THE BANKRUPTCY OF AIRLINES AS LESSEE IN FINANCE LEASING BASED ON CAPE TOWN CONVENTION 2001 AND HARMONIZATION WITH THE BANKRUPTCY AND SUSPENSION OF PAYMENT ACT NUMBER 37 YEARS 2004

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Abstract

By the development of the airlines industry in Indonesia today, international lease finance from all around the world (lessor) put higher trust to airline business in Indonesia. In reality many airlines company (lessee) is bankrupt, because of the inability to pay his debt to the lessor. Based on the Irrevocable Deregistration and Export Request Authorization (IDERA) in the Cape Town Convention, if the airlines company had been bankrupt and could not pay the debt of finance leasing, the aircrafts must be returned to the finance leasing. In contrary, there is disparities with Bankruptcy and Suspension of Payments Act No.7/2004 in Indonesia, so we need to harmonize the regulation between Bankruptcy Law and Leasing Rule in Indonesia with International Regulation to create the legal certainty to both companies.

Keywords: Aircraft, Leasing, Bankruptcy

Abstrak


Kata kunci: Pesawat, leasing, pailit
I. INTRODUCTION

Indonesia is the world’s fourth most populous country after China, India, and the United States of America (USA). It has an estimated population of over 260 million people. The geographical condition of Indonesia which consists of more than thirteen thousand islands with the largest population certainly need transportation for mobility, not only domestic but also for cross-border transportation. Moreover, today's tourism business is growing rapidly. So, the aviation industry plays an important role in improving Indonesia's economic growth. The aviation industry needs a big capital investment to developing the business, sometimes it also needs foreign investments.

The procurement of aircraft need substantial funds because the prices of the aircraft are very expensive. The more sophisticated type of aircraft, the more expensive the price of aircraft. The expensive price of the aircraft made airlines company in Indonesia could not possible to purchasing the aircraft in cash. If the aircraft should be purchased in cash by the airlines company, of course, the airlines will not be able to pay the price of the aircraft. So the way that can be taken to be able to have the aircraft is by loan from the bank or leasing. The loan from the bank can be in syndicated loans or cooperation between foreign banks with national banks (consortium), because foreign banks have strong capital structure compared to local banks. Airlines company can also use international finance in big scale which have strong capital structure. For example, AerCap and GECapital Aviation Services (GECAS), the worlds largest aircraft leasing company, International Finance Lease Corporation (ILFC) and Sierra Leasing Limited, and many more.

Aircraft manufacture companies also offer alternative financing for the airlines company who want to purchase the product of their aircraft. For example, the Boeing Aircraft Holding Co., Boeing Capital Corporation, or the Airbus Asset Management. They offer predelivery payment (PDP), the loan to finance the down payment for the aircraft which was being manufactured. Export Credit Agency (ECA) may be another purpose for funding. ECA is a joint institute of countries in Europe that connects the government of a country with exporters to finance the export trade transactions. Each country usually has its own ECA as the US had the Ex-Im Bank, the UK has the Export Credit Guarantee Department, France has COFACE, Germany has Euler Hermes or Canada has EDC.¹

Therefore, we need an international regulation to accommodate this finance transaction. Cape Town Convention created on the initiative of the International Air Transport Association (IATA), the International Civil Aviation Organization (ICAO), and International Institute for the Unification of Private Law (UNIDROIT), which discussion was did in Cape Town, South Africa on 29 October until 16 November 2001. Indonesia has ratified Cape Town Convention 2001 in Indonesia Presidential Decree No.8/2007 in February 20, 2007 and the Protocol to The Convention on International Interests in

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Mobile Equipment on Matters Specific to Aircraft Equipment. And as the consequence, Indonesia has changed the Flight Act No.15/1992 and make adjustments with Cape Town Convention 2001 into Flight Act No.1/2009, such as recognition to international interest on aircraft. After the ratification of Cape Town Convention, the regulation in the UNIDROIT Convention on International Finance Lease becomes unvalid.

The ratification also has advantages for the creditor or lessor. One of them is the legal certainty for the lessor, if the lessee did default or bankruptcy, lessor can execute the aircraft as security assets, because the government give permission to release the registration mark or nationality mark of aircraft based on the Irrevocable Deregistration and Export Request Authorization (IDERA) system in the Cape Town Convention 2001. This means, if the airlines company could not pay the debt of finance leasing, the aircrafts can be directly withdrawn by the owner, the finance leasing company. This paper will discuss about the the bankruptcy of airlines company as lessee which the aircraft as a mortgage withdrawn related to IDERA system.

