



The Hell-or-High-Water Clause in Aircraft Leasing Contract: UNIDROIT Principles and the Indonesian Civil Code

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Abstract

This research analyses the hell-or-high-water clause in aircraft leasing contracts in the context of the principle of freedom of contract. Focusing on the review of the principle of freedom of contract based on UNIDROIT Principles of International Commercial Contract (UPICC) 2016 and Indonesian Civil Code, this research uses normative juridical method with analytical descriptive approach. The findings show that the hell-or-high-water clause has a high binding force, providing legal certainty, especially for the lessor. However, its application must be in line with the principle of freedom of contract regulated in UPICC 2016 and the Civil Code. The application of this clause is suggested to consider three limitations stipulated by the UPICC 2016: *first*, the principle of freedom of contract that allows businesses to choose partners and transaction terms; *second*, the exclusion of certain sectors in the public interest by the state; and *third*, mandatory rules that limit the content of the contract. Therefore, the hell-or-high-water clause should be applied with due regard to the implementation of the principle of freedom of contract as well as national law or the existence of compelling national regulations.

Keywords: *hell-or-high-water; aircraft lease agreements; freedom of contract*



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Abstrak

Penelitian ini menganalisis klausul the hell-or-high-water dalam kontrak sewa pesawat dalam konteks prinsip kebebasan berkontrak. Berfokus pada kajian semula prinsip kebebasan berkontrak berdasarkan UNIDROIT Principles of International Commercial Contract (UPICC) 2016 dan KUH Perdata Indonesia. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan deskriptif analitis. Temuan menunjukkan bahwa klausul hell-or-high-water memiliki kekuatan mengikat yang tinggi, memberikan kepastian hukum, terutama bagi lessor. Namun, penerapannya harus sejalan dengan prinsip kebebasan berkontrak yang diatur dalam UPICC 2016 dan KUHPerdata. Penerapan klausul ini disarankan untuk mempertimbangkan tiga batasan yang ditetapkan oleh UPICC 2016: *pertama*, prinsip kebebasan kontrak yang memungkinkan bisnis untuk memilih mitra dan ketentuan transaksi; *kedua*, pengecualian sektor-sektor tertentu untuk kepentingan publik oleh negara; dan *ketiga*, aturan wajib yang membatasi isi kontrak. Oleh karena itu, klausul hell-or-high-water harus diterapkan dengan memperhatikan penerapan prinsip kebebasan berkontrak serta hukum nasional atau adanya peraturan nasional yang memaksa.

Kata Kunci: *hell-or-high-water; kontrak sewa guna usaha; pesawat udara; kebebasan berkontrak*

A. Introduction

Aircraft represent one of history's most significant technological advancements, enabling faster and more

efficient long-distance travel. Air transportation has gained popularity in Indonesia due to its convenience, safety, and security, especially following the challenging times experienced during the COVID-19 pandemic.

The pandemic significantly impacted various sectors, including the aviation industry, with airlines experiencing a drastic decline in passenger demand due to travel restrictions and border closures.¹ This decline negatively affected airline revenues, as passenger transport is a primary source of income. These restrictions forced many airlines to drastically reduce their operations; some even declared bankruptcy.² In 2022, Indonesia's domestic air travel saw a strong recovery, with passenger numbers reaching approximately 57 million, a significant increase compared to the 30 million in 2021.³

¹ Lucy Budd, Stephen Ison, Nena Adrienne, "European Airline Response to the COVID-19 Pandemic – Contraction, Consolidation and Future Considerations for Airline Business and Management", *Research in Transportation Business & Management* Vol. 37 (2020), p.. 2.

