

# URGENCY OF REGULATION

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**Submission date:** 14-Oct-2020 12:02PM (UTC+0700)

**Submission ID:** 1414718935

**File name:** document\_5.pdf (793.86K)

**Word count:** 6418

**Character count:** 34299

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**URGENCY OF REGULATION:  
AIRCRAFT AS OBJECT OF CREDIT GUARANTEE**

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**Abstract**

*Until now in Indonesia, there is no specific regulation regarding aircraft as collateral object. As a result, in practice, the aviation industry players experienced obstacles related to aircraft financing by guarantee agreements with aircraft objects. Such conditions create legal uncertainty both for credit providers (creditors) and the aircraft guarantees (debtors), because there are no references or signs that can provide direction in the guarantee agreement. If there is a default by the debtor, the creditor has no legal basis for how to execute it. To fill the legal vacuum, in practice, a guarantee agreement was found with the fiduciary deed of the aircraft. Whereas the Fiduciary Law expressly states that it does not apply to (mortgages) aircraft. While on the other hand, Law No. 20 of 2014 concerning Notary Position gives authority to the notary to make an aircraft mortgage deed. Thus the regulations in Indonesia give signals to use aircraft as collateral object. Such a situation demands the urgency for regulations on aircraft guarantee that can provide legal certainty and legal protection for the parties.*

**Keywords:** Urgency; Regulation; Aircraft; Credit Guarantee

## 1. Introduction

In Indonesia, there are 4 (four) types of collaterals, namely pawn, mortgage, fiduciary and mortgage right. There is no specific arrangement for the object form of aircraft collateral, whether it is possible to form mortgages or other forms. So, it is necessary to do an advanced study in the form of normative studies. To meet the needs of the community some regulations that can fulfill a sense of justice both for creditors and debtors are required. In practice, the fiduciary deed was found for aircraft or helicopters.<sup>1</sup> Even though Article 3 of Law No. 42 of 1999 concerning Fiduciary Guarantee clearly refused that mortgage is applicable to aircraft.

Nowadays the arrangement of mortgage guarantee institutions only applies to vessels as stipulated in Law No. 17 of 2008 concerning Shipping (Shipping Law). Article 1 point 12 of the Shipping Law states that "Ship Mortgage is a collateral right for registered vessels to guarantee repayment of certain debts that give a certain priority to other creditors".

The ship has been normatively confirmed, if guaranteed to use a mortgage, only limited to ships that have been registered. Based on Article 158 (2) Law No. 17 of 2008 concerning

<sup>1</sup> Y. Annalisa, Murzal Zaidan, Mada Apriandi, and others, 'Aircraft Mortgage in Indonesia: Alternative Object of Material Guarantee as a Debt Settlement', *International Journal of Recent Technology and Engineering (IJRTE)*, 8.2 S 9 (2019), 601–7 <<https://doi.org/10.35940/ijrte.B1126.0982S919>>.

Shipping it is stated that ships can be registered by registrant officials and Ship's Transfer of Title, gross tonnage sizes of at least GT 7 (seven Gross Tonnage). Ship registration is carried out by making a registration certificate, it is then recorded in the Indonesian vessel register which is located as a general register. For ships that have been registered, the owner is given a *grosse* for the registration certificate of the ship which functions as a proof of registration (can be seen on the ship's body). Every ship registered in Indonesia is given a sign of Indonesian nationality which makes the ship legally used as a means of commercial transportation and gives birth to proof of ownership of the ship.<sup>2</sup> The absence of strict regulations regarding the form of Aircraft guarantees makes it difficult for airlines to obtain capital financing and vice versa national and international fund owners are less interested in lending their money to airlines because there is no legal certainty and guarantee that their loans will return.

Actually an aircraft mortgage was once regulated in Article 12 of Law No. 15 of 1992 concerning Aviation, which states that "aircrafts and helicopters that already have registration marks and Indonesian nationality can be mortgaged". However, this Law has been revoked and declared no longer valid with the issuance of Law No. 1 of 2009 concerning Aviation which is precisely in this law does not regulate aircraft that can be burdened with mortgages. The problem that will be examined in this research is the need for aircraft guarantee arrangements to provide legal certainty and what forms of guarantee are most relevant for aircraft so that regulations on aircraft guarantees can be realized immediately.