II. RESULTS AND FINDINGS

A. Conceptual of Financing

Leasing has developed by the Sumerians more or less 4500 BC. Then, developed in USA and then spread to Europe and even to the whole world, including Indonesia. In 1850, the first leasing company in the USA was operating in the field of leasing trains. Furthermore, still in the USA, in 1877, the Bell Telephone Company introduced leasing in the field of telephone services. Afterwards, in 1952, the leasing company in San Francisco (USA) has also introduced leasing in specific products. Thus in the USA, the banks and leasing companies live abundantly as lessor. Even the company's famous trademark holder also becomes the lessor. For example, since the 1980s the company GATX is the largest lessor for leasing railcars and Xerox is the largest leasing also for leasing photocopiers.

With the development of leasing activities in various countries would need an international arrangement of this leasing activity. Governing Council of UNIDROIT arrange an international rules on leasing agreements in the form of sui generis (International Financial Leasing 1988). This convention have several important things related to aircraft financing:

1. Provide substantive international provisions to rights and obligations of the parties in leasing, especially the third party

2. Things related to the material rights was handed to the jurisdiction of the state, although the leasing convention provided the guiding

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principles of international private law to determine which law should apply in leasing issues.

3. Establishes priority rights of lessor, but limited to personal relative rights and not absolute material rights.

Leasing is a financing activity in the form of supply of capital goods either with option rights (financial lease) or without option rights (operating lease) which used by the lessee for certain period based on installments of payment (Presidential Decree No.9/2009 about Financial Institutions).

Mariam Badrulzaman said leasing is every activity of corporate financing in the form of supply of capital goods to be used by a company for a certain period based on periodic payments, characterized by option rights to extend the term of the lease based on the residual value agreed.\(^5\)

In principle, the parties involved in the leasing financing system are:

1. Lessor is the parties providing financing by leasing to those who need them. The lessor may be a multfinace company or a specialized company engaged in the field of leasing.

2. Lessee is a party that requires capital goods, capital goods, which are financed by the lessor and the lessee reserved.

3. Supplier/Manufacture is the party that provides capital goods become the object of leasing, which are paid by the lessor to supplier for the lessee interest. There are also types of leasing that does not involve the supplier, for example sale and leaseback.

Common types of leases, including the two types of leases stipulated in the Ministry of Finance Decree, are as follows:\(^6\)

1. Finance Lease

Under this type of lease, a lessor finances the procurement of capital goods. A lessee usually decides on the required capital goods and, on behalf of the lessor as the owner of the capital goods, orders, inspects and maintains the leased asset. During the lease term, the lessee makes periodic payments, the total of which plus the payment of the residual value, if any, will cover the acquisition price of the capital goods and interest, which represents income to the leasing company.

2. Operating Lease

Under this type of lease, the lessor buys the required capital goods to be leased to the lessee. Unlike the finance lease, the total periodic payments in an operating lease does not cover the amount spent to acquire the capital goods and the interest. The difference is due to the lessor's expectation of earning a profit from the sale of the leased assets or from other lease contracts. The lessor should possess special


skills to maintain and to resell the leased capital goods. Unlike a finance lease, the lessor in an operating lease usually has the responsibility for lease expenses, such as insurance, tax and maintenance of the related capital goods.

3. Sales-Type Lease

A sales-type lease is a direct finance lease where the total transaction amount includes the profit determined by manufacturers or distributors who are also the lessors. This type of lease is usually a distribution channel for marketing of a certain company's product.

4. Leveraged Lease

This lease transaction usually includes at least three parties: the lessee, the lessor and the long-term creditors who finance the major portion of the leasing transaction.

5. Direct Lease

Under this type of transaction, the lessee does not possess the leased asset until the lessee requests the lessor to acquire the asset. The lessee’s main purpose is to obtain funds through leasing for the acquisition of capital goods for production processes.

6. Sale and Leaseback

Under this type of transaction, a lessee sells capital goods it owns to a leasing company and subsequently executes a lease contract to lease the same capital goods from the leasing company.

7. Syndicated Lease

In a syndicated lease, several leasing companies, in consortium, enter into a lease transaction with a lessee. This type of lease is executed because the value of the transaction is too significant or because of other factors. One leasing company will be appointed as the coordinator, to whom the lessee communicates all activities related to the lease contract. This transaction can be performed through a direct lease as well as sale and leaseback.