² Julia Buckley, "How The Pandemic Killed Off 64 Airlines". CNN, February 11, 2023, <https://edition.cnn.com/travel/article/pandemic-airline-bankruptcies/index.html>

³ Lucas Romero, "Number of Domestic Air Passengers in Indonesia 2013 to 2022.", Statista, September 24, 2023,

Many airlines use the leasing mechanism as the primary alternative to manage the high costs of purchasing aircraft.⁴ Leasing allows airlines to use aircraft without the substantial upfront capital expenditure. This economical solution provides quick access to modern and efficient fleets.⁵ Leasing also helps airlines optimize their financial resources and ensure smooth operations. In the aircraft leasing process, several procedures ensure the contract meets the needs of both the lessor and lessee. This process is often complex and time-consuming due to multiple stages, including delivery and return of the aircraft.⁶ Such complexities can cause airlines to overlook critical details, leading to time-consuming and costly challenges.⁷

There are various types of aircraft leasing contracts, including operational lease, finance lease, dry

<https://www.statista.com/statistics/977206/indonesia-domestic-air-passengers/>

⁴ Alison Price, "The Economics of Aircraft Leasing," *Journal of Air Transport Management*, Vol. 13, No. 3, 2017.

⁵ Paul B. Clark & John P. Goglia, "Aircraft Leasing: A Legal and Practical Guide," Kluwer Law International, 2016.

⁶ International Air Transport Association (IATA), "Report on Aircraft Leasing and Fleet Management," IATA, 2020.

⁷ Deloitte, "Aviation Finance Report: Navigating the Complexities of Aircraft Leasing," Deloitte Insights, 2019.

lease, wet lease, short-term lease, long-term lease, sale and leaseback, and net lease. Each contract type has advantages and disadvantages, the choice depends on the company's policies and market conditions. For instance, an operational lease provides flexibility without ownership obligations, while a finance lease offers the option to purchase the aircraft at the end of the term. A dry lease provides full control without additional services, whereas a wet lease includes the aircraft, crew, and maintenance.⁸

During the COVID-19 pandemic, the airlines faced significant revenue declines due to travel restrictions, and yet they were still obligated to pay aircraft lease fees. This situation led many airlines to implement massive efficiency measures, including layoffs.⁹ The hell-or-high-water clause in aircraft leasing contracts requires lessees to continue paying lease fees regardless of external conditions impacting their obligations. This clause protects lessors by ensuring full and unconditional lease payments. It is commonly used

⁸ Hanley, D.P., *Aircraft operating leasing: a legal and practical analysis in the context of public and private international air law*, University of Leiden, 2011, p. 18

⁹ Kaitano Dube, Godwell Nhamo, dan David Chikodzi, "COVID-19 Pandemic and Prospects for Recovery of the Global Aviation Industry", *Journal of Air Transport Management* Vol. 92 (2021), p. 8.

in aircraft leasing contracts because it provides legal certainty and financial stability for lessors.¹⁰

The hell-or-high-water clause can be very burdensome for lessees, particularly during financial hardships like the pandemic. This clause creates an unavoidable and absolute payment obligation, even in difficult circumstances. While it offers protection for lessors, from the lessee's perspective, it can be viewed as discriminatory and unbalanced, disadvantaging lessees under certain conditions. The principle of freedom of contract allows parties to agree on the terms governing their relationship in a contract, provided it does not contravene laws, morality, or public order.¹¹ Although lessors and lessees can agree to include the hell-or-high-water clause in aircraft leasing contracts, applying this principle should consider balance. Each party's bargaining positions must be balanced to ensure that the agreement benefits both parties fairly. The application of the hell-or-high-water clause should consider the implementation

¹⁰ Peter Breslauer, "Finance Lease Hell or High Water Clause and Party Beneficiary Theory in Article 2A of the Uniform Commercial Code," *Cornell Law Review* 77 No. 2 (Januari 1992), p. 327.

¹¹ R. Subekti, *Aspek-Aspek Hukum Perikatan Nasional*, (Bandung: Alumni, 1980), p. 13.

principles of freedom of contract and balance within the contract.

Based on the descriptions mentioned above, this study aims to provide guidance for stakeholders in making informed decisions regarding aircraft leasing, including the associated risks and how aviation regulations and government policies influence leasing dynamics in the aviation industry, particularly for lessees, and will mainly discuss how the implications of hell-or-high-water clauses in aircraft leasing contract and the practical challenges faced from the implementation of hell-or-high-water clause in aircraft leasing contract reviewed from freedom of the contract based on the UPICC 2016 and Indonesian Civil Code.