## 2. Methods

This research is a type of normative research that is to find the rule of law, the values of the validity of the rule of law, legal concepts and legal norms<sup>3</sup> related to credit financing agreements and guarantee law in the aviation industry. The approach used is a historical approach related to mortgages that have been applied in Indonesia for registered land included in the category of immovable objects with collateral called mortgages, where currently the agreement with the mortgage deed applies to registered vessels. In addition, this study uses a statutory approach by analyzing regulations pertaining to collateral objects. To complete the data in answering questions, interviews were conducted with notaries as fiduciary and mortgage deeds makers.

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<sup>2</sup> Try Widiyono, *Agunan Kredit Dalam Financial Engineering* (Surabaya: Ghalia Indonesia, 2009).

<sup>3</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2010).

### **3. Results and Discussion**

In a broad sense the object is defined as anything that can be the object of law or can be judged by people according to the law and has economic value. Whereas in the narrow sense, the understanding of object is limited to everything that is tangible, that can be captured by the five senses. Material law is a set of legal provisions governing the direct legal relationship between a person and objects, which give birth to various material rights. The material rights give a person direct power in the control and ownership of an object wherever the object is located<sup>4</sup>.

The material rights are absolute rights to an object, and it is a civil right. This right gives direct power over an object and can be defended against anyone. The material rights have certain characteristics and superior features when compared with individual rights. The material rights in Civil Code (CC) can be divided into two, namely the material rights which provide guarantees (Dutch: *zakelijk zekerheidsrecht*) including pawn, mortgages, mortgages right, fiduciary, and property rights which are to give pleasure (Dutch: *zakelijk genotrecht*) including *bezit* and property rights.<sup>5</sup>

In material laws in Indonesia, according to Sri Soedewi<sup>6</sup> Masjchoen based on Article 504 CC, objects are divided into 2 (two), namely immovable and movable objects. Immovable objects are regulated in Article 506 - Article 508 CC. As for movable objects, are regulated in Article 509 - Article 518 CC.

#### **3.1. Immovable Objects**

Frieda Husni Hasbullah states that "for immovable objects, it can be divided into three groups"<sup>7</sup>: (a) Immovable objects because of their nature (Article 506 CC) for example, land and everything that is attached to or erected on it, or trees and plants whose roots are embedded in the soil or fruits on trees that have not been picked, likewise mining goods; (b) Immovable objects due to their purpose or intended use (Article 507 CC), for example, factories and the goods they produce, mills, and so on. Also housing along with objects attached to boards or walls such as mirrors, paintings, jewelry, etc. then those related to land ownership such as

<sup>4</sup> Iswi Hariyani, 'Comparison of Warehouse Receipt, Pawn and Fiduciary in The Security Law Perspective', *Yustisia*, 6.3 (2017), pp. 649–71.

<sup>5</sup> Trisadini Prasastinah Usanti, 'Subsequently Acquired Assets as Fiduciary Security on Bank Loans', *Journal Dinamika Hukum*, 16.2 (2016), 113–19.

<sup>6</sup> Sri Soedewi Masjchoen Sofwan, *Hukum Jaminan Di Indonesia Pokok Pokok Hukum Jaminan Dan Jaminan Perorangan* (Yogyakarta: Liberty Offset, 2007).

<sup>7</sup> Frieda Husni Hasbullah, *Hukum Kebendaan Perdata: Hak-Hak Yang Memberi Kenikmatan*, pertama (Indonesia: Indonesia Hill Company, 2002).

manure, honey in trees and fish in ponds, etc.; and building materials derived from building debris that will be used again to build the building, and others; (c) Immovable property due to statutory provisions, for example, usufructuary rights, and usage rights on immovable property, land tenure rights, usage rights on someone's yard, business rights, etc. (Article 508 CC). In addition, according to the provisions of Article 314 Book of Commercial Law (BCL), ships with a gross weight of 20 m<sup>3</sup> and above can be recorded in a vessel register so that they are categorized as immovable objects.

