

The Existence of a Mortgage Guarantee Institution with Ship Objects in the Guarantee Legal System in Indonesia

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Abstract: One of the business activities in Indonesia that is not spared from lending and guarantee activities is activities related to ships in shipping activities, this cannot be denied because Indonesia is an archipelagic country. The research method used in this research is normative legal research, with a statutory-regulatory approach and statuta approach. The problem that will be analyzed more deeply in this research is how is the existence of a mortgage guarantee institution with a ship object in the guarantee legal system in Indonesia and how is the legal force of a mortgage deed with a ship object in providing legal certainty for creditors. The results of this study are that the existence of a mortgage guarantee institution with the object of a ship in the guarantee legal system in Indonesia is still unable to provide protection and legal certainty to creditors because the mortgage guarantee institution is still not completely and detailed regulated in a separate law, so also the arrangement is still not in a complete material guarantee legal system but is still partial. And the grosse position of the ship mortgage deed in providing protection and legal certainty to creditors through the executorial title contained therein, has not been carried out because the implementation of the execution of collateral objects based on Article 224 HIR is too long in the procedure, because they have to follow the procedural procedures as in the execution of other cases, even though execution of collateral object context is different.

Keywords: Mortgage, Ship, Sea

1. Background

Economic development in Indonesia is currently experiencing development and can be said to be part of national development which is an effort to realize a just, prosperous and prosperous Indonesian society. Economic development in Indonesia can also be seen from the wider business fields owned by the community and the wider business fields and the large number of human resources, as well as for the sake of maintaining and maintaining the balance and continuation of development, business actors from both the Government and the community who act as individuals as well as legal entities, sooner or later they will need very large amounts of funds (Ernawati, 2021).

In an effort to meet the need for these funds requires support from the credit sector from financial institutions. The presence and continued development of the world of credit in the midst of the many types of businesses that exist in today's society shows that credit as a source of financing has a very important role in today's development era. It is realized that the funds used in the circulation of credit are very large funds, so given the importance and potential for large risks, it is only natural that the provision of credit must be accompanied by guarantees. Economic and trade developments will also be followed by developments in the need for credit and the imposition of guarantees to provide security for the provision of such credit. So that it is appropriate if creditors and credit recipients and third parties involved in a credit granting activity also receive protection by guarantee institutions to provide legal certainty for these parties (Yasir, 2016).

One of the business activities in Indonesia that cannot be separated from credit and guarantee activities is activities related to ships in shipping activities, this cannot be denied because Indonesia is an archipelago country. Indonesia is a maritime country that has two-thirds of its territory in the form of sea compared to the land area or islands, the sea area that Indonesia has is 3,166,163 km², while the island's land area is 2,027,087 km². In other words, two-thirds of Indonesia's territory consists of the sea. With these conditions, it can be seen that with more sea areas, the locations of the islands that stretch in Indonesia are separated from each other by water, sea, straits or oceans.

Indonesia's population is so large and separated by water, which makes transportation, especially sea transportation, a vital and important means. The field of shipping is a means of sea transportation that has the characteristics of a good regional liaison between one island and another and can even be used as a link between countries in international trade traffic. This fact is very important in responding to the needs that are currently developing in society, where the Government cannot remain silent and issue several policies in terms of granting credit. What deserves attention is the process of imposing credit guarantees (Salim, 2004).

Collateral actually functions as a means of legal protection for parties involved in a credit agreement, between the debtor and the creditor, by providing certainty that no party will default. The expected guarantee is a guarantee that is efficient, where the guarantee can provide certainty to the creditor (creditor), so that it is easy to get debt repayment for him, if the debtor defaults. As stated, collateral requires the existence of an object that can be pledged in order to obtain credit funds from the debtor. At the time the *Burgerlijk Wetboek* (BW) was in effect, mortgage and mortgage guarantee institutions were indeed sufficient to meet the needs of underwriting practices. This went on for quite a long time, until finally the need for a guarantee institution, which can be imposed without any control over the collateral object by the guarantor (creditor), is felt by business actors who need more capital to continue their business, but do not have any assets. other objects that can be used as collateral, except for objects used in the business activities (Nahrowi, N., & Masyrofah, 2021).

The ships that are discussed in this study, of course, the business actors also need large funds, and with the assistance of credit activities with mortgage guarantees, the business actors who actually only have ships as objects that can be pledged, then their business will stop if the ship is guaranteed for the release of funds from the creditor, because indeed with a mortgage, the object is in the possession of the creditor. However, this problem can be resolved with the presence of a mortgage guarantee institution regulated in Article 1162 of the Civil Code, where in that article the definition of a mortgage is a material right over immovable objects, to take reimbursement thereof for repayment of an agreement. This legal construction refers to loading on immovable objects. Immovable objects not only on ships measuring 20 m³, but also on land encumbrances, but mortgages on land are no longer valid because Book II BW relating to mortgages on land has been revoked with the presence of Law Number 4 of 1999 concerning Mortgage right.