B. Discussions

1. The Implementation of the Hell-or-High-Water Clause in the Aircraft Leasing Contracts in Relation with UPICC 2016 and Indonesian Civil Code

The hell-or-high-water clause is so common in aircraft leasing contracts that it applies to all

aircraft leasing contracts¹² because the aircrafts are very expensive assets, necessitating certainty for lessors to receive the agreed payments from lessees regardless of any situation, lessors want to ensure that they receive rent payments even if the aircrafts cannot be used.¹³

In recent years, the aviation industry has experienced significant financial losses due to the unexpected and extraordinary COVID-19 pandemic, making it challenging for industry players to continue business as usual.¹⁴ In order to survive the crisis and avoid the responsibility of failing to make lease payments, many airlines sought ways to defer aircraft lease payments.

Some airlines looked to use legal efforts like force majeure to potentially avoid lease payments and reduce their financial burden during pandemic-related restrictions. However, these lease agreements included explicitly the hell-or-

¹² Olubunmi Abayomi-Olukunle & Adekunle Adewale, "A Primer on Hell or High Water Clauses in Aviation Leases", Balogun Harold, May 23, 2024, <http://Z.cdn.xbeat.space>

¹³ *Ibid.*

¹⁴ ICAO, "Economic Impacts of COVID-19 on Civil Aviation", 2022, <https://www.icao.int/sustainability/Pages/Economic-Impacts-of-COVID-19.aspx>

high-water clauses, making it questionable for airlines to claim force majeure as a reason for reduced operations.

Cases related to the hell-or-high-water clause are quite numerous. One of the cases is in English Court, *ACG Acquisition XX LLC (ACG) v. Olympic Airlines S.A (Olympic)*, where Olympic stopped the lease payments because the leased aircraft was deemed unfit to fly. The ACG sued Olympic and demanded payment of the unpaid rent, arguing that the clause obliged Olympic to pay regardless of the condition of the aircraft. The Court sided with ACG, confirming that the payment obligation remained in place and that claims of aircraft unfitness could not relieve Olympic from their obligation.¹⁵

In another case, *Triple Seven v. Azman*, Triple Seven leased two Boeing 777-200 ER aircraft to Azman for Hajj and Umrah flights. When Azman did not obtain a licence from the Saudi Arabian authorities, they refused to accept the aircrafts and halted the lease payments. Triple

¹⁵ *ACG Acquisitions XX LLC v Olympic Airlines S.A.* [2012] EWHC 1070 (Comm)

Seven filed a lawsuit and terminated the agreement for default. The Court sided with Triple Seven, confirming that the hell-or-high-water clause in the contract ensured the payment obligations remained in place.¹⁶

The last example cases related to the implementation of the hell-or-high-water clause is *Wilmington v. Spice Jet* case. In this case, the English Court granted *Wilmington's* claim in *Wilmington v. SpiceJet*, confirming that *SpiceJet* must continue to pay for the lease of three aircrafts, including a Boeing 737-Max 8, despite the COVID-19 pandemic and the ban on aircraft operations. The Court affirmed the 'hell-or-high-water' clause in the contract and granted a 16-month stay of execution to allow for alternative dispute resolution, given *Spice Jet* financial difficulties.¹⁷

Cases discussed above reveal several practical challenges in applying the hell-or-high-

¹⁶ *Triple Seven MSN 27251 Ltd & Anor v Azman Air Services Ltd*. [2018] EWHC 1348 (Comm).

¹⁷ *Wilmington Trust SP Services (Dublin) Ltd & Ors v SpiceJet Ltd* [2021] EWHC 1117 (Comm).

water clause in aircraft leasing contracts, including flight bans due to the inability to obtain an airworthiness certificate, operational bans issued by relevant government authorities, prohibitions on operating certain aircraft types, and pandemics causing restrictions on flight activities. The practical challenges mentioned do not exempt the lessee from fulfilling their contractual obligations, particularly regarding rent payments, due to the applicability of the hell-or-high-water clause in aircraft leasing contracts.

