

## **Legal Analysis of Aircraft as Credit Collateral in Guarantee Law in Indonesia**

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### **Abstract**

*The current Aviation Law does not regulate the binding of mortgage guarantees on aircraft, causing legal uncertainty regarding aircraft as collateral. There are differing opinions on which guarantee institution is appropriate for imposing guarantees on aircraft according to Indonesian law. To date, mortgage collateral is considered the most relevant for binding aircraft because aircraft have special characteristics. Aircraft are registered and have a country mark, so they can legally be used as collateral for debt repayment. Therefore, the binding of aircraft and helicopters is done with a mortgage. The research method used is a normative juridical descriptive method with the object of research being guarantees on aircraft. The results of this study indicate that there are no government regulations concerning the imposition of security rights on aircraft, making the process unclear. Notaries are authorized to make aircraft mortgage deeds, providing certainty and legal protection. Notaries can also make SKMH, which has perfect legal proof. The existence of SKMH in the guarantee of aircraft security rights is the choice of the related parties. In essence, the imposition of mortgages must be done with an authentic deed made before a competent official, in this case, a notary, according to Article 1338 of the Civil Code (BW) and Article 1171 of the Civil Code (BW).*

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## **1. INTRODUCTION**

He guaranteed the aircraft in the granting of credit by the bank regarding the encumbrance. In practice, there are still problems in guaranteeing aircraft, namely in terms of classifying the criteria for charging guarantees. Considering that an airplane is a vehicle that can move/be moved, it should be an airplane classified into movable objects that are encumbered with fiduciary guarantees, whereas, if seen from the total weight of the aircraft, the aircraft has a weight of more than 20 m<sup>3</sup>, so it is an object that is excluded from the imposition of fiduciary guarantees, because according to Article 3 of the Law - Law Number 42 of 1999 concerning Fiduciary Guarantees does not apply to registered vessels with gross contents measuring 20 m<sup>3</sup> or more and mortgages for aircraft.

Apart from that, Article 1171 BW explains that mortgage assignment must be carried out with an authentic deed made before an authorized official, in this case a notary. The debtor's interests are protected if the mortgage agreement is carried out with a mortgage deed, which is contained in the Explanation to Article 15 paragraph (3) UUJN after the amendment explains that notaries have the authority to make aircraft mortgage deeds. Article 1179 BW explains that mortgage registration must be carried out in the general registers provided for this purpose. In that case, it is carried out in the "Aircraft Mortgage Register Book" provided by the Directorate General of Civil Aviation, or an official appointed by the Minister with the threat of being null and void. The new aircraft mortgage agreement is binding on the third party when it is registered in the aircraft mortgage register

book, while the creditor and debtor are bound from the moment the parties sign it in front of a notary.

Registration of aircraft mortgage agreements is carried out by officials of the Directorate General of Civil Aviation or officials appointed by the Minister and has the function and task of providing aircraft mortgage certificates (SHPU), storing and maintaining and deleting registration of agreements mortgage aircraft. The registration carried out must contain the registration date, the complete last address of the creditor or debtor, the debt repayment period, and the requirements for debt repayment. Aircraft mortgage registration

is an obligation with the threat of being null and void by law. Registration of mortgage agreements regulated in Article 1179 BW is carried out to fulfill the principles of publicity and specialization to protect the interests of third parties. Registration is carried out so that third parties can find out the remaining value of the mortgaged aircraft, so that third parties can anticipate and avoid losses if a loss occurs. Based on the provisions of Article 1171 BW, this means that if someone is going to place a mortgage, then based on Indonesian law, a Notary is known as an official whose authority includes making authentic deeds.

This Notary's authority shows that the Notary has the ability and comprehensive knowledge regarding civil legal acts, especially in making a deed that is able to protect the parties involved in it. In connection with the authority of a Notary in making authentic deeds, Law Number 2 of 2014 concerning Change Law Number 30 of 2004 concerning Notary Positions also regulates this authority. The authority of a Notary in making authentic deeds includes 4 things, namely the Notary must have authority as far as the deed he makes is concerned. This provision is regulated in Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries.

The notary must be authorized as far as the person and for whose benefit the deed is made is concerned. these provisions arranged in Article 52 of the UUJN after the amendment, the Notary has the authority as far as the place where the deed is made, this is regulated in Article 18 of the UUJN after the amendment, the Notary also has the authority throughout the time the deed is made. In connection with the Notary's authority above, the legal consequences if one of the above requirements is not fulfilled, has the consequence that the deed he makes is not an authentic deed and will only have legal force like a private deed if the deed is signed by the person present. Based on the brief analysis above, it can be seen that a Notary is a public official who has comprehensive abilities and knowledge and also great responsibility in his duties to facilitate the public's desire to obtain legal protection and certainty in the agreements they make, so the Notary has the authority in aircraft mortgage guarantees to provide legal protection and certainty for the parties in aircraft mortgage guarantees. Based on the background above, the author formulated a problem formulation, namely: Can aircraft guarantee institutions still be used with mortgage guarantees? Second, what is the authority of a Notary in binding aircraft collateral as debt security?