B. Legal Status of Aircraft

The presence of Flight Act Number 1 Year 2009 change the aviation industry in Indonesia, especially in business activities by airlines company and it also covers about aircraft. In terms of business activity, since January 12, 2012, the Flight Act requires that the national airlines company which operates the commercial air transport at least have ten aircraft, which five of them must be owned by the airlines company. This requirement certainly not an easy requirement, because the cost to pay the rent of the aircraft is very high, even to make a purchase. The government can not simply hands-off and leave it to the airlines company to fulfill the requirements. In terms of legal protection of the aircraft, the availability of legal regulation, both in international and
national levels are insufficient to support the growth of the aircraft in global scale.\footnote{Andre Rahadian, \textit{Pembiayaan Pesawat Udara Teori dan Praktek}, Hanafiah Ponggawa & Partners, 2015, p.19.}

There are several international convention that regulate about aircraft. Firstly, Geneva Convention On The International Recognition of Rights in Aircraft of 1948. In this convention, the participating countries recognise right of property in aircraft, right to acquire aircraft by purchase coupled with possession of the aircraft, right to possession of aircraft under leases of six month or more, and recognise mortgage, hypothecques and similair rights in aircraft which are contractually created as security for payment of an indebtness.But, Indonesia was not participate in this convention. Secondly, Cape Town Convention On International Interest In Mobile Equipment and the Protocol to The Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment of 2001.

Cape Town Convention 2001 is a convention that is formed in order to standardize universally financial transactions related to movable property, especially aircraft and aircraft engines, considering in the crossborder finance transaction are often found the problem in execution (enforcement) of the collateral. This Convention is ruled to facilitate the methods of financing based on asset-based financing, the acquisition procedure of capital goods by the creditor or lessor in case the debtor or lessee defaults. In addition to the Cape Town Convention also creates a system of international registration, the International Registry Authority, which is an international organization as a place of registration for the secured creditor in category international interest.\footnote{Hikmahanto Juwana, “Kewajiban Negara Mentransformasikan Ketentuan Perjanjian Internasional ke Dalam Peraturan Perundang-undangan: Studi Kasus Pasca Keikutsertaan Dalam Cape Town Convention”, \textit{Business Law Review}, vol. 28, no. 24, 2009, p.51-57.}

Mieke Komar mentions that this convention aims to:\footnote{Lastuti Abubakar, “Telaah Yuridis Perkembangan Lembaga dan Objek Jaminan (Gagasan Pembaruan Hukum Jaminan Nasional)”, \textit{Buletin Hukum Kebanksentralan}, Volume 12, No.1, Januari-Juni 2015, 2015, p.4.}

1. to facilitate the acquisition and financing of mobile equipment
2. to provide remedies for creditor where there is evidence of default
3. to establish an international registration, to register international interest
4. to support aircraft and airline industry
5. to give creditors greater confidence in the decisions to grant credit.

\textit{Aircraft is any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface} (Chicago Convention 1994). While in Geneva Convention 1948, the definition of aircraft limited on aircraft used for civil air transportation.\textit{For the purpose of this Convention term 'aircraft' includes the airframe, engines, propellers, radio apparatus and all other articles intended for use in the}
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aircraft whether installed therein or temporally separated therefrom (Geneva Convention 1948). In Indonesia Flight Act 2009, aircraft is each machine or tool that can fly in the atmosphere because the lifting force of the air reaction, but not because the air’s response to Earth's surface which is used for flights.

Aircraft as a tool used for flights and transportation able to move and can be moved, so the aircraft is movable property. But, not all the regulations on movable property can applicable to aircraft. The aircraft as movable property have nationality mark and registration mark, which is regulated in Chicago Convention 1994 and all member countries of International Civil Aviation Organization recognize the legal status of aircraft as movable property that have specificity (sui generis). The provisions also regulated by the Geneva Convention 1948, all member countries recognize the rights of civil aircraft that categorized as moveable property, but may be burdened mortgage.

