

Legal Certainty for Creditors in Funding with Ship Mortgage Guarantee

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Abstract: The problem of this research is to find out the existence of ship mortgage guarantee institutions in the legal guarantee system in Indonesia, related ship mortgage legal guarantees in Indonesia, and to know the position of the Grosse ship mortgage deed in providing legal certainty for creditors. The research method used in this research is normative legal research. From what has been researched and written, the results of the research can be concluded that the existence of ship mortgage guarantee institutions in the guarantee law system in Indonesia has not been able to provide legal protection and certainty to creditors because the legal arrangements for ship mortgage guarantees have not been comprehensively regulated in one legislation., as well as the regulation is not yet in a complete but still partial legal system of material guarantees. The law of ship mortgage guarantees as the legal principles of ship mortgage guarantees that underlie the legal norms of ship mortgage guarantees will function properly if the formulation of ship mortgage legal norms is clearly formulated so that it does not open up opportunities for multiple interpretations by law enforcement officials, and there are still different arrangements related to shipping mortgages, especially related to executions. And the conclusion found that the Grosse position of the ship's mortgage deed in providing legal protection and certainty to creditors through the executorial title contained in it had not been carried out because the execution of the collateral object based on Article 224 HIR was too complicated. After all, it had to follow the procedure as in the execution. other cases, even though the execution of collateral objects has a different context.

Keywords: Collateral, creditor legal certainty, ship mortgage

I. INTRODUCTION

Shipping companies or sea transportation businesses are business fields that require large capital (capital intensive). This business requires ships as the main business tool and human resources in the maritime sector that meet both national and international competency standards, especially seafarers. To meet this need, large capital is needed so that business continuity is guaranteed. This capital problem makes it difficult for national shipping companies to develop. As a way to keep the business running, they were forced to charter foreign-owned and foreign-flagged vessels. So that in the end the market share of domestic transportation is controlled by foreign-flagged vessels.

The main problem faced by the shipping business is the difficulty in obtaining funds for ship financing because they consider that mortgage guarantees for ships carry a high risk for creditors. Law No. 17 of 2008 concerning Shipping explicitly states the definition of a ship mortgage as material

collateral rights on registered ships to guarantee the repayment of certain debts that give priority to certain creditors over other creditors (Article 1 point 12).

Based on Article 1178 paragraph (2) of the Civil Code, it is stated that the bank (financial institution) can execute the collateral itself based on the Grosse Deed. However, the obstacles that banks often face during the execution of ships are the presence of ships that move frequently and the risk of the ship sinking. The provisions of Article 1178 paragraph (2) of the Civil Code, which gives the first mortgage holder the right to agree to what in Dutch is called "beding van eigenmachtige verkoop (a promise to sell on his power). By agreeing on such authority, if the debtor is in default, the creditor can directly sell the object of collateral in public without having to involve the courts.

Based on the description above, it can be seen that the difference in execution based on Article 224 HIR and Article 1178 paragraph (2) of the Civil Code lies in the subject or party submitting the request for auction sale to the Auction Office. According to Article 224, the HIR requesting the auction sale is the Head of the District Court, while according to Article 1178 paragraph (2) of the Civil Code, the creditor is the creditor.

Legal problems that arise in the execution of the Grosse mortgage deed are caused by legal arrangements that are not clear and firm and even contradict one another, or the court in its legal considerations is not right. If this allegation is true, it will certainly affect the implementation of law enforcement. The implementation of ship mortgage guarantee institutions about the execution of collateral objects has a tendency not to provide legal certainty to creditors.

In guarantees, it is known that one form of guarantee is a mortgage, where the arrangement is contained in the second book of the twenty-first title of Article 1162 to Article 1232 of the Civil Code, except for several articles which have not been enacted from the beginning with the Staatblad of 1848 number 10. In Article 1171, a mortgage can only be granted with an authentic deed, except in cases that are expressly designated by law (R. Subekti dan R. Tjitrosudio, 2008). So if it has to be in the form of an authentic deed, it must be made before the authorized official.