## 2. METHOD

In this case researchers use a type of normative legal research, which is legal research carried out by researching and using legal materials, namely primary legal materials, secondary legal materials, tertiary legal materials obtained from library research (*library research*). This research is of an analytical prescriptive nature, namely research that is scientific in nature with a method that aims to study one or several symptoms by analyzing them and by conducting an in-depth examination of these facts to then try to solve the problems caused by these facts.

The legislative approach is an approach that uses legislation and regulations.<sup>2</sup> Types of legal research regarding Aviation Law Number 1 of 2009 concerning Aviation does not regulate the imposition of material guarantees in the form of aircraft, but only regulates the registration of ownership of aircraft and helicopters. This is different from Aviation Law number 15 of 1992 before the amendments were made, it was previously stated that Airplanes and helicopters that already have registration marks and Indonesian nationality can be charged with mortgage collateral and must be registered as regulated in Article 12 of Law Number 15 of 1992 concerning Aviation.<sup>3</sup> Apart from that, this research also relates to the authority of a Notary in binding aircraft collateral where one of the powers of a Notary in accordance with Article 15 UUJN is the authority to make authentic deeds, and a mortgage deed is one of the authentic deeds whose authority can be carried out by a Notary. Legal materials that have been collected and assessed for their validity are then processed by classifying, categorizing, systematizing and interpreting according to the research topic. This series of activities is carried out by explaining, reviewing, systematizing, interpreting and evaluating all existing legal materials.

### 3. RESULTS AND DISCUSSION

#### **Aircraft as a Collateral Object in Guarantee Law in Indonesia**

Material Law in Indonesia currently still adheres to the system stated in the BW. In BW there are various types of classification of objects, namely tangible and intangible objects, objects move and immovable, objects that are used up and objects that are not used up, objects that can be traded and cannot be traded, objects that already exist and objects that will exist and objects that can be replaced and cannot be replaced. The imposition of collateral on objects is closely related to the classification of objects, namely movable and immovable objects.

In Article 1 paragraph 3 of the Aviation Law, it is stated that the definition of an aircraft is any machine or device that can fly in the atmosphere due to the lifting force of the reaction of the air, but not due to the reaction of the air against the earth's surface which is used for flight. Apart from airplanes, other terms used in the Aviation Law are airplanes and helicopters. An airplane is a heavier-than-air, rotary-winged aircraft whose rotor is driven by an engine.

If we look at the moving nature of aircraft, aircraft are classified as moving objects and this results in the provisions governing them being civil law regarding moving objects. However, according to Mieke Komar Kantaatmadja, the legal nature of aircraft as objects is different from movable objects in general because aircraft must be registered and have nationality markings. This is the background for legal experts to provide an exception regarding the status of aircraft as movable objects that have special regulations and refer to them as *moveable property of his kind*. *Of his kind* this suggests a special characteristic of the aircraft's character.<sup>4</sup> During its development, several civil law experts began to have the view that the current classification of objects, especially regarding movable and immovable objects, is considered to be no longer relevant to the realities and interests currently faced.

Basically, airplanes can be encumbered with mortgages because airplanes are included in the category of immovable objects, which is an absolute requirement to be the object of mortgage collateral. However, in practice this cannot be done because there are no provisions in the laws and regulations that regulate the burden of aircraft mortgages so that aircraft mortgages can never be created. Veenhoven stated that basically all objects, both movable and immovable, can legally be transferred to ownership rights in trust and can be used as objects of fiduciary collateral. The immovable objects in question are objects that cannot be encumbered with mortgage rights, objects that cannot be encumbered with mortgages, and provided that these objects can be owned and transferred. If you evaluate

an aircraft based on its nature and form, the aircraft is classified as a tangible object that moves and is transferred so that it meets the qualifications as an object of fiduciary security.

However, Article 3 of Law Number 42 of 1999 strictly regulates the prohibition on carrying out guarantees for aircraft as a whole. As a solution, aircraft are not charged with fiduciary duties over the entire aircraft, but rather individual aircraft components. In the provisions of Law Number 42 of 1999 there is no prohibition on placing security charges on all movable goods that make up an aircraft, meaning that components in an aircraft structure can be used as objects of debt collateral with a fiduciary charge. In the process of binding a fiduciary guarantee, there is a principle of specialization that must be fulfilled, namely the existence of an item whose shape and ownership can be clearly identified. In the practice of binding aircraft components as collateral objects which are encumbered with fiduciary guarantees, they must be accompanied by the identity of each aircraft component in question along with proof of ownership, both the aircraft frame and fuselage as well as the engines and supporting equipment along with all invoices and *invoice* which is proof of ownership of the aircraft.