The concept of property right on the aircraft is a concept of ownership that has characteristics. Especially about aircraft ownership, F.N. Videla Escalada argues that this right is a modern phenomenon that began from the development of aeronautics activities. The ownership of the aircraft is a fundamental modern concept of property rights. Various restrictions set in Aeronautical Law is held to fulfill the social function of the aircraft owner. In addition, there are involvement of Government in the control and regulation of the activities of the aircraft, and also the construction of the aircraft since beginning and term use of the aircraft. Videla Escalada further distinguish the concept of full ownership and imperfect ownership of aircraft. Imperfect ownership is a common thing in the aviation industry, where the registered owner is actually not a holder party of the property according to general provisions, known in civil law. As property rights arising from a conditional sale, leasing, and other agreements.

J.P. Hoenig argued the reason the aircraft has a special status are:

1. On aircraft is given a nationality mark, with obligation registered in certain countries.
2. For the purposes of civil interests, the aircraft must be registered in a civil public register.
3. On the aircraft there are specific provisions about acquisition and alienation which does not apply to other movable property.
4. Aircraft can be guaranteed by a hypothecques or a mortgage.
5. Aircraft commonly subject to legal regulation of detention and attachment that is different from other movable property.
6. Applicability of the law regulation about salvage assistance of aircraft which creating rights immaterial rights that established by law and

12Ibid.
these rights have prioritize position than another security rights that have been registered.

In Indonesia, each aircraft operating in Indonesia must be have registration mark, regulated in Article 24 Flight Act No.1/2009. The registration mark can be Indonesian registration mark or foreign registration mark, issued by aviation authorities in every country, where in Indonesia the aviation authority is Director General of Civil Aviation, Ministry of Transportation of the Republic of Indonesia. If all the requirement have been fulfilled, the aircraft will get the registration certificate which is valid in 3 years. Based on the argumentation from legal experts and regulation above the aircraft can be categorized as registrated movable property.

C. The Bankruptcy of Airlines Company

Indonesia Flight Act described that aircraft is a property that can be treated as an international interest, as we can see in Article 71 Flight Acts No.1/2009:

“International interests is an interests held by creditors comes as a results of granting security rights agreements, title reservation agreement or leasing agreements which is subject of the Cape Town Convention.”

Previously, international interest has been regulated under Cape Town Convention 2001 International interests in mobile equipment is an interest of a certain object that:

1. Is given by chargor based on Security Agreement, that is an agreement where is the chargor provides or agree to give the chargee an interest (including an ownership interest) over the aircraft to ensure the fulfillment of the obligations that already occurred or will occur from the chargor or third party.

2. Is attached to the Conditional Seller in Title Reservation Agreement, that is an aircraft sale agreement under the condition that the ownership would not switch until the requirements are fulfilled as stated in the agreement.

3. Is attached to the lessor by Leasing Agreement, that is an agreement where the lessor gives the right to other lessee for control the aircraft (with or without an option to purchase) with compensation in the form of rent or another payments.

In general, loaning money or capital for business development always requires the guarantee. For aviation industry, the absence of regulation about mortgage of aircraft in Indonesia is one of the obstacle to get the funds which is necessary to developing the aviation industry in Indonesia because
international fund owners or foreign bank do not want to give the loan to the airlines without any guarantee or legal certainty that the money will be paid back by the debtor. Therefore, Indonesian Government adopted the Irrevocable Deregistration and Export Request Authorization (IDERA) system from Cape Town Convention in Indonesia Flight Act. IDERA enables the leasing company as a creditor to be able to submit application to minister of transport to deregistration and export the aircraft if lessee default. It is clear to say that the aircraft as a registered movable property can be a mortgage in case the debtor or lessee defaults and fails to make any payment to the creditor or lessor, the aircrafts can be directly withdrawn by the lessor. In order to be implemented in Indonesia, Minister of Transportation published the Regulation of the Minister Transportation Number KM49 of 2009 Civil Aviation Safety Regulation Part 47 On Registration of Aircraft and Director General Air Communication Regulations No. SKEP/166/VII/2009 Staff Instruction (SI) On IDERA (Irrevocable Deregistration and Export Request Authorization).

The purpose of IDERA system is to facilitate withdrawal of aircraft from the territory of Indonesia by giving authority to the creditor to deregistration aircrafts in Indonesia and transfer the aircrafts out of areas in Indonesia if the debtor defaults. This system directly gives guarantees to creditors or lessor that the aircraft can still operate. Formerly before the ratification of Cape Town Convention, creditors or lessor always have difficulties to withdraw aircrafts from Indonesian territory when the debtor or lessee defaults, it could take months or even years for creditors or lessor to be able to regain his aircrafts.