A mortgage according to Article 1162 of the Civil Code is a material right on an immovable object, which aims to take payment of an engagement or agreement. Mortgages,

as well as pawns, are *accessoir*, which means that they are held as a mere aftermath of the main agreement, namely a credit agreement. What can be used as mortgage objects are immovable objects that do not belong to the person who owes the debt himself? A mortgage can only be given by the owner of the object (Rachmadi Usman, 2016)

Article 1167 of the Civil Code states: "Movable objects cannot be encumbered with a mortgage." The provisions of Article 1168 of the Civil Code state: "A mortgage cannot be placed other than by anyone who has the power to transfer the object that is burdened." Article 1171 paragraph (1) of the Civil Code states: "A mortgage can only be granted with an authentic deed, except in cases that are expressly designated by law." Article 1175 paragraph (1) of the Civil Code states: "A mortgage can only be placed on objects that already exist. Mortgages on objects that will only exist in the future are void." (Rachmadi Usman, 2016)

In the past, mortgages regulated land, ships, and airplanes, but since the issuance of the Basic Agrarian Law (UUPA) the guarantee arrangement regarding land stands alone and is transferred to Mortgage guarantees." Currently, several articles are still in full force and effect regarding mortgages on ships and aircraft in the Civil Code due to the absence of an independent law. (Sudradjat, 2019)

The mortgage on this ship exists because there is an agreement made by the parties. There are several principles of an agreement that must be fulfilled by the parties, namely the principle of freedom of contract, the principle of consensual, the principle of binding force, the principle of personal, the principle of good faith, the principle of trust, the principle of equality in law, the principle of balance, the principle of propriety, the principle of habit, and moral principles. There are also several elements of an agreement that need to be fulfilled in agreeing, namely the essential element, the natural element, and the accidental element (Salim HS, 2018).

Regulations regarding mortgages are contained in Law Number 17 of 2008 concerning Shipping from Article 60 to Article 64.

- 1) Vessels that have been registered in the Indonesian Ship Registry can be used as collateral for debt by imposing a mortgage on the ship.
- 2) The encumbrance of a mortgage on a ship is carried out by making a mortgage deed by the Registrar and Registrar of Transfer of Names at the place where the ship is registered and recorded in the Master Register of Ships.
- 3) Each mortgage deed is issued 1 (one) Grosse Mortgage Deed which is given to the mortgage recipient.
- 4) The Grosse Mortgage Deed as referred to in paragraph (3) has the same executive power as a court decision that has obtained permanent legal force.
- 5) If the Grosse Mortgage Deed is lost, a replacement Grosse deed may be issued based on a court order.

Article 61

- 1) A ship may be charged with more than 1 (one) mortgage.
- 2) The rating of each mortgage is determined according to the date and the serial number of the mortgage deed.

Article 62

The transfer of a mortgage from a mortgage recipient to another mortgage recipient is carried out by making a mortgage transfer deed by the Registrar and Registrar of Ship Names at the place where the ship is registered and recorded in the Master Register of Ships.

Article 63

- 1) The revocation of the mortgage (*roya*) shall be carried out by the Registrar and the Registrar of the Transfer of Names of the Vessel at the written request of the mortgagee.
- 2) If the request as referred to in paragraph (1) is submitted by the mortgagee, the request shall be accompanied by a letter of approval from the mortgagee.

Article 64

Further provisions regarding the procedure for charging a mortgage shall be regulated by a Ministerial Regulation.

In contrast to the provisions in Article 314 paragraph (3) of the Commercial Code, Article 60 of the Shipping Law Number 17 of 2008 limits the regulatory area to registered ships only, does not include ships in the books, and shares in ship construction as objects of regulation. This provision will cause problems because Law Number 17 of 2008 concerning Shipping has made changes to the priority right in shipping debt (*maritime lien*). (Aktieva Tri Tjitrawati, 2010)

There are two parties involved in the ship mortgage assignment agreement, namely the mortgage giver and the mortgage recipient. Mortgage lenders are those who as collateral gives a material right to immovable objects, usually they hold a debt that is tied to a mortgage, but the mortgage is at the expense of a third party. The mortgage recipient is also called a *hypotheekbank*, *hypotheekhouder*, or *hypotheeknemer*. *Hypotheekhouder* or *hypotheeknemer*, namely the party who receives the mortgage, the party who lends under the bond of the mortgage. Usually, those who receive this mortgage are banking institutions and or non-bank financial institutions (Salim HS, 2018)

The existence of guarantee institutions and credit institutions in large numbers, with long terms and relatively low-interest rates. Meanwhile, according to J. Satrio, it is interpreted that the law of guarantee is a regulation that regulates the guarantee of receivables between creditors and debtors. In short, collateral law is the law that regulates the guarantee of a person's receivables (Ashibly, 2018).