### **3.2. Movable Objects**

For movable objects, according to Frieda Husni Hasbullah, can be divided into two groups, namely: (a) Movable objects because of their nature, namely objects that can move or can be moved, for example chickens, goats, books, pencils, tables, chairs, etc. (Article 509 CC). Also included as movable objects are ships, boats, mills and bathing places installed in boats and so on (Article 510 CC); (b) Movable objects due to statutory provisions (Article 511 CC) for example: (1) Usufructuary rights and usage rights on movable objects; (2) The right to the agreed interest; (3) Billing or accounts receivable; (4) Shares or shares in trade partnerships, and others.

### **3.3. Registered and Unregistered Objects**

In the development due to economic needs in society and to add to the division of new types of objects other than those already familiar in CC, also known as registered objects and unregistered objects. Registered objects are objects that are registered in a general register that is managed by an agency that is authorized to do so. Unregistered objects are things that are not registered in a public register. Registered objects tend to follow the rules of the rules of immovable objects. Thus the form of collateral is a mortgage, just as a registered ship can be guaranteed in the form of a mortgage (Article of Law No. 17 of 2008 concerning Shipping)<sup>8</sup>.

The significance of the distinction between registered and unregistered objects lies in proving their ownership<sup>9</sup>. Registered objects are proven by proof of registration, generally in the form of certificates or documents on behalf of the owner, such as land, motor vehicles, aircraft, copyrights and so on. It is easier for the government to exercise control over registered objects,

<sup>8</sup> Siti Malikhatun Badriyah, 'Problematika Pesawat Udara Sebagai Jaminan Pada Perjanjian Kredit Dalam Pengembangan Industri Penerbangan', *Masalah Masalah Hukum*, 43.4 (2014), pp. 546–53.

<sup>9</sup> Moch. Isnaeni, 'Benda Terdaftar Dalam Konstelasi Hukum Indonesia', *Jurnal Hukum*, 7.13 (2000), 47–64 <<https://doi.org/10.20885/iustum.vol7.iss13.art4>>.

both in terms of the orderly administration of ownership and the payment of taxes. Unregistered objects are difficult to know with certainty who is the legal owner of the object, because the principle of 'who controls the object is considered to be the owner'. For example: jewelry, household appliances, electronic goods, clothing and so on. Unregistered objects can be analogous to movable objects so that the collateral is in the form of fiduciary as mentioned by Moch Isnaeni.

The division of movable and immovable objects in CC is related to the name of the guarantee.<sup>10</sup> If the object owned by the debtor is classified as movable object, bound by a material security agreement, then the concrete form of the agreement is a pawn guarantee agreement. Whereas if the collateral object is immovable, then it is bound by a material agreement, then the concrete form is the mortgage guarantee agreement. Mortgage and mortgage agreement are stipulated in Book II of CC.

The existence of a pawn agreement and a mortgage guarantee agreement is in the context of supporting the principal agreement, namely the credit agreement that gives birth to the right to collectively classified as a personal right. Credit agreements as obligatory agreements are subject to Book III CC including personal rights<sup>11</sup>. The existence of a basic agreement followed by an additional agreement (*accessor*) is a general pattern prevailing in the banking world when channeling loan funds (financing agreements) by applying the precautionary principle. In the development of collateral law in Indonesia, currently the collateral institutions are not only limited to mortgages and mortgages as stipulated in CC. However, with the entry into force of the Basic Agrarian Law, if land rights are offered as collateral, then the institution used is the security rights provided for in Law No. 4 of 1996. Then, the fiduciary guarantee institution as stipulated in Law No. 42 of 1999 is aimed at movable objects. Thus Indonesia currently has 4 (four) types of material guarantee institutions, namely mortgages which rules are contained in CC and Law No. 17 of 2008 concerning Shipping<sup>12</sup>.