As for the juridical fiduciary concept, an airplane or helicopter is an object that can be used as collateral for the repayment of a debt (collateral) as long as the airplane or helicopter has registration marks and Indonesian nationality (Article 13 of Law No. 15 of 1992 concerning Aviation), So it can be concluded that the binding of airplanes and helicopters is carried out through mortgage charges. As an implementation, the law refers to government regulations. However, government regulations governing mortgage charges on aircraft have not yet been implemented, so the implementation of mortgage charges on aircraft is still unclear and not yet national in nature.

Thus, it is not possible to tie a Fiduciary Guarantee to an airplane but to tie a mortgage. The Aviation Law does not regulate aircraft mortgage charges. In this provision, the regulations regarding aircraft guarantees are regulated in Articles 71 to Article 82 but do not state what guarantee institution is used and what the security system is. So the lack of clarity in the law governing aircraft guarantees in credit agreements has resulted in differences in interpretation of which institutions are used and how they are implemented in people's lives. This results in a lack of legal certainty and legal protection for the parties in encumbering aircraft as collateral in credit agreements. From the description above, researchers can conclude that aircraft as a tool used for flights and transportation, according to their nature, can move and be moved, they are moving objects. However, the legal nature of aircraft is different from other movable objects in two respects, namely that aircraft must be registered and aircraft have a nationality.

Looking at its nature and essence, an aircraft is a moving object (*moveable property*), therefore the first thing to control an aircraft is the regulation of civil law regarding moving objects. However, for various special purposes, legislation apparently deviates from general rules and applies to aircraft various legal rules that are usually applied to immovable objects. This tendency has given rise to opinions among legal experts to provide an opinion *exceptional* status as a specially arranged movable object and naming it *moveable property sui generis. Of his kind* This points to a special characteristic of the existence of aircraft.<sup>6</sup>

The characteristic nature of aircraft is that aircraft are marked with the nationality of a particular country. By fulfilling the requirements of national law regarding public registration, a country will provide a proof of nationality, known as the National Identity Certificate (*nationality marks*) and Registration Certificate (*registration marks*) to the aircraft. Nationality of an aircraft refers to the existence of a special relationship between the aircraft and a particular country. The legal consequence is that the country has the right to apply the special rights that the aircraft can enjoy under international law.



### Aircraft Warranty Engagement

Airplanes are a business industry that falls into the category *High Technology Yang* requires quite large financing. Quite a lot of airlines need financing for business continuity, especially in terms of aircraft rejuvenation. Airlines often collaborate with banks as a financing institution. The type of credit issued by banks is consortium credit, which means that more than 1 bank provides credit financing because the loan amount is quite large. The provision of funds by the bank through a credit agreement is contained in the credit agreement. The agreement will give rise to an agreement between the parties, namely a legal relationship in the field of assets between two parties which gives rise to rights to one party and obligations to another party in an achievement. The credit agreement provided is in the form of a fiduciary, where the object guaranteed is part or pieces of aircraft fuselage such as wings that contain aircraft engines in them that are of economic value. The status of the agreement is not based on a mortgage, but a fiduciary because the part of the aircraft that is guaranteed is small, measuring no more than 20 M3. So with the four types of collateral legal systems that exist in Indonesia, namely pawn, mortgage, fiduciary and encumbrance, airplanes cannot be used as objects of pawn, because they are too big and their management is difficult. Regarding mortgages, referring to Article 12 of the Aviation Law, which regulates, among other things, the following:

1. Airplanes and helicopters that already have registration marks and Indonesian nationality are eligible burdened with mortgage;  
Loading mortgage aircraft and helicopters as intended in paragraph (1) must be registered;
2. Provision as intended in paragraph (2) is further regulated by Government Regulation.

So regarding this matter, airplanes are essentially moving objects because they are tools used for flight and transportation, airplanes can move and be moved like moving objects in general, but the nature (laws) of airplanes are different from moving objects in general, especially in The following two things: Aircraft must be registered (like immovable objects such as land and aircraft must have a nationality.

In essence, aircraft are moving objects. However, based on the two reasons above, what differentiates it from moving objects in general is that not all regulations apply to all aircraft. Aircraft as movable objects have a nationality and must be registered. As a consequence of registration and nationality, the state is obliged to make a registration book (*record*) aircraft that are open to the public, because of this, Law Number 15 of 1992 concerning Aviation has been changed to the Aviation Law, aircraft are categorized as immovable objects on the grounds that aircraft must be registered like immovable objects, so the burden is the same. encumbrance or guarantee of immovable objects. Apart from that, special arrangements for leasing and purchasing aircraft are intended for purposes relating to aircraft registration in order to obtain aircraft nationality markings, because only aircraft belonging to the Indonesian nation can operate within Indonesian jurisdiction, therefore, to overcome this problem the government through the Ministry Air Transportation creates special construction for aircraft rental and purchase.