The implementation of the hell-or-high-water clause in aircraft leasing contracts presents challenges, especially when connected with the principles contained in the UPICC 2016 and the Indonesian Civil Code, which may conflict with the principles of freedom of contract and fairness guaranteed by these legal instruments. Article 1.1 of the UPICC 2016 emphasizes the fundamental principle of freedom of contract in international contract law.¹⁸

¹⁸ Article 1.1 UNIDROIT *Principles of International Commercial Contract* 2016

The principle of freedom of contract allows parties to determine the terms and conditions they deem appropriate in a contract. It includes not only the choice of contracting parties but also the substance of the contract itself.¹⁹ This principle is widely recognized and adopted as a fundamental norm in international business law, acknowledging that each business entity should have the freedom to conduct its business activities according to its interests and preferences.²⁰ However, while the principle of freedom of contract grants parties independence, certain limitations are still imposed. One of the most important limitations is that a contract can only be amended or modified if all parties involved agree to do so. For example, during an extraordinary event that disrupts the contract's implementation, such as the COVID-19 pandemic. This reflects the fundamental principle of contract sanctity, asserting that contracts must be honoured and adhered to by all involved parties.

¹⁹ Ewan McKendrick, "Contract Law: Text, Cases, and Materials," Oxford University Press, 9th edition, 2020.

²⁰ *Ibid.*

UNILEX, in its commentary on UPICC 2016, states that Article 1.1 of UPICC 2016 emphasizes the fundamental right of parties in international commercial relationships to create and adjust contracts according to their needs and desires.²¹ The commentary explains that freedom of contract encompasses several key aspects. *First*, freedom of contract as a fundamental principle of international trade. This principle is crucial in the context of international trade. The right of business actors to freely decide with whom they will offer their goods or services and from whom they will be supplied, and the ability to freely agree on individual transaction terms, is a foundational principle of an open, market-oriented, and competitive international economic framework.²²

Second, the UNILEX commentary mentions sectors of the economy where competition does

²¹ UNILEX, "Article 1.1 - Freedom of Contract," *UNILEX - International Case Law & Bibliography on the UNIDROIT Principles of International Commercial Contracts*, <http://www.unilex.info/principles/article/1.1> diakses 25 Juni 2024.

²² *Ibid.*

not exist. There are exceptions to the principle set out in Article 1.1 of UPICC 2016 regarding freedom of contract. In connection with the freedom to contract with other parties, certain economic sectors may be exempted by the state in the public interest from competition. In such cases, the goods or services in question can only be requested from a single available provider, typically a public body, which may not be obligated to contract with the requesting party, subject to the availability of the goods or services.²³

Third, the UNILEX commentary discusses the restriction of parties' authority by binding rules regarding the freedom to determine contract content which contains provisions that cannot be derogated by the parties. This can be seen in Article 1.5 of UPICC 2016 that explains the exceptions, reductions, and modifications to the application of UPICC 2016 principles by the parties.

Generally, the principles in UPICC 2016 are non-mandatory, allowing parties to exclude or

²³ *Ibid.*

modify them as needed for the transaction. However, in certain mandatory provisions, parties are not permitted to ignore them as they pertain to the legal system's interests.²⁴ These mandatory provisions include principles of good faith and fair dealing, as well as rules concerning contract validity, price determination, payment for non-performance, and the limitation period.²⁵

Additionally, the UNILEX commentary on freedom of contract in the third point explains that there are mandatory rules for both national and international actors that, if applicable according to relevant private international law rules, will take precedence over the provisions in UPICC 2016 and cannot be excluded by the parties. This can be seen in Article 1.4 of UPICC which explains that the UNIDROIT principles are generally non-mandatory and can be adjusted by the parties, but do not override mandatory rules of applicable

²⁴ *Ibid.*

²⁵ UNILEX, "Article 1.5 - Exclusion or Modification by The Parties," UNILEX - International Case Law & Bibliography on the UNIDROIT Principles of International Commercial Contracts, <http://www.unilex.info/principles/article/1.5> diakses 25 Juni 2024.