<sup>10</sup> A M Afdal Batara Agung and others, 'Legal Analysis Of The Official Issuing Land Deeds And Notary In A Different Position Of Place', 1.2 (2017), 195–211.

<sup>11</sup> Tanty Maharani, Lalu Parman, and Lalu Muhammad Hayanul Haq, 'Cyber Notary System in the Order of Norms in Indonesia and Australia (Comparative Study in Notary Service Improvement Strategies)', *International Journal of Scientific Research and Management (IJSRM)*, 7.05 (2019), 32–40 <<https://doi.org/10.18535/ijrm/v7i5.11a03>>.

<sup>12</sup> Sulfandi Kadaou, "Tinjauan Yuridis Jaminan Hipotik Kapal Laut Dan akibat Hukumnya", *Lex Crimen* Vol.5, No. 4 -2016, pp. 107-115)

The four guarantee institutions mentioned above can be utilized in business, especially the banking world. No exception to aircraft that can be used as objects of property security rights<sup>13</sup>. Based on the categories of objects mentioned above, aircraft are not included in the category of movable or immovable objects, but are classified as registered objects as mentioned in Law No. 1 of 2009 concerning Aviation (UUP 2009), which states that aircraft can be burdened with material security rights. But it was not confirmed what the name of the guarantee was. In the 2009 UUP it is stated that an aircraft is any machine or device that can fly in the atmosphere due to the lift force from the reaction of the air, but not because of the reaction of the air to the surface of the earth that is used for flight, this provision is stated in Law No. 1 of 2009 concerning Aviation. Related to the aviation industry that requires financing, of course, the agreement requires a guarantee. Related to that aircraft is one object that can be used as collateral<sup>14</sup>.

### **3.4. The Urgency of Aircraft Guarantee Regulations as Collateral Objects**

Mortgages lose basic as an object, but get a new substitute object that is far more sophisticated and complicated, namely in the form of registered objects such as ships. Such arrangements have the potential to also be used to overload aircraft. Meanwhile, the figure of mortgages in CC must be adjusted until it reaches an appropriate posture to meet current and future technological advances. This is a challenge that is not easy, considering the national legal system does not yet exist. As explained above, it is certain that for the present and future periods, the object of the mortgage is a registered object.

In Article 12 Paragraph (1) of Law Number 15 of 1992 concerning Aviation, it is stated that aircrafts and helicopters that have Indonesian registration and nationality marks can be burdened with mortgages and follow the provisions of national law regulated in CC. Thus based on this article the aircraft can be guaranteed.<sup>15</sup> But after the issuance of Law No. 1 of 2009 concerning Aviation (Indonesia: UUP), there are no norms that explicitly regulate that aircraft or helicopters can be burdened as mortgage guarantees. However Article 71 of the 2009 UUP states

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<sup>13</sup> Kezia Damayanti Aron, 'Tanggung Gugat Debitur Atas Jaminan Fidusia Dalam Bentuk Benda Persediaan Dan Keterkaitannya Dengan Akta Jaminan Fidusia.', *Jurnal Magister Hukum Udayana*, 6.3 (2017), 353–68.

<sup>14</sup> Lending and taking security in Indonesia: overview by Freddy Karyadi and Nina Cornelia Santoso, *ABNR*. [https://uk.practicallaw.thomsonreuters.com/6-504-1484?TransitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/6-504-1484?TransitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1).

<sup>15</sup> Hazar Kusmayan, 'Penerapan Dan Permasalahan Eksekusi Pesawat Terbang Berdasarkan Hukum Acara Perdata Dalam Perjanjian Perawatan Mesin Pesawat', *Jurnal Bina Mulia Hukum*, 1.1, 27–35.

that "Objects of aircraft may be burdened with international interests arising from agreements granting material security rights ..."