The provisions that require aircraft to be registered are contained in Articles 24 and 25 of the Aviation Law. Every aircraft operated in Indonesia must have a registration mark. The registration mark can be an Indonesian registration mark or a foreign registration mark. This registration mark is issued by the relevant aviation authority in each country. In Indonesia, this authority belongs to the Director General of Civil Aviation and the Ministry of Transportation of the Republic of Indonesia with conditions

1. Not listed in other countries;
2. Owned by Indonesian Citizens or owned by Indonesian legal entities

3. Owned by foreign citizens or foreign legal materials and operated by Indonesian citizens or Indonesian legal entities for a period of time minimal use 2 (two) years continuously based on an agreement;
4. Owned by a government agency or regional government and the aircraft is not used for law enforcement missions;
5. Owned by a foreign citizen or foreign legal entity whose aircraft is controlled by an Indonesian legal entity based on an agreement that is subject to law agreed by the parties for aircraft storage, rental and/or trading activities. Aircraft registration as intended in Article 25 of the Aviation Law is submitted by the owner or authorized person with the requirement to show proof of ownership or control of the aircraft; Show proof of deletion of registration or not registered in other countries; Fulfills the requirements for aircraft age limits set by the Minister; Proof of insurance aircraft air; and Proof of fulfillment of aircraft procurement requirements.

In relation to aircraft as collateral, it can be seen in the provisions starting from Articles 71 to 82 of the Aviation Law. Article 71 explains that aircraft objects can be burdened with international interests arising from agreements granting security rights to objects, agreements binding conditional rights, and/or leasing agreements. The agreement is made based on the law chosen by the parties. In the event that the agreement is subject to Indonesian law, the agreement must be made in an authentic deed containing the identities of the parties; Aircraft Object Identity and; Rights and Obligations of the Parties.

Basically, the existence of the Aviation Law provisions in Article 71 above explains that aircraft are only given material guarantee rights which depend on the agreement between the parties. In 2007 the Indonesian government also ratified the Cape Town convention with Presidential Regulation Number 8 of 2007 concerning Ratification *Convention On International Interests in Mobile Equipment* (Convention on International Interests in Mobile Equipment) along with *Protocol to the Convention On International Interests in Mobile Equipment on Matters Specific to Aircraft* (Protocol to the Convention on International Interests in Mobile Equipment Concerning Special Matters of Aircraft Equipment).

And also, in 2009 Law Number 15 of 1992 concerning Aviation replaced the Aviation Law and was in accordance with the Cape Town Convention which no longer mentioned mortgages on aircraft. This convention also creates an internationally valid rights registration authority (*International Registry Authority*) as a place of registration so that creditors can hold collateral rights in categories covered by International Interest. The Cape Town Convention basically contains general provisions relating to material rights or guarantees that are recognized internationally, referred to as *International Interest*, namely for several types of moving goods including aircraft, trains and satellites. In this regard, the Aviation Law which ratifies the Cape Town Convention, states that: "Aircraft objects can be burdened with international interests arising from agreements granting property security rights, agreements binding conditional rights and/or leasing agreements."

If the aircraft itself has been registered, it will have property rights, so it will have Sui Generis characteristics, that is, if the aircraft has been registered, it can already be burdened with security rights. To obtain Sui Generis properties, the aircraft must be registered nationally and internationally via: <https://www.internationalregistry.aero>, apart from that, it is also mandatory to record it at the Directorate of Airworthiness and Aircraft Operations (DKUPPU) at the Directorate General of Civil Aviation, but this second stage is only administrative in nature.

Explained In the Aviation Law, as in Article 71, it only states that aircraft objects can be burdened with international interests arising from agreements granting property security rights, conditional rights binding agreements, and/or leasing agreements, but the Aviation

Law does not regulate collateral institutions. what can be charged on an aircraft. This is different from the old law Number 15 of 1992 concerning Aviation, which stated that airplanes could be charged with mortgages, but unfortunately, until finally this law was revoked and no government regulations were issued which further regulated mortgages on these airplanes.

In the event that the parties choose Indonesian law, even though the Aviation Law does not explain the institution of guarantees for aircraft, the law recognizes the existence of a bond for movable objects with certain criteria, including without limitation aircraft which are subject to the provisions of the Cape Town Convention and its Protocol. . In other words, Indonesia imposes implementing provisions for guarantee institutions for aircraft which provide legal protection for parties who choose Indonesian law, namely referring to the provisions of the Cape Town Convention and its Protocol so that, even though Indonesian law does not recognize special guarantee institutions for binding aircraft. If business actors wish to choose to comply with Indonesian law, they can use collateral in a form agreed upon by the parties themselves and must include it in a collateral agreement which is subject to the implementing provisions of the Cape Town Convention and its protocol in order to obtain legal protection and priority rights.

