made before a notary and further needs to be registered to the registration office, thus the mortgage has legal force. In Indonesia, where an agreement will have more legal force if made before an authorized public official, then the mortgage agreement needs to be made before an authorized public official as one of the risk mitigation measures.

Regardless of the debate on why mortgage becomes the choice for collateral on aircraft as explained above, since the aircraft is classified as immovable object which has the characteristic of mandatory registration and nationality of the aircraft.[29] This situation is also applied in several countries, such as Singapore, United Arab Emirates, and Nigeria, which use the mortgage institution as a guarantee for aircraft. The United Arab Emirates regulates the mortgage of aircraft into UAE Civil Aviation Law (Federal Law Number 20 of 1991), UAE Commercial Code (Federal Law Number 18 of 1993) and implements the Cape Town Convention[30], Nigeria does not have specific regulations on aircraft mortgage and only bases on what is regulated in the Civil Aviation Act 2006, the Nigeria Civil Aviation Regulations 2015, and the Cape Town Convention[31], and Singapore which allows the mortgage institution on

[29] Putrawan.
[30] Yi Ling Wong, Sakshi Puri, and Bushra Abu Tayeh, February, 2018, "*Effectiveness of Aircraft Mortgages in the UAE*", Available on website: https://www.tamimi.com/law-update-articles/effectiveness-aircraft-mortgages-uae/, Accessed November 4th, 2023.
[31] Ola Alokolaro and Oladayo Ogungbe, "*Aircraft Financing in Nigeria: Challenges and Prospects*", Available on website: https://www.ibanet.org/article/BB8ADD33-EEDD-4341-80B5-BF7F42D39229, Accessed November 4th, 2023.

aircraft and bases it on the Cape Town Convention.[32] From this perspective, the mortgage has been the correct choice in imposing a collateral on aircraft.

It is known that the existence of an aircraft mortgage is indeed required by law. Therefore, whatever happens, what applies as a legal norm must be a guideline in actions related to the imposition of aircraft mortgage. These legal norms also must provide clarity about what actions are prohibited, what actions are permitted, and even sanctions, in relation to the imposition of aircraft mortgage. Looking at the current situation, the applicable legal norms have yet to provide clarity regarding the imposition of aircraft mortgage guarantees. The result is obstacles in executing aircraft mortgages due to the absence of a specific registration office to facilitate the registration of aircraft mortgages and who the officer is specifically authorized to make *grosse* (the first duplicate) of the aircraft mortgage deed. This situation arises due to the absence of legal norms that justify actions related to the registration of aircraft mortgages and the creation of the *grosse* (the first duplicate) of the aircraft mortgage deed.

If this situation continues, it will maintain legal uncertainty due to a legal vacuum demonstrated by the absence of legal norms that specifically regulate the imposition of aircraft mortgages. Therefore, it damages the purpose of the establishment of legal norms which ideally aim to create order.[33] Therefore, the implementation of a mortgage guarantee on the aircraft is bound to be chaotic. Such concerns should not be desired by law. This is the arguments which justify for the urgency of establishing the provisions of laws and regulations on aircraft mortgages from the perspective of legal science.

There are several benefits if legal norms have provided certainty and clarity about the imposition of aircraft mortgage. For financing institutions, aircraft mortgages have legal force so there is a guarantee that the mortgage can be executed if there is a breach of contract by the air transportation business entity. Due to the certainty about executing aircraft mortgages, financing

[32] Shaun Lee, Niel Liebenberg, and Leo Fattorini, April 1st, 2023, "*Aviation Finance in Singapore: Overview*", Available on website: https://uk.practicallaw.thomsonreuters.com/3-630-4292?navId=D14CCC8B2E8C8C5639DCF6234EF29677&comp=pluk&transitionType=Default&contextData=(sc.Default)&firstPage=true, Accessed November 4th, 2023.
[33] Syofyan Hadi, "Hukum Positif dan The Living Law," DIH: Jurnal Ilmu Hukum, Vol. 13 No. 26, September 2017, p. 263.

institutions get legal protection in providing financing facilities. The expectation is that this situation will increase success and accelerate the provision of financing facilities in order to procure aircrafts to air transportation business entities.

Further elaboration shows that, if so, air transportation business entities will enjoy convenience from the granting of financing facilities in order to procure aircraft. Airline business actors can meet their main needs in transportation, namely the availability of aircraft fleet to serve air transportation. If this situation occurs, the expectation is also to increase economic growth in the field of commercial air transportation due to the availability of fleet capable of accommodating commercial air transportation demand. Up to this point, the benefits that will be obtained if legal norms have provided certainty and clarity about the imposition of aircraft mortgages are clearly seen.