The provisions of the Cape Town Convention is extremely protect the interests of creditors, who are mostly foreigners. The advantage ratification of the Cape Town Convention for developing countries by Priti Suri and Aditya Gupta: 13

1. Aircraft manufacturers and suppliers will be able to get access to expanded markets, higher output and sales levels as because of reduced rate of interest many more airline operators/individuals will opt for procurement of aircrafts. This will propel the demand for new aircrafts;
2. Airlines will be benefited by reducing financing costs and providing greater access to finance;
3. Governments will gain by reducing debt levels where government is lending the money to purchase the aircraft through guarantees and reducing risk, and eliminating providing counter guarantees to international financial institutions in the long run;
4. Investors will be able to get higher returns on investments as banks have assurance of secured debt;

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5. Passengers will be able to get cheaper air tickets as interest amount payable has to be factored in the ticket prices, reduction in interest payment amount will be passed down to the passengers and there will be increased frequency of flight services with more aircrafts being inducted.

Several provisions in the Cape Town Convention 2001 allows the participants country to conduct a declaration on certain provisions. Indonesia by Indonesia Presidential Decree No.8/2007 has made a declaration related to Bankruptcy Provision under Article 39 paragraph (1) letter (a) of the Cape Town Convention:

"Indonesia declares that the following categories of non-consensual right or interest have priority under its laws over an interest in an aircraft object equivalent to that of the holder of a registered international interest and shall have priority over a registered international interest, whether inside or outside insolvency proceedings:

1. liens in favor of airline employees for unpaid wages arising since the time of a declared default under a contract to finance or lease an aircraft object;

2. liens or other rights of an authority of Indonesia relating to taxes or other unpaid charges arising from or related to the use of that aircraft object, and arising since the time of a declared default under a contract to finance or lease that aircraft object; and

3. liens or other rights in favour of repairers of an aircraft object in their possession to the extent of service or services performed on and value added to that aircraft object."

And also under the Article XXX (1) Protocol Cape Town On Declarations Relating to Insolvency Assistance:

"Indonesia declared the court in Indonesia obligate to cooperate with foreign courts and foreign curators (foreign insolvency administrator) in implementing the provisions of Article XII of the Protocol Insolvency Assistance."

The other provisions under the Bankruptcy Law that worth to note in the context of aircraft lease are as follows:14

1. the receiver (curator) must transfer ownership of the aircraft to the owner/lessor as long as the lease has been registered with the International Registry within 60 calendar days. During this waiting period, it will be up to the receiver (curator) whether the aircraft operator can continue its operation or not during this waiting period. If the receiver (curator) decide that the aircraft operator will continue its

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operation, any payment under the lease for the operation of the aircraft (such as the rent and/or additional rent) during the waiting period can only be collected from the bankruptcy estate (boedel). The rent payment will rank pari passu prorata parte principle with other unsecured creditors. Accordingly, lessor needs to consider to agreement lease that lessee will stops to operate the aircraft upon the occurrence of an event of default (particularly an event of default occurs from an insolvency event;

2. receivers (curator) have general rights in managing the business of debtor to use and/or sell current assets and inventory under his control during the stay period under the Indonesian Bankruptcy Law, except the assets and inventory are not owned by the debtor (such as lease objects); and

3. the Indonesian Bankruptcy Law provides that with approval from the relevant receivers (curator), a bankrupt company may terminate the Lease Agreement by notify the termination in certain time period provided in the lease agreement or prevail time period according to local custom (which is currently ninety days). If the rent has been paid in advance, the lease may not be terminated earlier than the day on which the time period for which the advance rent was paid expires. From the date of the declaration of bankruptcy or a temporary delay of payment, the rent becomes a debt of the bankruptcy estate.

Bankruptcy is a general statutory attachment encompassing all the assets of the debtor. The bankruptcy only covers the assets. The personal status of an individual will not be affected by the bankruptcy, he is not placed under guardianship (receiver/curator). A company also continues to exist after he declaration of bankruptcy. During the bankruptcy proceedings, all the acts with regard to the bankruptcy estate can only be performed by the receiver/curator, but other acts remain part of the domain of the debtor’s corporate organs. The receiver/curator was appointed by Commercial Court to manage the company. Jerry Hoff classifies creditors in bankruptcy in 3 types:\(^{15}\)

1. Secured Creditor, Right of secure creditors, security interests are in rem right that vest in the creditor by agreement and subsequent performance of certain formalities. A creditor whose interests are secured by an in rem right is usually entitled to cause foreclosure of the collateral, without a judgement to satisfy his claim from the proceeds with priority over the

\(^{15}\)Jerry Hoff, *Indonesian Bankruptcy Law*, Tatanusa, p.96.
other creditors. This right to foreclose without a judgement is called the right of immediate enforcement.