So it can be concluded that the regulation of the imposition of collateral on aircraft is not regulated in the Aviation Law, Article 71 of the Aviation Law explains that "aircraft objects can be encumbered with international interests arising from material security rights grant agreement, conditional rights binding agreement, and/or business lease agreement".

#### **Existence of Mortgage Guarantee Institutions for Aircraft**

Article 1168 BW further states that a mortgage cannot be placed other than by someone who has the power to transfer the object being encumbered, while Article 1171 states that a mortgage can only be granted with an authentic deed, except in cases that are expressly indicated by the law. Then Article 1175 BW states that mortgages can only be placed on existing objects. Mortgages on objects that will only exist in the future are void. Furthermore, in article 1176 BW it is stated that a mortgage is only valid, the amount of money for which it has been given is certain and is stipulated in the deed. Apart from that, outside of Article 1164 BW, things that can be burdened with mortgages include the following:

- a. Parts that cannot be divided into immovable objects which are Free Joint Property Rights (*free mead property*)
- b. Ships registered according to article 314 paragraph 1 of the Commercial Code
- c. Mining concession rights according to article 18 *Indian mining law*
- d. Concession Rights according to S. 1918 No. 21 yo. No. 20 which can also be used as a guarantee mortgage.

With the enactment of the UUHT, it is clear that mortgages no longer apply to land and everything related to land. However, with the enactment of Law no. 15 of 1992 and Law no. 21 of 1992, then the object of the mortgage became clear. Aircraft Status, Registration and Nationality In the field of civil law, the legal status of an aircraft is an immovable object. This concerns the aspect of granting status according to civil law classification, especially regarding material things, which is still adhered to by the majority of countries in the world. This means that it has an influence on the determination of civil law rules that control aircraft as objects, among other things, which can have a direct relationship with guarantee institutions, especially mortgages. This mortgage institution is really needed in the world of aviation companies if an aircraft is to be used as collateral for a debt. The most important thing is that the airship meets the publicity requirements (*publicity*) and meets the requirements of being registered.

In Indonesia, provisions regarding airplanes are regulated in Law no. 15 of 1992 concerning Aviation. In Aviation Law No. 83 of 1958 Article 9 paragraph (1) states that aircraft used for flights must have nationality markings and registration marks which will be further determined by the Minister's decision. Then Article 11 paragraph (1) states that aircraft registered in the aircraft register in Article 9 have Indonesian nationality. What is clear in Article 17 of the Chicago Convention is that "*Nationality of aircraft has the nationality of the state in which they are registered*". Furthermore, in Law No. 15 of 1992 concerning Aviation, Chapter V also includes the issue of registration and nationality of aircraft as well as their use as collateral. The meaning of important articles regarding registration and nationality that need to be taken into account in the Aviation Law include Articles 9, 10, 12 of the Aviation Law. Article 9 of the Aviation Law states as follows:

1. Aircraft operated in Indonesia must have registration marks
2. Civil aircraft that can obtain an Indonesian registration mark are aircraft that do not registered another country and fulfills one of the following conditions:
  - a. Owned by Indonesian citizens or Indonesian legal entities.
  - b. Owned by a foreign citizen or foreign legal entity and operated by an Indonesian citizen or Indonesian legal entity for a minimum period of continuous use of two years based on a hire-purchase agreement, lease or other form of agreement.
  - c. Owned by a government agency.
  - d. Owned by the Institution, certainly owned by the government.

Provisions regarding the registration of civil aircraft as intended in paragraph (2) and the registration of ABRI aircraft are further regulated by government regulations. Then Article 10 of the Aviation Law states:<sup>13</sup>

1. In addition to the registration mark as intended in Article 9 paragraph (1), airplanes and helicopters operated in Indonesia must have nationality marks;
2. Indonesian nationality marks are only given to airplanes and helicopters that already have Indonesian registration marks;
3. Requirements and procedures for obtaining and revoking Indonesian nationality marks as intended in paragraph (2) and certain types of airplanes and helicopters which can be exempted from the obligation to have nationality marks, are further regulated by government regulations.

Aircraft as Mortgage Collateral If the requirements in the two particular articles have been fulfilled, then according to Article 12 of the Aviation Law, airplanes and helicopters can be used as mortgage collateral, as stated in the provisions as follows:<sup>14</sup>

1. Airplanes and helicopter which has a mark registration and Indonesian nationality could be burdened Mortgage;
2. Loading mortgage on airplanes and helicopter as that intended in paragraph (1) must registered;
3. Provisions as intended in paragraph (2) are further regulated by government regulations. Then in the explanation of Article 12 paragraph (1) it is stated that the provisions for airplane and helicopter mortgages as intended in this provision apply. Mortgage in BW. The provisions in this Article do not cover the encumbrance of airplanes and helicopters with other security rights in accordance with applicable laws and regulations.<sup>15</sup>

