

Airplane as the Object of Mortgage Collateral in Indonesia Collateral Law



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ABSTRACT: Transportation is an important thing in supporting economic activities in Indonesia. One of them is an airplane which is a means of transportation for humans and facilities logistics. Based on data from the Directorate General of Civil Aviation, Ministry of Transportation (Kemenhub), there are around 18 airlines operating to transport passengers and around 54 cargo airlines, as well as 56 foreign airlines operating in Indonesia. It shows that the position of an airplane as an object becomes important, especially in terms of buying and selling and leasing of the airplane itself. In Indonesia, airplane leasing air travel is more often carried out for the implementation of the aviation business compared to buying and selling. This is due to the high price of airplanes as well as the legal situation regarding guarantees against airplane in Indonesia that are not yet fully present.

In terms of guarantee, airplane is one of the objects that can be charged guarantee. This refers to Article 72 of Law Number 1 of 2009 concerning Aviation stating that "airplane objects can be burdened with interests international agreements arising from agreements on the granting of material guarantee rights, binding agreements conditional rights, and/or leasing agreement". Looking at these provisions, raises an issue regarding the classification of guarantee imposition criteria. Remember airplanes is an object that can change hands, then an airplane should be classified into movable objects subject to fiduciary guarantees. However, when viewed from the total weight of the airplane has a weight of more than 20 m³ so that it is included in the excluded object the imposition of fiduciary guarantees as referred to in Article 3 of Law Number 42 of the year 1999.

Based on these problems, the author wants to devote the author's thoughts related to **AIRPLANE AS MORTGAGE COLLATERAL OBJECTS IN INDONESIA COLLATERAL LAW**

KEYWORDS: airplane, guarantee, mortgage, movable objects, fiduciary.

1. RESEARCH METHODS

1. Type of Research

This type of legal research is carried out in a normative juridical manner where law is conceptualize as what is written in statutory regulations (law in books) or law conceptualized as a rule or norm which is a standard of human behavior deemed appropriate. This normative legal research is based on primary legal materials and secondary, namely research that refers to the norms contained in regulations legislation.

1. Type of Research

Researchers choose legal research by focusing on legal ambiguity (vague norm), namely problems from existing laws and regulations but are not yet clear. Type This legal research is a normative juridical which will emphasize on assessment and tracing legal materials as a result of legal ambiguity. The legal ambiguity referred to in Law Number 1 of 2009 concerning Aviation (Aviation Law). The Aviation Law only regulates registration of ownership of airplane and helicopters and does not regulate regarding imposition of material guarantees. This is different from the provisions in Article 12 Law Number 15 of 1992 concerning Aviation which regulates that airplane airplane and helicopters that already have registration marks and Indonesian nationality can subject to mortgage collateral and must be registered.

3. The nature of the research

The research is analytical prescriptive in nature, namely scientific research with a method for learn one or several symptoms by analyzing and examining things in depth to certain facts to then seek a solution to the problems problem caused by this fact. So in this research will be solved problems regarding mortgages as an airplane guarantee institution due to regulations regarding mortgages that are currently in effect do not mention the classification and guarantee charge.

4. Research Approach

This research will be conducted with a statutory approach (statute approach) where laws and regulations will be reviewed and then related to legal issues discussed.

5. Types of legal materials

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The type of data used is in the form of library materials, namely primary, secondary and tertiary data

6. Techniques for collecting legal materials

The collection of legal materials will be carried out by means of a literature study by researching laws and regulations and literature by inventorying books related to the problems to be discussed in this study.

7. Processing and Analysis of Legal Materials

Legal materials collected will be sorted and then processed by classification, categorized, systemized, and interpreted according to the research discussion.

2. ANALYSIS AND DISCUSSION

Air transport, namely airplane, has experienced rapid development, especially after the government gives freedom for airlines to determine the rates as regulated in the Ministry of Transportation Regulation (Permenhub) Number 20 of 2019 regarding the Mechanism of Calculation Formulation and Determination of Upper and Lower Limit Tariffs Domestic Scheduled Commercial Air Transportation Economy Class Passengers. Matter This gives a signal that the air aviation business will develop. See in the development of the business, there is a problem regarding guarantees airplane where the guarantee penalty in terms of financing for Procurement/purchase of airplane has not been properly regulated. In fact, entrepreneurs of course requires financing from the bank to make a purchase airplane whose price is very expensive.