Furthermore, in the 2009 UUP the guarantee is only mentioned as far as international interests and can be promised by the parties, without determining in the context of material laws in Indonesia, aircraft must be categorized as what objects. Is the object moving or not moving. The explanation of this article is motivated by the International Convention on Mobile Equipment (Convention on International Interest in Mobile Equipment) and protocols concerning special problems on aircraft equipment (Protocol to the Convention on Interest in Mobile Equipment on Matters Specific to Aircraft Equipment), as the consequences of ratification of the "Cape Town Convention" conventions and protocols. Next, the guarantee agreement is explained, what is meant by "granting rights of security (security agreement)" is an agreement where the giver of the rights of the material guarantee (*chargor*) gives or agrees to give the recipient of the material security rights (*chargee*) an interest (including ownership interests) on aircraft objects to ensure fulfillment of obligations incurred or to be incurred from the material security rights giver or third parties. Therefore, in a research written that for the benefit of material security with the object of guarantee is the aircraft in the context of guarantee law in Indonesia.<sup>16</sup> The use of fiduciary guarantees<sup>17</sup> by placing parts of the aircraft as collateral objects (for example: aircraft engines, etc.) because there are no specific arrangements, the question is whether the arrangement using this fiduciary deed is appropriate? Meanwhile there are no specific arrangements regarding the form of aircraft guarantees. Such conditions create a problem that raises the presence of notary deed in the form of an aircraft fiduciary deed. Of course this can lead to legal uncertainty which will impact the execution of the aircraft when the debtor fails to fulfill his/her promise.

### **3.5. Mortgage: The Object of Aircraft Guarantee**

Ships and aircrafts are strategic transportation facilities currently used nationally and internationally. In connection with that for the sake of systematizing the interests of Indonesia's national law, the right choice of law for the purposes of collateral is a mortgage. For this reason, it is necessary to elaborate mortgage rules in CC, becoming a challenge for the realization of a

<sup>16</sup> Irma Devita Pumamasari, *Hukum Jaminan Perbankan* (Bandung: PT. Mizan Pustaka, 2014).

<sup>17</sup> Y. Annalisa, Murzal Zaidan, M. Syaifuddin, and others, 'Is Fiduciary Deed Suitable for Aircraft in Indonesia?', *International Journal of Psychosocial Rehabilitation*, 24.2 (2020), 2175–88 <<https://doi.org/10.37200/IJPR/V24I2/PR200518>>.

modern mortgage guarantee institution. Next Chapter IX of the Aviation Law on International Interests over Aircraft Objects is one of the important ingredients to be regulated in more detail and systematically, by synergizing mortgage principles in CC (such as principles of specialty, publicity, *droit de suite*, priority) which are still feasible worn. Likewise, the important principles related to the world of aviation as stated in one of the Cape Town Convention protocols, need to be accommodated comprehensively, so that a mortgage guarantee institution can be aligned with other countries.

Regarding registered objects, the ship has been registered as a registered object as stated in the Shipping Law. Actually Article 12 of the Aviation Law No. 15 of 1992 concerning Aviation (revoked by Law No. 1 of 1992 concerning Aviation) explicitly stated that aircraft that already had registration marks could be subject to mortgages.

Although the 2009 Aviation Law does not mention the use of mortgages on aircraft, it also does not provide a prohibition on that, so binding aircraft using mortgages in the banking world has its potential to be used and refers to CC provisions. Even Law No. 42 of 1999 concerning Fiduciary precisely states that the Fiduciary Law does not apply to aircraft mortgages as stated in Article 3 c which reads: "This Law does not apply to Mortgages on aircraft ". Thus it can be concluded that the mortgage on aircraft does not apply the provisions in the Fiduciary Law.

The designation of the use of mortgages for aircraft which are objects of material security is also stated explicitly in the Elucidation of Article 15 (3) of Law No. 20 of 2014 concerning the Position of Notary, which grants authority to the notary to make an aircraft mortgage deed. The Aviation Law does not limit the form of institutions to be used. However, fiduciary charges cannot be imposed because the debtor must submit the physical form of the collateral object (aircraft) to the creditor (the Bank), as also mandated by the Fiduciary Law.