This mortgage guarantee is a special guarantee that arises as a result of a preliminary agreement attached to an object specifically designated by the creditor and debtor. What is meant is an agreement followed by a separate agreement which is an additional agreement (*accessoir*) related to the main agreement. This means that if the debtor does not fulfill his or her engagement obligations or is in default, then the collateral will be forcibly sold by auction as repayment of the debt that is his obligation. Because there is no real transfer of power over the object, the deed of mortgage guarantee and its supporting documents, such as the guarantee certificate, can be used as evidence that an agreement has been formed. For this reason, the mortgage debtor must be seriously stated that he is a person who acts freely on the mortgaged object, and the object is free from all burdens.

Guarantees that are expected are guarantees that are efficient, as explained above, so it is with ships. The mortgage guarantee institution is specifically for registered marine vessels, with a gross volume of at least 20m³, and with a gross weight above GT 7 (Grosse Tonnage) which is hereby declared as immovable property. Ships have several legal aspects that are quite diverse, for example registration, insurance, ownership, how to guarantee them, and so on, also ships have great economic value because they can be used to support the development of shipping fleets. The development of a shipping fleet, which by its nature requires a lot of funds, and financing that is carried out on a term basis and requires investment funds that are also quite large, can obtain procurement of funds by obtaining the required credit guarantees or loans, from bank and non-bank financial institutions abroad, which which of course the ship must be used as collateral or collateral for the loan (Winarno, 2013).

Until now, mortgages are still regulated in the Civil Code because they have not been regulated in an independent law which is still fully enforced regarding mortgages on ships and aircraft. Meanwhile, the definition of ships is regulated in several laws and regulations in Indonesia. In the Book of Commercial Law (which will be referred to as the Criminal Code) book II, the definition of a ship is given as all goods or equipment that can sail. Article 309 of the Criminal Code defines a ship as all tools or goods that can sail, regardless of their name and what their nature is. Unless otherwise specified or other agreements are made, it is considered that the ship is the equipment of the ship. Ship equipment can be interpreted as all goods that are not part of the ship but are still used with the ship.

The definition of a ship is also stated in Article 1 paragraph 36 of Law number 17 of 2008 concerning Shipping (hereinafter referred to as the Shipping Law) which states that a ship is a water vehicle of a certain shape and type, which is propelled by wind power, mechanical power, energy others, towed or delayed, including vehicles with dynamic carrying capacity, underwater vehicles, as well as floating devices and floating structures that are not mobile. In the agreement or agreement on the imposition of marine mortgage collateral, there are subjects that regulate all matters relating to the rights and obligations of the parties. Where each party has responsibility in the agreement.

In the case of a credit agreement, the debtor can apply for collateral imposition, in which the object or goods used as collateral must always be well taken care of and still in the hands of the debtor and must be ready to provide any time the item will be taken by the creditor if the debtor cannot pay off debt owed. Meanwhile, creditors must provide credit loans to debtors when the debtor has fulfilled the terms of the existing agreement. The problem that will be analyzed in more depth in this research is how is the existence of a mortgage guarantee

institution with a ship object in the guarantee legal system in Indonesia and how is the legal force of a mortgage deed with a ship object in providing legal certainty for creditors.

2. Method

This research is a juridical-normative law research. Data collection techniques in this study used literature and document or archive studies, namely by collecting data related to the research needs to be studied, in addition to various books and other supporting legal materials. The analysis technique used was descriptive qualitative data, with a statutory and comparative approach.

3. Results and Discussion

3.1 The Existence of a Mortgage Guarantee Institution with Ship Objects in Guarantee Law in Indonesia

At the birth of a mortgage, there are differences of opinion among legal experts, namely, according to Harsono's opinion, the birth of a mortgage refers to the birth of property rights, so for the parties, the time of birth of a mortgage is when the mortgage deed is drawn up. Meanwhile, for third parties, when the mortgage is born, it is when registration is carried out, because registration is intended as a means of proof for third parties. However, Mariam Darus Badruzaman opposed Harsono's opinion. According to him, judging from the system of transferring rights in the BAL, Boedi Harsono's interpretation was confusing and inappropriate. Both property rights and mortgages are material rights which at birth are in one system so that at birth these material rights cannot be placed at a different moment (Nugroho, 2021).