Provision of these funds can be implemented through a credit facility on the basis of a Agreement. Sudikno Mertokusumo argued that an agreement is a relationship law between two or more parties based on an agreement to cause consequences law. This agreement will create an engagement between the parties, namely a relationship law in the field of assets between two parties that give rise to rights on one parties and obligations to other parties in an achievement.

Relating to the Credit Agreement itself, before the agreement was formed of course the parties must be able to determine what objects will be subject to collateral and What class of objects are included? In this case, property law in Indonesia still adheres to the system set out in the Burgelijk Wetboek (BW) which classify tangible and intangible objects (Article 503 BW), Movable objects and immovable objects (Article 504 BW), consumables and non-consumable objects (Article 505 BW), Things that already exist and things that will still exist (Article 1131 BW). Objects that can be divided and objects that cannot be divided (Article 1160 jo. 1163 BW), Objects in trading and non-trade goods (Article 537 jo 1132 BW), Property treasures and non-treasure objects (Article 587 BW), Producing objects and non-producing objects produce (Article 575 BW), Master and no-man's goods (Article 519 BW), and Replaceable objects and non-replaceable objects (1694 BW).

As regulated in Chapter I Article I Part 2 (a) of the Convention On International Interests In Mobile Equipment (Cape Town Convention) defined that, "airplane means airlift as defined for the purposes of the Chicago Convention which are either airframes with airplane engines installed thereon or helicopters "airplane" means airplane defined for the purposes of the Chicago Convention as airframes with airplane engines attached to airplane or helicopters). Based on this explanation, it can be seen that the definition of an airplane contained in the Cape Town Convention is as intended in Convention on Civil Aviation (1994 Chicago Convention). Based on Annex 7 of the Convention Chicago 1944 that, Airplane is any machine that can sustain in the atmosphere from the reaction of the air other than the reaction of the air on the earth's surface. Then when referring in Article 1 paragraph (3) of the Aviation Law, it is explained that an airplane is any machine or a device that can fly through the atmosphere due to lift from the reaction of the air, but is not due to the reaction of the air against the surface of the earth used for flight. Besides In the understanding of the airplane there is also an explanation of the term airplane flying and helicopters.

According to Article 1 point 4 Airplanes are airplanes heavier-than-air, fixed-winged, and able to fly on its own Meanwhile, based on Article 1 point 5, a helicopter is a heavier airplane from the air, winged swivel whose rotor is driven by engines. By looking at the definition it can be seen that, airplanes and helicopters are part or it can be said as an airplane. Of the two definitions, there is no clear and definite description kind of airplane property. In fact, in terms of encumbrance/guarantee it needs to be determined first about the moving object or the immovable object. Immovable objects consist of:

1. Immovable objects according to their nature (Article 506 of the Civil Code) are objects that because the nature of these objects cannot be moved or moved from one place to another other places, for example the land (yard) along with everything that is built on it, mills other than those stipulated in Article 510 of the Civil Code, trees or plants whose roots go deep into the ground, fruits that have not been picked, items mining goods (as long as they have not been separated or excavated from the ground), wood from trees in uncut and/or logged forest. pipes and drains from the house or yard, and anything that is stuck in the ground or nailed down in a building.
2. Immovable objects based on their designation or purpose (Article 507 Civil Code) are all objects attached to land or buildings even though they are not permanent in nature, with the aim of adhering to the land or building for a time old, for example the machines in a factory.
3. Immovable objects under the provisions of the law (Article 508 of the Civil Code) are objects both tangible and intangible which by law law is determined as immovable objects, for example the right to collect results on immovable objects usufructuary

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rights over immovable objects, and objects that can be burdened with mortgages such as ships with a size of more than 20 m³ (twenty kubik meter) that has been registered with the competent authority (ships that have not registered as still domiciled as a movable object).

The movable objects consist of:

1. Movable objects by their nature (Article 509 of the Civil Code) are objects which by their nature of objects that can move or be moved from one place to another.
2. Movable objects under the provisions of the law (Article 511 of the Civil Code) are objects both tangible and intangible due to provisions law is determined as a thing.

Based on these two classifications of objects, airplanes are not included in the definition of both making it difficult to determine material guarantees that are suitable for airplane. In this regard, four types of institutions will be discussed in advance material guarantees, namely:

1. Pawn

Pledge is a right obtained by someone who has a debt on something movable property handed over to him by a debtor or by a person other on his behalf and who gave power to the debtor to take payment of the goods in priority over the people other receivables, with the exception of fees for auctioning the item and costs that had been incurred to salvage it after the item was mortgaged, the costs which must take precedence (Article 1150 of the Criminal Code).