The procedure for binding an aircraft using collateral in the form of a mortgage begins with a credit agreement as the principal agreement, in which a clause of the parties' agreement (bank and debtor) is included to charge the mortgage on the object of the aircraft as a credit guarantee. At the same time as the agreement was signed, the power of attorney to install the mortgage and the power to sell were also signed.

Thus for the present normatively it has been emphasized that the mortgage is used to overload registered vessels as stated by Law No. 17 of 2008 concerning Shipping. Likewise the instructions that have been mentioned in Law No. 42 of 1996 concerning Fiduciary and Law No. 2 of 2014 concerning the Position of Notary Public, as well as the Criminal Law Act which

provides reinforcement of the use of mortgages against aircraft collateral objects. Therefore the building of a mortgage guarantee institution that has been one and a half centuries old needs to be adjusted in accordance with the demands of the industrial revolution 4.0. To support it all is not excessive if the mortgage guarantee institution that has normatively used its 4 (four) legislation as mentioned above, it is necessary to get more intense attention in order to realize a modern standard material insurance institution. Mortgage rules in CC have a lot left behind with current technological advances. This is a challenge going forward to immediately initiate using a mortgage guarantee agency to overload aircraft.

Legal issues will arise in the financing agreement with the object guarantee aircraft when there are parties who feel insecure. This also applies in the United States and Canada, which must provide security to investors and may not limit airlines in operations or transactions.<sup>18</sup> Given the financial climate prevailing in the aviation industry it is important to examine legal issues related to aircraft. For this reason, it is necessary to ascertain what has been done and what can be done to develop a more favorable climate for investment by financial institutions. The machinery provided by law must be simple must provide security for investors.

In a credit agreement, the bank always asks for collateral or collateral as additional collateral given by the debtor to the bank (creditor) in the context of granting credit facilities.<sup>19</sup> Credit agreements are usually firmly agreed that if the debtor defaults, the creditor has the right to take part or all of the proceeds from the sale of the collateral as repayment of the debtor's debt (Dutch: *verhaalsrecht*). If it is not accompanied by special collateral (movable or immovable objects), then the general collateral provided for in Article 1131 of the Civil Code.<sup>20</sup> If a loan at a bank is not accompanied by collateral, according to Douglas J. Whaley: "A creditor who has no security interest in the collateral but has a personal claim against the debtor (EG, a doctor to whom bills are owed) is called an unsecured creditor".<sup>21</sup>

Arrangement of mortgage guarantee institutions only applies to vessels as stipulated in Law No. 17 of 2008 concerning Shipping. Article 1 point 12 of the Shipping Law states that "Ship Mortgage is a collateral right for registered vessels to guarantee the payment of certain

<sup>18</sup> David I. Johnston, 'Legal Aspects of Aircraft Finance (Part I)', *Journal of Air Law and Commerce*, 29.3 (1963), 15–25.

<sup>19</sup> Moch. Isnaeni, *Lembaga Jaminan Kebendaan Dalam Burgerlijk Wetboek, Gadai Dan Hiptek* (Surabaya: PT. Revka Pertra Media, 2016).

<sup>20</sup> Moch. Isnaeni, *Hipotek Pesawat Udara (Seberkas Pelangi 4.0 Di Langit Euphoria Indonesia)* (Surabaya: CV Revka Prima Media, 2018).

<sup>21</sup> Douglas J, *Secured Transactions* (Chicago: WhaleyHarcourt Brace Legal and Professional Publication, Inc, 1991).

debts that give a certain priority to other creditors." Vessels that have been registered in the Indonesian Vessel Register can be used as collateral for debt. Burdening the mortgage on the ship is done by making a mortgage deed by the Registrar and Registrar of Ship Names at the place where the ship is registered and recorded in the Register of Vessels Register (Article 60). For ships weighing 7 (seven) tons or more or with volume of 20 m<sup>3</sup> including immovable objects so they can be guaranteed in the form of mortgages.<sup>22</sup>

