

VII. CONCLUSION

The Indonesian Civil Code recognizes two forms of security interests, these are pledge and hypothec, but neither of which is applicable to aircraft. The absence of laws and regulations may create uncertainty concerning the forms of secured transaction which may be applicable to aircraft. This uncertainty has been felt by some Indonesian legal writers especially those at the "Seminar on Hypothec and other Forms of Secured Transactions" held in Yogyakarta by the Badan Pembinaan Hukum Nasional. Some writers are concerned with the classification of aircraft, while those at the Seminar suggest that classifying aircraft as movable or immovable should be avoided. On the other hand the Minister of Communication in his decree has already adopted mortgage to be used as a secured form of transaction in aircraft without classifying aircraft to be movable or immovable.

Those problems of uncertainty may give impact to the creditors who want their position to be protected by the existing laws and regulations. The experience of secured parties with the sale of the collateral conducted by the Public Auction has been unfavorable, especially if the object is ship or aircraft. The enforcement proceeding in fiduciary transfer, hire-purchase, and installment purchase is not provided in any regulation and if there is a judicial decision in this case the solving of the problem is not clear.

If there is a dispute involving instruments which are

not set forth in any regulations should be brought into court, the interested parties cannot predict the outcome of the litigation.

The regulations concerning priority rights in mortgage and the enforcement proceeding set forth by the Director General of Aviation is unclear, and contradictory with the existing laws or regulations.

As it has been discussed earlier the absence of legislation can create uncertainty concerning the form of secured transaction which may be applicable to aircraft. There can be no effective measure as related to priority rights in aircraft, the system of recordation, the enforcement proceeding and execution for sale. Those problems can be overcome by adopting certain regulation concerning the above matters. Such a regulation can be set up by a decree of a Minister, if it relates to an administrative function. According to article 9 paragraph 1 of Law no.83/1958 a Minister is granted a power to establish regulation concerning registration of aircraft. But according to article 26 paragraph 2 of Law no. 83/1958, any decision concerning aviation in general should be taken by the Government after having heard from the "Board of Aviation," (Segala keputusan mengenai penerbangan yang bersifat umum, diambil oleh Pemerintah setelah mendengar Dewan Penerbangan). If such a regulation should be adopted by Undang-undang (Law) it can take so long period of time before it can be passed by the "Dewan Perwakilan Rakyat."

And in fact the Minister of Communication or even the Director General of Aviation has issued various decrees and circulars concerning aircraft used for flight in Indonesia.