2. Preferred Creditors, unlike secure creditors, who have a preference because they agreed upon this with their debtor, the preferred creditors have a preference to their claim. Obviously, the preference issue is only relevant if there is more than one creditor and if the assets of the debtor are not sufficient to pay all the creditors (there is a consorhus creditorium). Preferred creditors are required to present their claims to the receiver for verification and thereby charged a pro rata parte share of costs of the bankruptcy. There are several categories of preferred creditors:
   a. Creditors who have statutory priority
   b. Creditors who have no statutory priority
   c. Estate creditors

3. Unsecured creditors, they are do not have priority and will therefore be paid, if any proceeds of the bankruptcy estate remain, after all the other creditor have a receive payment. Unsecured creditors are required to present their claims for verification to their receiver and they are charged a pro rata parte share of the cost of bankruptcy

There are many cases in bankruptcy of airlines company, Bouraq Airlines, Jatayu Airlines, Sempati Airlines, Adam Air, and the last one Batavia Air in 2012. Several airlines company declared bankrupt because of the debt problems and the others because of the minimum requirement owns five aircrafts that issued by Transportation Minister. For Batavia Air, this case began from submission for bankruptcy petition by the International Lease Finance Corporation (ILFC) to PT Metro Batavia (Batavia Air). Batavia Air tied to Aircraft Lease Agreement of Airbus A330-202 by December 20, 2009, which requires Batavia pay rent and reserves in addition to the rental fee. The Airbus A330-202 aircraft will be used for transporting Indonesian pilgrims during the annual Hajj season and Umrah, but apparently Batavia lost the tender competition, which resulted unable to pay rental fees and interest on the aircraft leasing.

In this case, ILFC directly had taken back the aircrafts of Batavia Air because the aircrafts came from the lessor, and Batavia Air unable to pay for aircraft it had leased. In the situation of a debtor’s or lessee’s bankruptcy, curator or debtor will hand over the control of the aircraft to the creditor or lessor within the time limit provided by the law. This regulation of bankruptcy is regulated in Article 80 of Flight Act No.1/2009 so does the regulation in IDERA system.

Bankruptcy in Indonesia is realization of legal principles paritas creditorium and pari passu prorata parte in Article 1131 and 1132 of Indonesian Civil Code. Paritas creditorium principle was regulated in Article 1131 Indonesia Civil Code: “All the property of the debtor, whether movable
or un moveable, whether exist or will be exist, become guarantee for all the engagement.” Pari passu prorata parte principle was regulated in Article 1132 Indonesian Civil Law: The assets of debtor is a guarantee for the all creditors and the result of auction should be distributed proportionally to the creditors. It means that if the debtor is unable to pay its debts, the assets of the debtor becomes creditors target and all creditors have the same rights to all property of debtor. In this case, the aircraft as a part of assets (boedel) of Batavia Air had withdrawn from Batavia Air company. Batavia Air could not continue its business because the important asset which was the aircraft about 14 aircrafts has withdrawn. The existence of the aircrafts became the important part of the bankruptcy estate to increase the amount of assets. It also make discrimination against creditors, especially prefered creditors, which has preference rights, because they did not receive appropriate payment from the sale of aircrafts. It shows that there is disparities between Cape Town Convention and its ratification in Indonesia Presidential Decree No.8/2007, and Article Flight Act No.1/2009 with Indonesian Bankruptcy Law and thus these regulation needs to be harmonized by Indonesian Governement. Whether the Indonesia Bankruptcy Law need to be adapted with Flight regulation to create the legal certainty, so there is no creditors that get disadvantage from disharmonisation.

### III. CONCLUSION

The Indonesian Government has ratified the Cape Town 2001 through Presidential Decree No. 8 of 2007, the aims of ratification to helping domestic airlines companies to get the trust of foreign leasing company, in order they will give the loan to national airlines. But unconsciously, the regulation of internasional leasing agreement with aircraft object provides no protection to national creditors and national airlines, when faced the bankruptcy. The regulations tend to favor the interest of foreign leasing company, so the regulations need to adapt it and harmonized it with national interest.
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