Thus, for ships normatively it has been confirmed, if it is guaranteed to have to use a mortgage, it's only limited to ships that have been registered. Based on Article 158 (2) of Law No. 17 of 2008 concerning Shipping states that ships that can be registered by registrar officials and Vessel Name Recipients, measure gross tonnage of at least GT 7 (seven Gross Tonnes). Vessel registration is done by making a deed of registration which then being recorded in the list of Indonesian ships domiciled as a general register. For ships that have been registered, the owner is given a gross of ship registration certificate which functions as proof of registration (can be seen on the ship's wall). Every ship registered in Indonesia is given an Indonesian national certificate which makes the ship legally used as a mean of commercial transportation and a proof of ownership of the ship.

As mentioned above, explicitly in the Shipping Law, it is stated that only registered vessels can be mortgaged. What about unregistered vessels that are owned by many fishermen, who want to apply for bank credit? What material collateral will be used by banks to obtain collateral object. While credit facilities may not be patterned discrimination to get loan funds from banks. For the problem solving, Moch. Isnaeni explained that the law is still able to resolve the solution by utilizing fiduciary guarantee institutions.

The next question, can Indonesian aircrafts be analogous to ship mortgages as stipulated in Law No. 17 of 2008 concerning Shipping? Credit agreements are classified as anonymous agreements that give rise to agreements in accordance with Article 1233 CC. Consequently the obligation is borne by the agreement.<sup>23</sup> Credit agreements give rise to obligations that make the parties bound to one another, in which this type of agreement is classified as an obligatory agreement.<sup>24</sup> According to Sudargo "the law focuses on the obligation to carry out self-imposed

<sup>22</sup> Try Widiyono, *Agunan Kredit Dalam Financial Engineering* (Jakarta: Ghalia Indonesia, 2009).

<sup>23</sup> Dwi Tiara Kurnilasari, Annalisa Yahanan, and Rohani Abdul Rahim, 'Indonesia's Traditional Knowledge Documentation in Intellectual Property Rights' Perspective', *Sriwijaya Law Review*, 2.1 (2018), 110-30 <<https://doi.org/10.28946/slrev.vol2.iss1.114.pp110-130>>.

<sup>24</sup> Moch Isnaeni, *Pengantar Hukum Jaminan Kebendaan* (Surabaya: PT. Revka Pertra Media, 2016).

obligations".<sup>25</sup> If the credit agreement is followed by a material guarantee agreement, then the creditor is positioned as the preferred creditor who gets the first debt repayment when the debtor is in default.<sup>26</sup>

Collateral is part of the term credit guarantee, relating to goods, while the guarantee (*zekerheid / cautie*) is not only related to goods, but also to the character, capacity, capital and economy of the debtor customer concerned.<sup>27</sup> Collateral is anything that is received by creditors and submitted by the debtor to guarantee his/her debts.<sup>28</sup> Gerald G. Thain mentions "Collateral is something of value that while the debtor has included in the transaction in order the secure debt."<sup>29</sup> Without the involvement of collateral, there would simply be a contract for a loan or debt and an obligation to repay it" (collateral is something that has the value of the debtor included in the agreement, to guarantee the debtor's debt. Without being accompanied by collateral, then it will become only an ordinary contract/loan agreement and the obligation to fulfill it. Economic development, trade, and the need for credit to increase trade businesses must be guaranteed as a logical consequence of the realization of the responsibility of legal development to balance the pace of activities in the field of air transportation.<sup>30</sup>

Related to the aircraft financing agreement, there is also a debtor (borrower of funds) and the lender is called a creditor in this case the bank. However, this financing agreement is in the form of aircraft as collateral. Problems arise when, what type of deed will be made by a notary if additional agreement is needed as collateral if the debtor fails to promise when he cannot repay the debt in accordance with the agreement. For this reason, a collateral agreement between the debtor and the creditor is made by a notary in the form of a deed.