Shipment law in Indonesia is regulated in the Shipping Law no. 17 of 2008, INPRES No. 5 of 2005 concerning Empowerment of the National Shipping Industry, and PERPRES No. 44 of 2005 concerning Ratification of the International Convention On Maritime Liens and Mortgages, 1993 (International Convention on Maritime Receivables and Mortgages, 1993). With the existence of these laws, it is hoped that the world of commerce, especially shipping, will be able to rise and develop rapidly. Vessel financing funds are needed, among others, for ship procurement, fleet addition, fleet rejuvenation, rehabilitation and operational costs, and others. Meanwhile, ship financing sources are expected to come from banks, non-bank financial institutions, and other creditors. As a result of the absence of a mortgage law at the time before the existence of the legal regulations as mentioned above, by itself has dwarfed national shipping. Because on the other hand, foreign shipping companies are growing rapidly because many of the new creditors are willing to finance the procurement of ships with foreign flags, which are considered more able to provide a sense of security and trust.

Shipping Law Number 17 of 2008, also contains the sabotage principle which in essence prioritizes Indonesian-flagged ships in domestic commercial affairs, so that what the government as well as domestic shipping players aspire to is related to becoming the home in their own country in the world of shipping can be realized.

Legal protection for creditors with ship mortgage guarantees is very important so that banks or non-bank financial institutions have legal certainty in providing credit facilities to ship owners. One of the ways that banks or non-bank financial institutions do to reduce the risk of default is to ask for a ship mortgage to be charged.

Ship mortgage guarantees provide a sense of security for creditors to repay debts/credits by debtors. Not only that, but based on the nature of the mortgage as a material security right, the ship mortgage is placed as a strong guarantee institution in providing legal protection and certainty for creditors. (Brilliant Jafet Anis, 2019)

"Sea guarantees that have been burdened and registered, both in the form of fiduciary guarantees and in the form of mortgage guarantees, have not provided guarantees to creditors, given the risk of accidents or other things beyond human control that may occur to ships that are used as collateral." In addition to things beyond human control, other things may cause losses to creditors. Considering the nature of ships that move and there is the possibility of sailing outside the legal territory of Indonesian waters. (Mismimi, 2012)

The occurrence of non-performing financing by debtors causes problems. Financial institutions as creditors in dealing with non-performing loans will provide solutions first through restructuring, namely extending the loan period, rescheduling credit, realigning the loan amount, and the last method is the execution of collateral objects.

Based on Article 1178 paragraph (2) of the Civil Code, it is stated that the bank (financial institution) can execute the collateral itself based on the Grosse Deed. However, the obstacles that banks often face during the execution of ships are the presence of ships that move frequently and the risk of the ship sinking.

Based on Article 224 HIR and Article 1178 paragraph (2) of the Civil Code, the subject or party submits a request for auction sale to the Auction Office. According to Article 224 HIR requesting auction sale is the Head of the District Court, while according to Article 1178 paragraph (2) of the Civil Code requesting auction sale is the creditor.

II. RESEARCH METHODS

The research method used normative legal research. The data analysis method used is a qualitative analysis method that examines and examines the legal certainty of creditors in financing with ship mortgage guarantees by looking at the relevant laws and regulations and the opinions of experts, then analyzing, so that later the research results can provide an overview and a more in-depth explanation.

III. DISCUSSION

1. Existence of Ship Mortgage Guarantee Institutions In Indonesia's Legal Guarantee System

Based on the entire set of laws and regulations in the field of ship mortgage guarantees, as a material legal basis, namely regarding the rights and obligations of the existence of a mortgage guarantee legal relationship, mortgage principles, mortgage promises, and so on still refer to the Civil Code Book II Chapter XXI. While formally related to the loading of ship mortgages, it refers to the KUHD and the Shipping Law No. 17 of 2008 and its implementing regulations." The Indonesian guarantee law system gives an important position to ship mortgage guarantee institutions as the opinion of respondents is shown in table 1 below.