national and international law.²⁶ These mandatory rules include specific statutes and general principles of public policy governing contracts, whether applied by national Courts or international arbitration Tribunals, to ensure that decisions are legally enforceable.²⁷

In Indonesian law, the principle of freedom of contract is stated in Article 1338 of the Indonesian Civil Code, where parties have the freedom to determine or choose the cause of the contract to be made, the contract's object, the form of the contract, and accept or deviate from optional statutory provisions.²⁸ The principle of freedom of contract allows the parties to create any contract, whether regulated or not, and to determine the meaning and content of the contract themselves.²⁹ However, this freedom is not absolute, as it has

²⁶ UNILEX, "Article 1.4 - Mandatory Rules," UNILEX - International Case Law & Bibliography on the UNIDROIT Principles of International Commercial Contracts, <http://www.unilex.info/principles/article/1.4> diakses 25 Juni 2024.

²⁷ Ibid.

²⁸ Agus Yudha Hernoko. *Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial (Cet. 4)*. Jakarta: Prenamedia Group, 2014

²⁹ F. Ibrahim & Nathanela, "300 Contoh Surat Perjanjian (Kontrak) dan Surat Resmi, Jakarta:Gudang Ilmu, 2011, p. 10.

limits: it must not violate the existing laws or regulations, disregard public order, or ignore morality.

The application of the hell-or-high-water clause may conflict with the principles of freedom of contract and fairness guaranteed by UPICC 2016 and the Indonesian Civil Code. UPICC 2016 states that while its principles are non-mandatory and can be adjusted by the parties, there are still mandatory rules that cannot be ignored, such as the principles of good faith and fair dealing, as well as rules concerning contract validity and price determination.

The hell-or-high-water clause has the ability to force the lessee to continue payments even under extraordinary circumstances. That condition may conflict with the principles of good faith and fairness.³⁰ Thus, the application of the hell-or-high-water clause in aircraft leasing contracts is suggested to consider the limitations set by UPICC 2016 and the Indonesian Civil Code.

³⁰ Michael D. Nolan & Frederic M. Garsson, "The Impact of Hardship on Contractual Obligations in the Aviation Industry," *Journal of Air Law and Commerce*, Vol. 85, No. 2, 2020.

2. Legal Implication of the Implementation of the Hell-or-High-Water Clause in the Aircraft Leasing Contracts in the Relation with UPICC 2016 and the Indonesian Civil Code

In the process of negotiating and drafting aircraft leasing contracts, the roles of the parties involved, namely the lessor and the lessee, are crucial in ensuring that not only the contract meets the business needs of both parties, but also aligns with the principle of freedom of contract as stipulated in the UPICC 2016 and the Indonesian Civil Code. The lessor, as the party providing the aircraft, tends to secure their investment by including provisions that protect against payment risks, such as the hell-or-high-water clause, which ensures rental payments are made even in extraordinary circumstances that disrupt operational activities.³¹ Conversely, the lessee seeks to protect their operational flexibility by ensuring that the contract provides adequate safeguards against regulatory changes, unforeseen

³¹ Peter J. Wallach, "Aircraft Financing and Leasing: A Practical Guide," Kluwer Law International, 2006.

market conditions, or even natural disasters such as a pandemic.³²

Article 1.1 of UPICC 2016 emphasizes the freedom of the parties in international commercial relationships to create and adjust contracts according to their needs,³³ including the right to determine the content and terms of the contract freely, as well as stringent payment provisions like the hell-or-high-water. However, although the principle of freedom of contract grants extensive autonomy, this principle is not absolute and must be constrained by mandatory rules that cannot be overridden by the parties.

The Indonesian Civil Code, particularly Article 1338, also recognizes freedom of contract, provided that the contract complies with statutory provisions, public order, and morality.³⁴ This means that while the parties are free to determine the content of the contract, including the hell-or-

³² Ewan McKendrick, "Contract Law: Text, Cases, and Materials," Oxford University Press, 9th edition, 2020.

³³ Article 1.1, UNIDROIT *Principles of International Commercial Contract* 2016

³⁴ Article 1338, Indonesia Civil Code.

high-water clause, the contract must not violate the applicable laws or contravene with principles of fairness and equity.