Related to the guarantee agreement, since there is no regulation on aircraft as the object of collateral, the question is what type of deed is in accordance with the aircraft as collateral. Is it a fiduciary or mortgage deed? Because there is no regulation on aircraft mortgages, the notary made the choice to use a fiduciary deed, even though when viewed from the 2009 UUP, explicitly stated that the aircraft was a registered object. If analogous to the provisions of the Shipping Law No. 17 of 2008, the norm expressly states in the form of a mortgage guarantee

<sup>25</sup> Novi Ratna Sari, 'Komparasi Syarat Sahnya Perjanjian Menurut Kitab Undang-Undang Hukum Perdata Dan Hukum Islam', *Jurnal Repertorium*, 4.2 (2017), 81.

<sup>26</sup> Moch. Isnaeni, *Lembaga Jaminan Kebendaan Dalam Burgerlijk Wetboek, Gadai Dan Hiptek*.

<sup>27</sup> Rachmadi Usman, *Hukum Jaminan Keperdataan*, 2nd edn (Jakarta: Sinar Grafika, 2016).

<sup>28</sup> Maharani, Parman, and Hayanul Haq.

<sup>29</sup> Gerald G. Thain, 'A Basic Outline of the Law of Secured Transaction', in *Seri Dasar Hukum Ekonomi*, 4th edn (Jakarta: Ellips Project, 1998), p. 15.

<sup>30</sup> H. K. Martono, *Pengantar Hukum Udara Nasional Dan Internasional*, pertama.

deed. Thus, if there is a reconstruction of the normalization of the mortgage guarantee institution in Indonesia in the future (*ius constituendum*), the normalization should be narrative: mortgages are property rights over registered objects to take debt repayment beforehand in an agreement.

In addition, it was also mentioned that the Fiduciary Law could not be applied to Aircraft Mortgage and the Notary Position Law also states that notaries are given the authority to make an aircraft mortgage deed. Thus the most relevant for an aircraft guarantee as its object is in the form of a mortgage deed.

In the Netherlands the division of registered objects has been established in its positive law, but still maintains the classification of immovable objects.<sup>31</sup> Furthermore, the Netherlands, France and Italy have set up an aircraft as objects moving in national law, they treat specificity (*sui generis*) using a mortgage guarantee.<sup>32</sup>

The notary's reason for making an aircraft fiduciary deed in the credit agreement is related to the aircraft financing agreement because there is no explicit regulation on the form of Aircraft guarantees, making it difficult for airlines to obtain capital financing and vice versa national and international fund owners are less interested in lending money to airlines because they have not there is legal certainty and guarantee that their loans will return. The absence of regulation on aircraft guarantees does not provide legal protection to both creditors and debtors.

Thus it is time to determine explicitly that the object of the mortgage is a registered object. This fact is indisputable, but rather it is a challenge given the age of the mortgage as a material security agency in CC is very old. Mortgage articles in CC will not be able to accommodate collateral objects such as aircrafts as registered objects, where their existence is far more complicated than land which according to CC is classified as immovable object. Moreover, aircraft as registered objects are technically very complicated. This is a formidable challenge when elaborating mortgage guarantee institutions so that they can be used to overload aircraft.

## 5. Conclusions

The results showed that the need for an aircraft arrangement as a collateral object in a financing agreement in the aviation industry. The existence of these special arrangements can provide legal certainty and legal protection to both creditors and debtors.

In the distribution of objects, aircraft are categorized as registered objects, therefore analogous to immovable objects. If guaranteed in a financing agreement, the most relevant form

<sup>31</sup> Moch. Isnaeni, 'Benda Terdaftar Dalam Konstelasi Hukum Indonesia'.

<sup>32</sup> H. K. Martono.

of guarantee is a mortgage. This provision is also in line with guarantees for ships as registered objects which collateral is in the form of mortgages. In addition, the provisions concerning mortgages related to aircraft have been alluded to in the Fiduciary Act as well as the Notary Position Act. Thus the most appropriate figure of an aircraft collateral form is a mortgage.

### **Acknowledgement**

This article is a summary of the Competitive Research Report funded by PNBP (Non-Tax State Revenue) Universitas Sriwijaya in 2019.

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