#### **Notary's Authority in Binding Aircraft Guarantees as Debt Collateral**

Airplanes as objects of agreement that can be burdened with international interests are expressly regulated in Chapter IX of Article 71 to Article 82 of the Aviation Law. Article 71 of the Aviation Law states that aircraft objects can be burdened with international interests arising from agreements granting material security rights, conditional rights



binding agreements and/or leasing agreements. Based on this article, it is necessary to describe aircraft objects of international importance

#### 1. Airplane frame

According to Article 71 of the Aviation Law, there are 3 types that can be used as aircraft objects, namely aircraft frames, aircraft engines and helicopters. The framework is an aircraft frame that is not used for State aircraft which, when installed appropriately on the aircraft frame, is certified by the authorized official to lift at least 8 people including aircraft crew or goods weighing more than 2,750 kg along with all their equipment. installed or related components and equipment (other than aircraft engines) and all manual data and records relating thereto.

#### 2. Aircraft Engines;

Aircraft engines that can be burdened with international interests are aircraft engines that are not used for State aircraft (*state aircraft*) that is powered by jet propulsion or turbine or piston technology and (a) in the case of aircraft engines with jet propulsion, has a thrust of at least 1,750 lbs or its equivalent, (b) in the case of aircraft engines that powered by a turbine or piston, having a thrust of at least 550 horsepower used for average takeoff or equivalent, together with all modules and equipment, components and other equipment installed, inserted or related, and all data, user manuals and related notes with that.

#### 3. Helicopter

Helicopters that can be charged with international interests are certain helicopters that are not used for State aircraft (*state aircraft*) certified by the authorized airline to carry at least 5 people including crew, or goods of more than 450 kg, together with all installed, included or associated equipment, components and equipment (including rotors) and all data, manuals, and notes related thereto. Discussions regarding the legal status of aircraft in the field of civil law are always linked to the classification of material law which is commonly carried out in the civil law of the majority of countries in the world. Considering its nature and essence, an aircraft is a moving object, therefore the first thing to control an aircraft is the regulation of civil law regarding moving objects.<sup>17</sup>

Thus, for various special purposes, as with ships, the national legislation of the majority of countries apparently deviates from the general rules above and applies to aircraft various legal rules which are usually applied to immovable objects. This tendency has resulted in the emergence of views, especially among air law experts, to give it something *exceptional* status as a movable object that is specially arranged or named it with *movable property sui generis*.<sup>18</sup>

*Of his kind* here it refers to the nature of the existence of aircraft, because classifying aircraft as immovable objects would be a legal fiction, in this case R Soebekti is of the following opinion: The division into two types of objects, namely movable and immovable objects is something that cannot be avoided. This division is something that is in accordance with nature, goods that can be carried anywhere must be subject to different rules than those that apply to goods that remain in their place at all times. Objects of the first type are easily eliminated, therefore the division and difference in the treatment of these two types of objects is something that occurs automatically everywhere.<sup>19</sup>

Aircraft, within legal limits according to the majority of countries' national legal systems, can be used either as collateral for repayment of debts or for other agreements that provide guarantees. The aircraft can be used as an object of collateral, both to pay off debts for payment of the acquisition price of the aircraft itself and to pay off other debts. Thus, to support the national and international aviation industry, regulations regarding aircraft guarantees are needed with easy and fast handling process facilities, both in the procedures for implementing, disbursing and realizing the guarantee, even though the risks inherent in

aircraft as above are quite large, however This does not reduce the need to use aircraft as a means *collateral*, especially because creditors cannot always rely on guarantees provided by the government. Apart from that, mortgages can answer the needs of the aircraft industry in terms of procuring aircraft, because there is no strict regulation which makes it difficult for airline companies to obtain capital and conversely, national and international fund owners are less interested in lending their money to airline companies because there is no legal certainty and guarantee that their money will return, so that a mortgage can be placed on an aircraft whose purpose is not yet clear, in the provisions of Article 314 of the Commercial Code, it is stated that the condition for a ship that can be placed on a mortgage must be at least 20 m in size.<sup>3</sup> Fred BG. Tumbuan believes that aircraft mortgages could be regulated in Indonesia. This can be analogous to Article 314 of the Criminal Code. Referring to the provisions of Article 314 of the Commercial Code, as long as it meets the dimensions and is registered, a mortgage can be carried out, the most important thing is that it meets the principle of publicity. In the provisions of Article 314 of the Commercial Code, the most important thing in using a ship as collateral is that it must be registered, so that it can be known by the public.

### **Implementation of the binding of aircraft collateral with mortgage collateral**

In principle, a mortgage can only be placed by a person who can transfer collateral. The act of transfer is an act of ownership so to be able to place a mortgage the person must be able to act and have the right (authority) to take ownership actions against the collateral, which includes encumbering actions.<sup>21</sup> The act of encumbering can be seen as the beginning of an action of passing, because an encumbrance can end with a passing, in the event that the creditor is forced to sell the collateral to collect repayment.