Despite the financial protection provided by the hell-or-high-water clause for the lessor, it can result in unfairness to the lessee in extraordinary circumstances that hinder the contract's performance. The COVID-19 pandemic is a concrete example of how the hell-or-high-water clause can lead to practical problems.³⁵ Travel restrictions and a sharp decline in flight operations caused many airlines to be unable to use the leased aircraft but still obligated to pay the rent under this clause. Lessees may attempt to claim force majeure to suspend payments, but the hell-or-high-water clause is essentially designed to exclude such defences, emphasizing that payment obligations must be fulfilled despite extraordinary circumstances.

Within the UPICC 2016 framework, the principle of freedom of contract must be balanced

³⁵ Tanya Agrawal. "Aircraft Leasing Contracts in the Pandemic Era: Navigating the Challenges of Invoking Force Majeure by Applying Hardship under International Commercial Law". New York University. *Journal of International Law and Politics*.

with the principle of good faith and fair dealing as outlined in Article 1.7 which deals with the interpretation of agreements in the context of international agreements.³⁶ This article establishes the principle that agreements should be interpreted based on the parties' intentions and considering fairness and reasonable principle of conduct among the involved parties.³⁷

The UPICC 2016 underscores the importance of considering the overall context of the agreement and avoiding interpretations that could result in unreasonable or unfair outcomes. The hell-or-high-water clause may be deemed inconsistent with the principle of good faith because it does not allow contract adjustments in unforeseen situations.

Additionally, UPICC 2016 contains and regulates mandatory provisions that must be adhered to, such as contract validity and fair treatment, which may not be met if the hell-or-high-water clause is rigidly enforced. Similarly,

³⁶ Article 1.7. UNIDROIT Principles of international Commercial Contract 2016.

³⁷ *Ibid.*

under the Indonesian Civil Code, principles akin to good faith in contracts are also regulated in Article 1339 of the Indonesian Civil Code which asserts that contracts must be executed in good faith.³⁸ Therefore, the hell-or-high-water clause should be designed and enforced with consideration for fairness and a balance of rights and obligations between the parties. If not, this clause may be deemed contrary to the principles of good faith and justice recognized in the

In order to achieve a consistent balance with the existing legal principles as mentioned before, the hell-or-high-water clause should include mechanisms that allow the review or re-negotiation of contract terms in extraordinary situations. For example, the hell-or-high-water clause might state that payments must continue, but with the provision that the parties will re-negotiate to find a fair solution if unforeseen extraordinary circumstances affecting the contract's continuation arise.

³⁸ Article 1339, Indonesia Civil Code.

This approach would align more closely with the principle of freedom of contract articulated in UPICC 2016 and the Indonesian Civil Code. Such efforts should be made to provide flexibility and emphasize good faith consistent with the applicable legal principles in contract execution.

The hell-or-high-water clause should also consider the principle of fairness enshrined in Article 1338 of the Indonesian Civil Code which mandates that contracts must be fair and not overly burdensome to one party.³⁹ In extreme cases such as the COVID-19 pandemic, strict application of this clause could lead to significant injustice, as the lessee might be unable to fulfil their obligations despite considerable efforts. Therefore, this clause should be designed to allow fair adjustments under extraordinary circumstances.

In the context of international law, UPICC 2016 underscores the importance of adhering to mandatory rules that apply both nationally and

³⁹ Article 1338, Indonesia Civil Code.

internationally. In certain situations, such as a global pandemic, the hell-or-high-water clause must be adjusted to align with relevant international provisions, including general public policy principles protecting broader societal interests. This aligns with the principle of freedom of contract, which cannot be used to override binding mandatory rules.

Applying the hell-or-high-water clause must also consider the possibility of intervention by government authorities that can affect contract execution. For example, suppose the government revokes the operational license of the lessee airline or imposes mobility restrictions. In that case, applying this clause should include mechanisms for reviewing payment terms or schedules according to the new conditions. By integrating these strategies, the contract can be designed to remain flexible in facing regulatory changes or other external conditions, ensuring that both parties are protected fairly and under applicable legal provisions.