4. Conclusion

Until now, it is known that there are no specific regulations that specifically regulate aircraft mortgages. If this situation continues, it will maintain legal uncertainty due to legal vacuum demonstrated by the absence of legal norms that specifically regulate the imposition of aircraft mortgages. Therefore, damaging the purpose of establishing legal norms in order to create order.

Therefore, the implementation of an aircraft mortgage is in chaotic. Such concerns should not be desired by law. The law requires legal certainty so that the law itself is used to guide actions related to the imposition of aircraft mortgages. This is the arguments which justify for the urgency of establishing the provisions of laws and regulations on aircraft mortgages.

Then, there are several benefits if legal norms have provided certainty and clarity regarding the imposition of aircraft mortgages. For financing institutions, aircraft mortgages have legal force so there is a guarantee that the mortgage can be executed if there is a breach of contract by the air transportation business entity. Due to the certainty of the execution of

aircraft mortgages, financing institutions obtain legal protection in providing financing facilities. The expectation is that this situation will enhance the success and acceleration of providing financing facilities for the procurement of aircrafts to air transportation business entities.

Further elaboration shows that, due to this air transportation business entities will enjoy convenience from the granting of financing facilities for the procurement of aircraft. Air transportation business entities can meet the main needs within air transportation, namely the availability of an aircraft fleet to deliver air transportation. If this situation occurs, it is also expected that it can stimulate economic growth in the commercial air transportation sector due to the availability of aircraft fleet capable of fulfilling commercial air transportation demands. Up to this point, the benefits that will be obtained if legal norms have provided certainty and clarity about the imposition of aircraft mortgages are clearly seen.

References

Irianto, Sulistyowati and Shidarta. 2015. *Metode Penelitian Hukum: Konstelasi dan Refleksi*. Jakarta: Yayasan Pustaka Obor Indonesia.

Munisami, Ari. 2010. *Aircraft Financing: Perspectives for Small and Emerging Economies*. Montreal: Institute of Air and Space Law McGill University.

Agustino, Daniel. "Karakteristik Harga dan Pengawasan KPPU Terhadap Industri Oligopoli". Jurnal Persaingan Usaha Komisi Pengawas Persaingan Usaha. Vol. 3 No. 0. July 2010. Pp. 3-26.

Damanik, Debora and Paramita Prananingtyas. "Prudential Banking Principles dalam Pemberian Kredit Kepada Nasabah". Notarius. Vol. 12 No. 2. March 2019. Pp. 718-730. DOI: https://doi.org/10.14710/nts.v12i2.29011.

Hadi, Syofyan. "Hukum Positif dan The Living Law". DIH: Jurnal Ilmu Hukum. Vol. 13 No. 26. September 2017. Pp. 259-266. DOI: https://doi.org/10.30996/dih.v0i0.1588.

Kharimah, Erlisa Akhlakul. "Sewa Guna Usaha Pesawat Udara Menurut Konvensi Cape Town 2001 dan Implementasinya dalam Hukum Nasional". Jurist-Diction. Vol. 2 No. 5. September 2019. Pp. 1675-1690.

Mulyati, Etty. "The Implementation of Prudential Banking Principles to Prevent Debtor with Bad Faith". Padjadjaran Jurnal Ilmu Hukum. Vol. 5 No. 1. April 2018. Pp. 89-108. DOI: https://doi.org/10.22304/pjih.v5n1.a5.

Ngatemin, Ngatemin, et.al. "Faktor-Faktor yang Mempengaruhi Struktur Modal (Studi Empiris Pada Perusahaan Industri Pariwisata yang Terdaftar di Bursa Efek Indonesia)". Jurnal Riset Akuntansi dan Bisnis. Vol. 19 No. 1.

March 2019. Pp. 40-52. DOI: http://dx.doi.org/10.30596%2Fjrab.v19i1.3323.

O'Keefe, Constance. "Book Review: Aviation Law: Cases and Materials". Journal of Air Law and Commerce. Vol. 71 No. 4. 2006. Pp. 737-747.

Prastya, Dimas Hadi, I Nyoman Putu Budiartha, and Desak Gd. Dwi Arini. "Pembebanan Hipotek Atas Kapal Laut dalam Perjanjian Kredit Bank". Jurnal Analogi Hukum. Vol. 2 No. 2. July 2020. Pp. 155-159.