Seeing these two opinions, the author agrees more with the second opinion, because when talking about the process of a mortgage, it must go through several phases, namely the credit agreement phase as the principal agreement, the mortgage binding phase as the assessor agreement and finally the mortgage registration phase. These three phases form a unified whole which cannot be separated from one another which forms what is referred to as the mortgage guarantee legal system which is an integral part of the national guarantee legal system.

Furthermore, according to the author, Boedi Harsono's opinion can also be accepted when looking at the process of the occurrence of separate mortgages in order to see the legal implications arising from the parties including third parties. By making a mortgage deed, at that time it gave birth to rights and obligations for creditors and debtors. Meanwhile, when the mortgage deed is registered, it will have legal implications in terms of proving the birth of a ship mortgage for a third party. When compared with mortgage rights and fiduciary guarantees as part of the national guarantee legal system linked to the recording of ship mortgage deeds in the master register, for mortgage rights and fiduciary guarantees after recording mortgage rights and recording fiduciary guarantees will be followed by the issuance of mortgage certificates and certificates fiduciary guarantees given to mortgage holders and fiduciary guarantee holders.

Mortgage certificates and fiduciary guarantee certificates have executorial powers by including the "For the sake of Justice Based on Belief in the One and Only God" on the two guarantee certificates. The legal consequences arising from the inclusion of the irah-irah make the two guarantee certificates equivalent to a court decision that has permanent legal force. So that if the debtor or mortgage holder and fiduciary guarantee provider defaults, the creditor or mortgage holder and fiduciary guarantee holder can execute the collateral object without going through a lawsuit in court.

Whereas in the ship mortgage guarantee, the inclusion of irah-irah "For the sake of Justice Based on Belief in the Almighty God" is found on the ship mortgage deed *grosse* not on the ship mortgage certificate because the difference is that ship mortgage certificates are not issued. According to the author, the difference in the location of the executorial title is stated due to the legal basis on which the executorial title is listed in each of these guarantees. Inclusion of executorial title in the ship's mortgage deed *grosse* refers to the provisions of Article 224 HIR which gives an executive function to the *grosse* mortgage deed and debt acknowledgment deed *grosse*. As for mortgage certificates and fiduciary guarantee certificates, they adopt the mortgage provisions contained in Article 1186 of the Civil Code and Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA) and its derivative regulations contained in Article 22 paragraph (4) PP 10 of 1961 in conjunction with Article 7 paragraph (1) Regulation of the Minister of Agrarian Affairs Number 15 of 1961 (Rachmayani, D., & Suwandono, 2017).

Article 14 of Law Number 4 of 1996 concerning Mortgages places a mortgage certificate as a substitute for a mortgage deed *grosse* as long as it concerns land rights. According to the author, the difference in the inclusion of executorial titles described above is a small part of the problems surrounding the national guarantee legal system. Even though the Indonesian nation already has national legal products in the field of guarantee law, namely Law Number 42 of 1999 concerning Fiduciary Guarantees and Law Number 4 of 1996 concerning Mortgage Rights, it will not be effective if there are still matters in which the regulations are not regulated, clear or contradict one another.

In relation to this issue, the author supports Mariam Darus Badruzaman's opinion that the development of a partial bail law is dangerous. The level of danger is found in some guarantee laws, which are not in one system. Furthermore, it is said that applications that are not related to each other will make the system complicated, difficult to understand and eventually abandoned by people (Sanusi, 2019). Referring to Fuller's legal system theory, a legal system must pay attention to eight legal principles called the Principles of Legality. One of the principles referred to, among other things, requires that in compiling a regulation it must be compiled in an understandable formulation and these regulations must not conflict with each other. Likewise, referring to Friedman's theory of the legal system, the legal system will experience inequality if the substantive elements, namely the set of laws and regulations, do not function as they should. In connection with Badruzaman's opinion above, Fuller's theory should be the basis for thinking for legislators in the field of guarantee law. Especially now that the Government is preparing to issue the Ship Mortgage Law, of course it is hoped that this law can answer questions that still surround the national guarantee law (Susilo, 2021).

3.2 The Legal Power of Mortgage Deeds with Ship Objects Related to Legal Certainty for Creditors.

An understanding of the existence of a mortgage deed is given several meanings by legal experts including the limitations provided by laws and regulations as well as a description or concept of a mortgage deed. Prior to the enactment of Law No. 30 of 2004 concerning the Office of a Notary (UUJN), there is no single law or regulation which contains a clear definition or grosse definition of a deed. Several experts have provided an understanding or formulation of the grosse deed which can be mentioned, among others: G.H.S. Lumban Tobing, defines grosse as a copy or (with the exception of) a quote, by loading it (above the title of the deed) with the words: "For the sake of Justice Based on Belief in the One and Only God" and below it the words: "Given as Grosse First, by mentioning the name of the person, at whose request the grosse was given and the date it was given (Pamungkas, 2021).