Table 1. Position of the Ship Mortgage Guarantee Institution in the Indonesian Guarantee Law System

No.	Evaluation	Respondent										Amount	
		Bank Leader		Shipping Entrepreneur		Head of Port Office		Judge		Notary		F	%
		F	%	F	%	F	%	F	%	F	%		
1	Important	7	70	8	80	9	90	8	80	10	100	42	84
2	Doubtful	3	30	2	20	1	10	2	20	0	0	8	16
3	Not Important	0	0	0	0	0	0	0	0	0	0	0	0
	Amount	10	100	10	100	10	100	10	100	10	100	50	100

Source: Processed from primary data, 2021

Description: F: Frequency

Based on the data shown in Table 1 above, the majority of respondents (84%) think the importance of a ship mortgage guarantee institution in the Indonesian guarantee law system. The reasons given are that ship mortgages are still applied and are an option as a means for debtor customers to obtain funds or financing. Meanwhile, 16% answered doubtful for reasons related to its function and role which they felt were not as expected, and there were no respondents who stated it was not

important for reasons related to the bank's very selective tying of ship mortgages which made it difficult to get loans/credits. Within the framework of Indonesian guarantee law, ship mortgages are included in material guarantees (Zakelijke Zekerheidrechten), which were born due to an agreement or based on an agreement between the debtor and creditor.

As material security, ship mortgages provide material rights to creditors intending to protect creditors in fulfilling the debtor's obligations in paying off their debts. Law No. 17 of 2008 concerning Shipping explicitly states the definition of a ship mortgage as a material collateral right on a registered ship to guarantee the repayment of certain debts that give priority to certain creditors over other creditors (Article 1 point 12).

2. Vessel Mortgage Encumbrance Legal System

Based on the procedure for loading the ship's mortgage, several stages must be taken outside of the credit agreement stage as the main agreement. Therefore, in this discussion, the legal aspects of the credit agreement will no longer be discussed, but will only be limited to two main things related to the loading of ship mortgages, namely the legal aspects of ship registration and ship mortgage loading.

Registration of ownership rights to ships includes three categories, namely sea vessels (sea transportation vessels, ferry transportation and other vessels), fishing vessels (fishing fish/other animals at sea) and inland vessels, namely vessels used in rivers and lakes (Article 6 Permenhub No. PM.13/2012). The three categories of vessels, there is no difference in principle registration, except for fishing vessels that require a recommendation from the relevant minister. For a registered ship, the status of the ship is the same as an immovable object." On the other hand, ships that are not registered are classified as movable objects and according to their physical condition, it is more appropriate for them to apply a fiduciary guarantee institution. The binding of credit with ship collateral through a fiduciary institution in banking practice has been accepted as stated by Kiki Taufiqurahman, a leader at Bank BJB that his party has held a credit binding with a fiduciary guarantee whose object is a ship (Kiki Taufiqurahman, 2021). As with other rights registrations such as land registration, the registration of ownership rights to ships has an important meaning as shown in the table below.

Table 2. Importance of Registering Ownership of Ships

No.	Evaluation	Bank Leader		Shipping Entrepreneur		Head of Port Office		Judge		Notary		Amount	
		F	%	F	%	F	%	F	%	F	%	F	%
		1	Important	10	100	10	100	10	100	10	100	10	100
2	Doubtful	0	0	0	0	0	0	0	0	0	0	0	0
3	Not Important	0	0	0	0	0	0	0	0	0	0	0	0
	Amount	10	100	10	100	10	100	10	100	10	100	50	100

Source: Processed from primary data, 2021

Description: F: Frequency

Based on the data shown in Table 2 above, all respondents (100%) believe that it is important for ships to be registered with reasons to obtain legal ownership and related

to the legal status of ships. According to Andi Hartono (2021), ship registration in Indonesia is very important in the world of shipping because it is a requirement for obtaining Indonesian ship nationality so that ships will later be entitled to fly the Indonesian flag and receive protection from the Indonesian government. Vessel registration is a registration of ownership rights to a ship, in addition, it also includes registration of mortgage encumbrances and registration of other property rights over.