Based on this explanation, pawn loading cannot be carried out on the airplane because if a pawn guarantee is applied, the airplane will be under mastery of the creditor which is detrimental to the debtor or the airplane business entrepreneur because not operational.

2. Fiduciary

Article 1 point (1) of the Fiduciary Law explains that Fiduciary is a transfer of ownership rights an object on the basis of trust provided that the object is the right ownership is transferred remains in the control of the owner of the object. Fiduciary Guarantee is collateral for movable objects both tangible and intangible and intangible objects movable, especially buildings that are not burdened with mortgage rights according to Law no. 4/1996 (Article 1 point 2).

Based on this explanation, the airplane is not included in the fiduciary because it is explained in Article 3 of the Fiduciary Law that the Fiduciary Guarantee Law does not apply to

- a. Mortgage rights related to land and buildings in accordance with regulations applicable laws determine the guarantee for these objects must be registered;
- b. Mortgage on ships registered with a gross content of 20 m or more;
- c. Mortgages on airplanes and helicopters; And
- d. Pawn

3. Mortgage Right

Based on Law Number 4 of 1996 concerning Mortgage Rights on Land Along with Land-Related Objects (UUHT), explaining that, the object of rights Liability is the right to land and other objects which form a unit with soil. Therefore, airplane cannot be used as objects of guarantee institutions Mortgage because it is not an object of Mortgage guarantee.

4. Mortgage

Mortgage is a material right over immovable objects to take reimbursement rather than for repayment of an agreement (Article 1162 of the Civil Code). Characteristics of a mortgage:

- For immovable objects
- There is no element of inzestelling
- Implemented based on an authentic deed

When viewed based on Article 509 of the Civil Code, an airplane is in nature indeed move around and can be classified as moving objects, but if seen based on the weight of the airplane has a weight of more than 20 m³ so that it can also be classified as an immovable object such as a ship. When viewed from the nature of the airplane moving around, airplane are classified into movable objects and result in the provisions governing it are civil law regarding objects moving. However, according to Mieke Komar Kantaatmadja, the legal nature of airplane as objects are different from moving objects in general because airplane must be registered and have a national identity. This is the background of legal experts provides an exception regarding the status of an airplane as a movable object has a special setting and calls it moveable property *sui generis*. *Sui generis* implies a special feature of the character of a separate airplane so that when seeing these characteristics, airplane can be used as collateral for mortgages as an *accessoir* agreement.

Furthermore, if examined further in Article 1171 of the Civil Code it is explained that the guarantee institution the mortgage must be charged on the deed of authentication made before the competent authority in this case is a notary. To clarify this, if seen in the Elucidation of Article 15 paragraph (3) Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 Concerning the Position of Notary Public explains other powers A notary is one of those who makes an airplane mortgage deed. From this explanation, Notaries are expressly authorized to make an airplane mortgage deed. Authority a notary in

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making an airplane mortgage deed provides a legal protection and legal certainty for the parties to hold a mortgage guarantee for the airplane.

This is then in line with the 1948 Geneva Convention concerning the Convention On The International Recognition of Rights In Airplanes, that, "mortgages, hypothèques and similar rights in airlift which are contractually created as security for payment of an indebtedness. (Guarantees for airplane are mortgages, mortgages and similar guarantees for airplane). Based on this explanation, it can be seen that airplanes are material belonging to the sui generis nature that can be provided with material guarantees mortgage. For this reason, if an airplane is to be pledged as collateral, then the mortgage is the appropriate guarantee institution is associated with registration to the making of an authentic deed become a notary.

3. CONCLUSION AND ADVICE

a. Conclusion

1. Airplane assurance is very important in the development of the aviation industry. However, the arrangements regarding the guarantee institution to be used are unclear and lead to different interpretations and implications for its implementation there is a difference, some use mortgage institutions and some don't using fiduciary institutions, whereas there are things that actually deviate from fiduciary guarantee principles
2. The current Aviation Law creates legal uncertainty, where it arises several differences of opinion regarding the classification of objects and collateral institutions which one is appropriate for the imposition of collateral for an airplane under Indonesian law of guarantee. For that now Mortgage guarantee is the most relevant guarantee for binding to the airplane, because airplane has specific characteristics (sui generis). That matter because the airplane has a registration mark and a national mark as stipulated in Article 24 of the Aviation Law.

b. Advice

1. It is better for legislators to immediately make special arrangements regarding airplane guarantee so that the implementation of airplane loading can obtain legal certainty.

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