Requirements for authority to take action: The mortgage charge is closely related to when a person becomes the owner of a fixed object. In other words, it relates to when ownership rights to land (and buildings attached to it) are transferred. Registration only functions as a means of proof, because all transfers of land and land rights (except due to inheritance and relinquishment of rights) must be carried out/implemented with a PPAT deed. (Article 19 PP Number 10 of 1961), the transfer of land rights has occurred when the deed of transfer of rights is signed in front of the PPAT. This is in accordance with the characteristics contained in the sale and purchase deed ex PMA 11/1961 where it is stated that the object of sale and purchase has been handed over and received, as has the purchase price. Thus, a buyer who has completed the sale and purchase deed before the PPAT, even though the registration of the transfer of rights has not yet occurred, has the authority to take ownership actions (*order*) over the land (land rights) in question, so that he has the authority to encumber it.

In connection with the opinion, that for the parties the mortgage is already in existence at the time of signing the mortgage deed, then there are conditions where there is authority to take action. *order* (including the act of encumbrance) when signing the mortgage deed before the PPAT. The difficulties faced by those who argue that the mortgage for the parties has already been created at the time the mortgage deed was signed before the PPAT can be overcome by taking the route of using the power to place a mortgage. Regarding the conditions for encumbrance, there are several important articles that need to be stated here, including: Article 2 states that aircraft that can be encumbered with mortgages are aircraft that already have registration marks and Indonesian nationality. This provision is mentioned in Article 12 of Law no. 15 of 1992. Then Article 3 states that:

1. Aircraft mortgages must be made in the form of an authentic deed, this is the case also related with Article 1171 BW;

2. Authentic Deed as intended in paragraph (1) is a deed made before an official appointed based on a Ministerial Decree;
3. Costs related to making a mortgage deed as mentioned in paragraph (1) and (2) determined by the Minister.

Furthermore, in Article 5 paragraph (3) of the Government Regulation concerning the Registration of Aircraft Mortgages and other Property Rights, as well as in Article 7 paragraph (2) of the Record, the conditions that must be fulfilled by aircraft mortgage registrants are as follows:

1. Proof of aircraft ownership issued by the Minister or a copy of "*bill of sale*" or a copy of other proof of ownership;
2. A copy of the debt and receivable agreement between the debtor and the bank or other financial institution acting as creditor;
3. A copy of the mortgage deed made before a notary or an official appointed by the Minister;
4. A copy of the aircraft's registration and national markings issued by the Minister;
5. Proof of payment of aircraft mortgage registration fees;
6. Copy of proof of aircraft insurance agreement, if the aircraft concerned is insured.

In the Elucidation to Article 7 paragraph (2) of Rekordas, it is stated that the conditions mentioned above must be fulfilled by aircraft mortgage registrants to provide legal certainty and supervision. According to Article 1171 BW, a mortgage must be made with an authentic deed, meaning a deed made before an official authorized to make authentic deeds. Bearing in mind that in practice so far the official in relation to aircraft is the Minister or an official appointed by the Minister, it is deemed appropriate that the aircraft mortgage deed, apart from being made before a notary, can also be made before the Minister or an official appointed by the Minister or an official appointed by the minister. . Then, according to Article 6 of the Government Regulation Concerning Mortgage Registration, other security agreements besides mortgages must be recorded in the mortgage registration book and must be made in the form of an authentic deed. Article 7 further states as follows:

1. Aircraft that have registration marks and Indonesian nationality mortgaged abroad, cannot be recorded in the mortgage registration book, unless otherwise regulated in an international agreement;
2. Foreign aircraft mortgaged abroad then operated in Indonesia and has registration marks and Indonesian nationality, Mortgage Recognized in Indonesia and must be recorded in the mortgage registration book in Indonesia.

Mortgage and other guarantee agreements made abroad legalized by authorized officials. If it does not meet the requirements as intended in accordance with the provisions of Article 5 paragraph (3) and Article 8, then according to the provisions of Article 9 the application for air mortgage registration will be rejected. If the requirements are met, then as proof of aircraft mortgage registration, the Minister or an official appointed based on a ministerial decision will issue a mortgage registration certificate no later than 30 days after the date of the registration request. The aircraft mortgage registration takes effect from the date the mortgage registration certificate is issued.<sup>22</sup>

Finally, based on the Transitional Regulations, all provisions governing the recording of aircraft mortgages or other security rights that existed before the enactment of this Government Regulation are declared invalid. According to Alexander FH Roemokoy as *Head of Credit Recovery Mandiri Bank Group*. Argues that the implementation of mortgages in Indonesia is the absence of clear regulations regarding binding procedures. Without proof of ownership that can be controlled by the bank, the aircraft cannot be immediately bought and sold. In principle, debt financing with aircraft collateral can be carried out as long as it is feasible to finance and meets the bank's internal requirements

and Bank Indonesia regulations, however, because legal certainty regarding the binding of aircraft collateral does not yet exist, the bank will not be willing. Notary's Authority in Binding Aircraft Collateral as Debt Guarantee in Indonesia