As for ship ownership, ships that can be registered in Indonesia are ships owned by Indonesian citizens or legal entities established under Indonesian law and domiciled in Indonesia. In addition, the ship is owned by an Indonesian legal entity which is a joint venture whose majority shares are owned by Indonesian citizens (Article 158 paragraph (2) of the Shipping Law No. 17/2008).

Based on several systems or ship registration flows mentioned above, it shows that Indonesia adheres to a balanced school or a flexible closed registry system. This flow is implied from the provisions on the registration of ship ownership rights which stipulate that the vessels that can be registered are vessels owned by Indonesian legal entities which are joint ventures whose majority shares are owned by Indonesian citizens. (Minister of Transportation Regulation No. PM.13 Year 2012)

3. Ship Mortgage Charges

Based on the mandate of Article 64 of Law No.17 of 2008 concerning Shipping, in connection with the imposition of ship mortgages, the government has issued a Regulation of the Minister of Transportation of the Republic of Indonesia Number: PM 13 of 2012 concerning Vessel Registration and Nationality. This regulation comes into force as of the date of promulgation, namely on February 14, 2012. Based on Article 28 paragraph (1) of this regulation, the basis for a ship to be used as collateral by imposing a ship mortgage is a ship that has been registered in the Indonesian ship register. The ships that can be registered are also limited to those measuring 20 m3 and above or the equivalent of 7 GT (gross tonnage) and above. Thus, not all ships can be used as collateral for ship mortgages. The provision that only registered vessels can be encumbered with a mortgage is supported by the opinion of respondents as shown in the table below.

Table 3. Ships Registered as Vessel Mortgage Objects

No.	Evaluation	Respondent										Amount	
		Bank Leader		Shipping Entrepreneur		Head of Port Office		Judge		Notary		F	%
		F	%	F	%	F	%	F	%	F	%		
1	Agree	8	80	7	70	10	100	9	90	10	100	44	88
2	Doubtful	2	20	2	20	0	0	1	10	0	0	5	10
3	Don't agree	0	0	1	10	0	0	0	0	0	0	1	2
	Amount	10	100	10	100	10	100	10	100	10	100	50	100

Source: Processed from primary data, 2021

Description: F: Frequency

Based on the data shown in Table 3 above, most of the respondents (88%) agreed that the ship's mortgage object is a registered ship on the grounds that it is for the benefit of the shipowner and the bank related to the object of the

guarantee. While 10% answered doubtful on the grounds that the object of the ship mortgage could be for registered ships and also for unregistered ships. Similarly, there are 2% of respondents who stated that they did not agree with the reasons for discriminating against owners of small vessels because they closed the opportunity to use ship mortgage guarantees.

Mortgage assignment on the ship is carried out by making a ship mortgage deed by the Registrar and Registrar of Balikhnama Ships at the place where the ship is registered and recorded in the master register of the ship concerned. Making a ship mortgage deed based on a request from the ship owner and the mortgage recipient (creditor) or the mortgage recipient himself on the authority of the ship owner. The form of power of attorney from the ship owner must be made before a notary which is called a Power of Attorney to Install a Mortgage. The submitted application must be accompanied by a credit agreement and the original Grosse of the ship registration certificate or the grosse of the ship's title transfer certificate.

4. Ship Mortgage Guarantee Law in Indonesia

The legal principles of ship mortgage guarantees cannot be separated from the legal principles of guarantees contained in the Civil Code. There are two principles of guarantee law relating to the rights of creditors to debtors, namely general guarantees which can be seen in the provisions of Article 1131 and Article 1132 of the Civil Code. Article 1131 of the Civil Code stipulates that all debtor's assets, both in the form of movable and immovable objects, both existing and those that will exist in the future, serve as collateral for all agreements made by the debtor with his creditors. This provision gives every creditor the right to obtain guarantees for the repayment of debt from all debtor's assets without exception and therefore is called a general guarantee.