The hell-or-high-water clause should also account for risks in aviation operations, such as

aircraft damage or flight bans.⁴⁰ In such situations, the clause is suggested to provide solutions that allow the lessee to meet their obligations without imposing unreasonable financial burdens.⁴¹ For instance, the clause could require the lessee to ensure the aircraft is adequately insured.

In cases where insurance covers aircraft damage, the insurance compensation funds could be used to fulfil rental payment obligations while the aircraft is under repair.⁴² This approach may ensure that the hell-or-high-water clause is applied in good faith and does not unfairly burden one party while maintaining stable operational continuity.

Applying the hell-or-high-water clause in aircraft leasing contracts should be carefully designed to ensure that the clause aligns with the principles of freedom of contract, good faith, and fairness as stipulated in UPICC 2016 and the Indonesian Civil Code.

⁴⁰ Hasna, "Force Majeure in Aircraft Lease Agreement and Covid-19: Indonesian and English Law Perspective", *Padjadjaran Journal of Law*, Vol. 9 No. 1 (2022), p. 96

⁴¹ Article 1.7 UPICC

⁴² *Ibid.*

The clause should provide adequate protection for the lessor while offering flexibility for the lessee in extraordinary situations. Thus, this clause can effectively ensure payment certainty without sacrificing the fundamental principles underlying international and national commercial contracts.

C. Conclusion

The application of the hell-or-high-water clause in aircraft leasing contracts presents complex challenges related to legal principles as stipulated in UPICC 2016 and the Indonesian Civil Code. Although this clause imposes an absolute obligation on the lessee to pay rent even in extraordinary circumstances, its implementation must align with the principles of freedom of contract. It is crucial to consider and include provisions that allow for payment adjustments or protection against unforeseen events. This approach ensures that the application of the hell-or-high-water clause is balanced and fair, in accordance with applicable legal principles, particularly those based on UPICC 2016 and the Indonesian Civil Code. The legal implications of

implementing the hell-or-high-water clause in aircraft leasing contracts necessitate careful consideration of the principles of freedom of contract. While this clause provides legal certainty for the lessor, it is essential to ensure protection for the lessee against extreme, unforeseen conditions to maintain balance and fairness. Mechanisms such as re-negotiation and payment adjustments in unforeseen situations affecting the contract's execution should be considered to prevent the clause from creating excessive unfairness for the lessee. Therefore, implementing the hell-or-high-water clause must proportionally respect the rights and obligations of both parties, in line with the legal principles in UPICC 2016 and the Indonesian Civil Code.

The hell-or-high-water clause should be flexibly designed to allow adjustments in unforeseen circumstances, balancing the interests of both the lessor and the lessee, and ensuring that no party is disproportionately disadvantaged. Violating the principles of justice, freedom of contract, and good faith in the application of the hell-or-high-water clause can lead to financial difficulties for the lessee and reputational risks and legal actions for the lessor,

highlighting the importance of maintaining balance and fairness in contracts to avoid negative impacts and ensure a contractual relationship. Based on the analysis and conclusions presented, addressing the complex challenges associated with applying the hell-or-high-water clause involves considering mechanisms within the contract that permit negotiations to adjust payments in response to unforeseen events. This approach aims to balance the interests of the lessee and the lessor, aligning with the legal principles outlined in UPICC 2016 and the Indonesian Civil Code. Moreover, ensuring fairness and balance in applying the Hell-or-high-water clause requires proportional consideration of the rights and obligations of both parties. Including provisions for renegotiation and payment adjustments in certain situations affecting the contract's execution can prevent excessive unfairness for the lessee. Applying this clause in aircraft leasing contracts should also consider the limitations set by UPICC 2016 and the Indonesian Civil Code. While providing payment certainty for the lessor, the clause should retain flexibility to adjust the contract in extraordinary circumstances, consistent with the principle of

freedom of contract as explained by UPICC 2016 and the Indonesian Civil Code. Therefore, respecting the principles of freedom of contract is crucial for maintaining the continuity of a contractual relationship.

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