In terms of Notary authority, it shows that the Notary has the ability and comprehensive knowledge regarding civil legal acts, especially in making a deed that is able to protect the parties involved in it. There is the authority of a Notary in making authentic deeds, UUJN Number 2 of 2014 also regulates the authority of Notaries in making authentic deeds covering 4 (four) things, namely:<sup>23</sup>

The notary must be authorized as far as the deed he makes is concerned. This provision is regulated in Article 15 UUJN, whether before or when changes are made to the UUJN, the Notary must be authorized as far as the person and for whose interests the deed is made. This provision is regulated in Article 52 UUJN, the Notary is authorized throughout the place where the deed is made, this is regulated in Article 18 UUJN, the Notary is also authorized throughout the time the deed is made.

So the mortgage deed is an authentic deed which is part of the notary's authority to make it. Apart from that, the regulation of the registration system for granting material collateral for aircraft as credit collateral is not regulated in the Aviation Law, but follows the regulation of providing collateral for aircraft, namely mortgages as regulated in Articles 1162 to 1232 BW.<sup>24</sup>

Article 1171 BW explains that mortgage assignment must be carried out with an authentic deed made before an authorized official, in this case a notary. The debtor's interests are protected if the mortgage agreement is carried out with a mortgage deed, this is contained in the Elucidation of Article 15 paragraph (3) of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries explaining that notaries have the authority to make aircraft mortgage deed. Article 1179 BW explains that mortgage registration must be carried out in the general registers provided for this purpose. in that case, it is carried out in the "Aircraft Mortgage Register Book" provided by the Directorate General of Civil Aviation, or an official appointed by the Minister under threat of being null and void. A new aircraft mortgage agreement is binding on a third party when it is registered in the "Aircraft Mortgage Register Book", while creditors and debtors are bound from the moment the parties sign it in front of a notary.<sup>25</sup>

Registration of aircraft mortgage agreements is carried out by officials of the Directorate General of Civil Aviation or officials appointed by the Minister and has the function and task of providing aircraft mortgage certificates (SHPU), storing and maintaining and deregistering aircraft mortgage agreements. The registration carried out must contain the registration date, the complete last address of the Creditor and Debtor, the debt repayment period, and the debt disbursement requirements. Registration of an aircraft mortgage is an obligation that threatens to be null and void. Registration of mortgage agreements regulated in Article 1179 BW is carried out to fulfill the principles of publicity and specialization to protect the interests of third parties. Registration is carried out so that third parties can find out the remaining value of the mortgaged aircraft, so that third parties can anticipate and avoid losses if a loss occurs.

Apart from that, Article 1171 BW states that a mortgage can only be granted with an authentic deed, except in cases where the law expressly provides otherwise. So it can be concluded that deviations are only justified by law. in Article 1171 BW the mortgage guarantee institution must be charged for an authentic deed made before an authorized official, in this case a notary, to clarify this, if you look at the Elucidation of Article 15 paragraph (3) of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary explains the



other powers of a Notary, one of which is making aircraft mortgage deeds. From this explanation, the Notary is expressly authorized to make an aircraft mortgage deed. The authority of a notary in making an aircraft mortgage deed provides legal protection and legal certainty for the parties. Therefore, the most relevant collateral institution for aircraft is mortgage collateral.

The notary also has the authority to make the SKMH, which means that the SKMH also has the power of perfect proof. The existence of SKMH in the aircraft mortgage guarantee process is the choice of the parties, it can be made, it can be done, it can be done in front of a Notary, it can be not, because in essence SKMH is a power of attorney and the form of an agreement, which means that the principle of freedom of contract applies in accordance with Article 1338 BW. At the beginning of the use of SKMH, SKMH is usually made in the form of "absolute power of attorney" by setting aside the provisions listed in Article 1813 BW, this avoids the granting of power at any time to be able to revoke the power of attorney.<sup>26</sup>

#### 4. CONCLUSION

The current Aviation Law does not regulate the binding of mortgage guarantees for aircraft, giving rise to legal uncertainty, where there are several differences of opinion regarding which guarantee institution is appropriate for placing collateral for an aircraft based on Indonesian guarantee law. Until now, mortgage collateral is the most relevant collateral for binding aircraft, because aircraft have special characteristics (*of his kind*). This is because aircraft have registration marks and nationality marks as regulated in Article 24 of the Aviation Law.

In Article 1171 BW which explains that mortgage assignment must be carried out with an authentic deed made before an authorized official, in this case a Notary. This is in accordance with the explanation of Article 15 paragraph (3) of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries explaining that notaries have the authority to make aircraft mortgage deeds. Registration of providing material security for an aircraft by making an aircraft mortgage deed can be registered by a Notary in the Aircraft Mortgage Register Book by the Directorate General.

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