In this study, it was found that the provisions in the material security law regulations (Civil Code, Ship Mortgage, Mortgage Rights and Fiduciary Guarantees) associated with the provisions of the Bankruptcy law (Law No.37 of 2004), do not show harmony or synchronization in their arrangements. This is due to the provisions in Article 56 paragraph (1) of the KPKPU Law which regulates the suspension of the rights of separatist creditors to execute the assets of the bankrupt debtor for a period of 90 days from the date of bankruptcy. This provision has reduced the previous provision in Article 55 paragraph (1) of the KPKPU Law which gives creditors the right to execute their rights as if there was no bankruptcy. Although there are still problems in enforcing the law on material security, however, the laws and regulations governing material security are currently adequate, as indicated by the opinions of respondents in table 4 below:

Table 4. Legal Arrangements for Material Security

No.	Evaluation	Respondent										Amount	
		Bank Leader		Shipping Entrepreneur		Head of Port Office		Judge		Notary		F	%
		F	%	F	%	F	%	F	%	F	%		
1	Adequate	3	30	6	60	8	80	9	90	10	100	36	72
2	Doubtful	2	20	3	30	2	20	1	10	0	0	8	16
3	Inadequate	5	50	1	10	0	0	0	0	0	0	6	12
	Amount	10	100	10	100	10	100	10	100	10	100	50	100

Source: Processed from primary data, 2021

Description: F: Frequency

Based on the data shown in Table 4 above, most of the respondents (72%) stated that the legal arrangements for material security were adequate on the grounds that there were several laws and regulations that had been established specifically to regulate material guarantees (Security Rights and Fiduciary Guarantees) in Indonesia as regulated in the Civil Code and the Commercial Code. Meanwhile, 16% answered doubtful on the grounds that the legal regulation of material guarantees still provides a gap for conflicts of legal norms. Likewise, there are 12% of respondents who stated that they were inadequate on the grounds that the existing laws and regulations did not provide legal protection.

5. Legal Norms for Ship Mortgage Guarantees

Some legal norms which according to the researcher are substantial in relation to ship mortgage guarantees are as follows:

a. Article 1162 of the Civil Code and Article 1 number 12 of Law No. 17 of 2008

The provision of Article 1162 of the Civil Code provides an understanding or definition of a mortgage, namely as a material right on immovable objects, to take reimbursement from it for the settlement of an agreement. As for what is meant by a ship mortgage according to Article 1 number 12 of the Shipping Law No. 17 of 2008 is the right of material collateral on a registered ship to guarantee the repayment of certain debts which gives priority to certain creditors over other creditors. Based on the definition of a ship's mortgage, it is clear that the object of the ship's mortgage is a registered ship so that unregistered ships cannot be tied up with a mortgage. This provision has a very important meaning related to the validity of the party entitled to the ship that is used as collateral. Registered ships will be able to easily find out the legal status of the ship and the clarity of the ship that is the object of collateral, including who is the legal owner of a ship, because the registration referred to here is the registration of ownership rights to the ship. Another benefit of this provision, which is fundamental in nature, is to provide legal certainty for the parties regarding the binding of the mortgage made."

b. Article 314 paragraph (1) and paragraph (3) of the KUHD

"This article basically regulates the limits on ships that can be registered, namely ships that have a weight of at least 20 m3 (twenty cubic meters) of gross content. With respect to the size of the ship that can be registered, Article 158 paragraph

(2) of the Shipping Law No. 17 of 2008 is equivalent to a ship with a gross tonnage size of 7 (GT.7).

c. Article 60 paragraph (2), paragraph (3) and paragraph (4) of the Shipping Law No.17 of 2008

The assignment of a mortgage on a ship according to this regulation is carried out by making a mortgage deed by the Registrar and Registrar of Transfer of Names at the place where the ship is registered and recorded in the Master Register of Ships. Making a mortgage deed followed by recording in the Master Register of Ship Registration is the fulfillment of two principles in the law of ship mortgage guarantees, namely the principle of speciality and the principle of publicity. Furthermore, paragraph (3) determines that each mortgage deed is issued one grosse mortgage deed given to the mortgage recipient. For the recipient of the mortgage (creditor), the grosse of the mortgage deed he holds gives him the right to obtain guarantees in fulfilling the debt by the mortgage giver (debtor). The provision in paragraph (3) is the actualization of the principle of preference (priority right) that exists in the law on ship mortgage guarantees.