Purba, Hasim. "Mewujudkan Keselamatan Penerbangan dengan Membangun Kesadaran Hukum Bagi Stakeholders Melalui Penerapan Safety Culture". Jurnal Hukum Samudra Keadilan. Vol. 12 No. 1. January-June 2017. Pp. 95-110.

Renee, Rodrico Agustino. "Hipotek Sebagai Jaminan Hak Kebendaan Setelah Berlakunya Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan". Lex Et Societatis. Vol. 9 No. 1. January 2021. Pp. 146-153. DOI: https://doi.org/10.35796/les.v9i1.32193.

Rose, Andrew. "Aviation/Measuring Safety and Controlling Risk". Measurement and Control. Vol. 38 No. 8. October 2005. Pp. 239-242. DOI: https://doi.org/10.1177/002029400503800802.

Weda, I Nyoman Ganang Bayu, I Made Sarjana, and Suatra Putrawan. "Pengaturan Pesawat Udara Sebagai Obyek Jaminan Kredit". Kertha Semaya. Vol. 2 No. 6. October 2014. Pp. 1-14.

Wirsamulia, Feri. "The Legal Problem of Aircraft Mortgage". Journal of Legal, Ethical and Regulatory Issues. Vol. 24 No. 6. 2021. Pp. 1-10. DOI: https://doi.org/10.15742/ilrev.v12n1.2.

Y, Annalisa, et.al. "Aircraft Mortgage in Indonesia: Alternative Object of Material Guarantee as a Debt Settlement". International Journal of Recent Technology and Engineering (IJRTE). Vol. 8 No. 2S9. September 2019. Pp. 601-607. DOI: https://doi.org/10.35940/ijrte.B1126.0982S919.

Yahanan, Annalisa et.al. "Urgency of Regulation: Aircraft as Object of Credit Guarantee". Diponegoro Law Review. Vol. 5 No. 1. April 2020. Pp. 19-33. DOI: https://doi.org/10.14710/dilrev.5.1.2020.19-33.

Simanjuntak, Frederick, Tesalonika Barus, and Anastasia Anggita. "Aircraft Finance and Leasing in Indonesia". In-House Community. 4th February 2020.

The Civil Code.

Law of the Republic Indonesia Number 42 of 1999 Concerning Fiduciary Guarantee.

Law of the Republic Indonesia Number 1 of 2009 Concerning Aviation.

Presidential Regulation of the Republic Indonesia Number 8 of 2007 Concerning Ratification of Convention on International Interests in Mobile Equipment and Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment.

Financial Services Authority Regulation of the Republic Indonesia Number 35/POJK.05/2018 Concerning Implementation of the Financing Institutions.

Alokolaro, Ola and Oladayo Ogungbe. "Aircraft Financing in Nigeria: Challenges and Prospects". Available on website: https://www.ibanet.org/article/BB8ADD33-EEDD-4341-80B5-BF7F42D39229. Accessed November 4th, 2023.

ICAO. "*Cape Town Convention and Protocol*". Available on website: https://www.icao.int/sustainability/Pages/Capetown-Convention.aspx. Accessed November 2nd, 2023.

Lee, Shaun, Niel Liebenberg, and Leo Fattorini. April 1st. 2023. "Aviation Finance in Singapore: Overview". Available on website: https://uk.practicallaw.thomsonreuters.com/3-630-4292?navId=D14CCC8B2E8C8C5639DCF6234EF29677&comp=pluk&transitionType=Default&contextData=(sc.Default)&firstPage=true. Accessed November 4th, 2023.

Prawiraatmadja, Denon. July 16th. 2021. "*Menguatkan Jembatan Udara yang Mulai Rapuh*". Available on website: https://money.kompas.com/read/2021/07/16/140825026/menguatkan-jembatan-udara-yang-mulai-rapuh?page=all. Accessed November 1st, 2023.

Tim Hukumonline. December 12th. 2022. "Hipotek: Pengertian, Objek, dan Dasar Hukumnya". Available on website: https://www.hukumonline.com/berita/a/hipotek-lt619ee64b0d84b. Accessed November 3rd, 2023.

Wong, Yi Ling, Sakshi Puri, and Bushra Abu Tayeh. February. 2018. "Effectiveness of Aircraft Mortgages in the UAE". Available on website: https://www.tamimi.com/law-update-articles/effectiveness-aircraft-mortgages-uae/. Accessed November 4th, 2023.