d. Article 224 HIR

This article stipulates: A grosse of mortgage deed and debt securities drawn up before a notary in Indonesia whose head uses the words "For Justice Based on God Almighty" has the same force as the judge's decision. If such a letter is not fulfilled by peaceful means, then the matter of carrying it out is carried out by orders and the leadership of the chairman of the district court in which the debtor remains silent or stays or chooses his position, namely as stated in the articles above in this section. but with the understanding that coercion of the body can only be carried out if it has been permitted by a judge's decision. If the matter of carrying out the judge's decision must be carried out at all or in part outside the jurisdiction of the district court, whose chairman ordered it to be carried out, the regulations in Article 195 paragraph two and the following must be obeyed.

e. Article 1178 paragraph (2) of the Civil Code

In charging a mortgage according to this article, the mortgagee (creditor) can ask for an agreement that if the mortgagee (debtor) does not fulfill his obligations, the mortgagee can absolutely be empowered to sell the object as collateral through a public auction. This provision is known as parate execution, which means to run it yourself or take what is your right without court intervention.

"Regarding the right to sell on one's own power, there are two opinions in the science of law, namely the doctrine of mandate and the teaching of execution. Mandaat teachings argue that this promise actually gives the mortgage holder the power (volmacht) to sell the collateral object as a representative of the mortgage giver." Meanwhile, according to the teachings of execution, the right to sell collateral is an independent right (zelfstandig) of the mortgage holder and is not the power of the mortgage giver (Mariam Darus Badruzaman, 1986).

Table 5. Court's Authority in Executing Ship Mortgage Guarantees

No.	Evaluation	Respondent										Amount	
		Bank Leader		Shipping Entrepreneur		Head of Port Office		Judge		Notary		F	%
		F	%	F	%	F	%	F	%	F	%		
1	Agree	0		6	60	2	20	10	100	1	10	19	38
2	Doubtful	1	10	3	30	1	10	0	0	1	10	6	12
3	Don't agree	9	90	1	10	7	70	0	0	8	80	25	50
	Amount	10	100	10	100	10	100	10	100	10	100	50	100

Source: Processed from primary data, 2021

Description: F: Frequency

Based on the data in Table 5, it shows that 38% of respondents, which are dominated by shipping entrepreneurs (PP) and judges, agree with the court's authority in the execution of mortgage collateral objects because the existing provisions have so stipulated. It is also known that there are 12% of respondents expressed doubt because the court's authority could be allowed or it could be set aside. Meanwhile, as many as 50% of respondents stated that they did not agree, which was dominated by Bank Leader, Head of Port Office, and Notary respondents on the grounds of hindering the ease and smoothness of execution

Position of The Grosse Hypothetic Deed in Providing Legal Guarantee for Creditors

1. Executional Title on Grosse Mortgage Deed

It is explained in article 1 number 11 of Law no. 30 of 2004 Jo. Law Number 2 of 2014 concerning the Position of Notary, Grosse deed is one of the copies of the deed of recognition of debt with the head of the deed "For Justice Based on God Almighty" which has executive power. With respect to a debt acknowledgment deed made by the debtor before a notary, the legal force is perfect in the sense that it has the same power as a court decision that has permanent legal force (inkrack van gewijsde). This is as stated in Article 55 paragraph (3) of Law no. 30 of 2004 concerning the Position of a Notary, it is stated that; The grosse of the deed as referred to in paragraph (2) at the head of the deed contains the phrase "For the sake of Justice Based on God Almighty" and at the end or closing of the deed contains the phrase "given as the first Grosse" by stating the name of the person requesting it and for whom the grosse is issued. and the date of issuance. (Ananda Fitki Ayu Saraswati, 2015)

Based on some of these opinions, the researcher can summarize that the definition of grosse deed has the following elements:

- In the form of an authentic deed;
- Is the first copy or quote of the original minutes/deed;
- Having a head/irrah for the sake of justice based on the Almighty God which functions as an executive title to facilitate the execution of the mortgage object;
- The bottom of the deed is written as the first grosse and the name of the person requesting the making of the grosse deed and the date of granting the grosse of the deed.

In the Act of Notary Position No. 30 of 2004 it is stated that what is meant by Grosse deed is one copy of the deed for debt recognition with the head of the deed "For Justice Based on the One Godhead", which has executive power (Article 1 point 11). From the definition of Grosse deed, it gives authority to the notary in issuing Grosse deed, and Grosse deed in question is only limited to Grosse deed of acknowledgment of debt.

2. Implementation of Executorial Titles

The various problems encountered related to the arrangement of executive titles have existed for a long time. For example, based on Article 7 paragraph (2) of the Regulation of the Minister of Agrarian Affairs (PMA) No. 15 of 1961 it is determined that mortgage certificates and credietverband have executive power. However, there is no mention of the necessity of having an executive title on the two certificates even though according to Article 224 HIR, the existence of an executive title is the main requirement for a Grosse deed to have executive power." Besides that, it becomes ambiguous here when the PMA stipulates a mortgage certificate and the credietverband has executive power. Meanwhile, according to Article 224, the HIR limits only the Grosse of the mortgage deed and the Grosse of the deed of acknowledgment of debt which has executorial power. The substance regulated in Article 7 paragraph (2) PMA No. 15 of 1961 is also followed by Law no. 16 of 1985 concerning Flats where Article 14 paragraph (5) states that a mortgage certificate has executive power and can be implemented as a court decision.

The issue of the most crucial executive title appears in the execution of collateral objects. It should be an executorial title that reads "For Justice Based on God Almighty" on a mortgage deed grosse, clearly equated as a court decision that has permanent legal force, so that there is no need for an excessive court role but only limited to providing a determination or approval for the execution. Excessive court involvement by examining or re-examining documents related to mortgage agreements and encumbrances has removed the essence of the executive title.

To guarantee legal certainty for creditors including debtors, the existing problems related to the executive title must be addressed by tracing the source of the problem so that solutions are found to overcome them.

IV. CONCLUSION

Based on the results of the research and discussion that has been described, the researcher can draw the following conclusions:

1. The existence of ship mortgage guarantee institutions in the legal guarantee system in Indonesia has not been able to provide legal protection and certainty to creditors because the legal arrangements for ship mortgage guarantees have not been comprehensively regulated in one legislation, as well as the arrangements have not been in a material guarantee legal system whole but still partially.

2. The law of ship mortgage guarantees as the legal principles of ship mortgage guarantees that underlie the legal norms of ship mortgage guarantees will function properly if the formulation of ship mortgage legal norms is formulated so that it does not open up opportunities for multiple interpretations by law enforcement officials. There are still different arrangements regarding ship mortgages, especially regarding executions. The provisions of the Civil Procedure Code contained in Article 224 HIR / Article 258 RBg and Article 195 paragraph (1) HIR / Article 206 paragraph (1) RBg which essentially stipulates that execution cannot be carried out without a court order or approval but in Article 60 paragraph (4) of Law No. 17 of 2008 concerning Shipping which states that the Grosse mortgage deed has the same executorial power as a court decision that has obtained permanent legal force. Therefore, it is easy for creditors to execute collateral objects without having to file a lawsuit in court.
3. The Grosse position of the ship's mortgage deed in providing legal protection and certainty to creditors through the executorial title contained therein, has not been implemented because the execution of the collateral object based on Article 224 HIR is too complicated because it must follow the procedure as in the execution of other cases. even though the execution of the guarantee object has a different context. Execution of ships is carried out if a debtor is negligent or does not fulfill his obligations, which is also known as default in fulfilling the agreed achievements. To execute the object of collateral consists of various kinds, such as execution with an executorial title, by parate through the auction office, execution without going through the auction office, execution by claim, and execution through lawsuits. Execution of ships charged with mortgages will be carried out through tenders, provided that the Grosse mortgage deed has the same executive power as court decisions and has permanent legal force. In carrying out the auction, one must go through several stages until the vessel is auctioned, namely, first confirming that the debtor has breached the contract, requesting permission from the court to execute or auction the vessel, submitting an application letter to the State Assets Service Office and the Auction and or Auction Hall, then An announcement will be made regarding the auction to the public, after getting the winner from the auction, a deed of the minutes of the auction will be issued. The execution does not always run smoothly, which means that there are obstacles such as moving ships, high execution costs, and the debtor's non-acceptance in terms of default.

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