Victor M. Situmorang and Cormentya Sitanggang give the understanding that the grosse deed is a copy or derivative of an authentic deed, which has the head on it the words: "For the sake of Justice Based on Belief in the One and Only God", and at the bottom it must be listed as the First Grosse by mentioning the name of the person at whose request the grosse was given and the date of granting the grosse, where the copy has the same powers of execution as a permanent court decision.

From these several opinions the researcher can summarize that the definition of grosse deed has the following elements; first; in the form of an authentic deed, second; is the first copy or quote of the original, third minuta/deed; has a head/irah-irah for the sake of justice based on belief in one and only God which functions as an executorial title to facilitate the execution of mortgage and fourth objects; At the bottom of the deed is written the first grosse and the name of the person requesting the grosse deed to be made and the date of granting the deed grosse. As an authentic deed, the grosse deed must be made by or in the presence of an authorized official. The grosse of the ship mortgage deed is made by the Registrar and Registrar of Ship Transfer and for the grosse deed of acknowledgment of debt is made by a Notary.

Therefore, for deeds made privately, grosse cannot be made. As a copy or quotation, the contents of the grosse deed must be exactly the same as the original minutes/deeds with an editorial addition at the bottom of the sentence which reads "given as the first grosse" by writing the name of the person to whom the grosse requested it was given and the date it was given. With an irah-irah for the sake of justice based on belief in one and only God, the grosse deed contains executorial power like a court decision that has permanent legal force so that it can directly ask the court to carry out the execution without requiring an execution fiat (Indriati, 2019).

The provisions of the Notary Guarantee Act also stipulate that those who have an interest, heirs, or beneficiaries, they are only given the First Grosse, while the granting of the Second Grosse and so on, must be based on a court decision in the legal area for depositing minuta deed concerned is domiciled. Compared to the copy of the deed, the excerpt of the deed, only the first grosse has executorial krachts. Ship mortgages as material collateral, have material rights that are *droit de suite*, namely always following the object in the hands of whoever the object is. Such a nature of ship mortgage material rights closes the possibility of a third party to own a ship that has been burdened with a mortgage. In other words, the debtor is not allowed to transfer ownership of the ship to a third party as long as the ship is still burdened with a mortgage, because the ship's mortgage property rights which provide guarantees for repayment of the debtor's debt will still follow in the hands of whoever the ship is. Thus it will bring losses to third parties if they buy a ship that is being pledged because the transfer of ownership of the ship will not cancel the validity of the ship mortgage.

Based on Article 197 HIR, if at the specified time, the debtor has not carried out his obligations, or after being summoned by the debtor cannot appear before him or after coming and being reprimanded by the debtor does not want to fulfill his obligations, the Head of the District Court shall issue an order by letter to confiscate the movable property belonging to the debtor. "If the movable goods are not available or not enough, then the property still belonging to the debtor can also be confiscated and auctioned so that it is deemed sufficient to pay

off the debt." The debtor or mortgage giver is required to insure the ship burdened with the mortgage. In the event that the ship is destroyed or damaged so that the insurance claim is issued, then the payment is the creditor's right. The insurance claim will later be used to pay off the debtor's debt to the creditor (Article 297 KUHD).

Collateral for immovable objects on ship mortgages, considering the nature and characteristics of the collateral object, the creditor cannot physically control the collateral object. Physical control of the collateral object in the ship mortgage is not meaningful in connection with efforts to transfer ownership of the ship because what determines this is administrative actions such as transfer of name. Therefore, what is relevant to note is to prevent the occurrence of transfer of names which may result in a transfer of ownership of the ship. The material rights of the ship mortgage guarantee provide a special position for preferential creditors. In the position of preferred creditor, when the debtor cannot fulfill his obligations resulting in bad credit, the creditor has the main or priority right to obtain repayment from the proceeds from the sale of collateral.

The position of preferred creditors is more guaranteed than concurrent creditors, namely creditors who are not guaranteed by material rights (general collateral). However, according to the researcher, as a preferred creditor, priority rights may not be applied to all preferred creditors. This can happen because when a ship is bound in several mortgages as discussed in section c above, the preferred creditor's right to take precedence will be determined by the existing or older ship's mortgage (Harsono, 1990).

The position of the Grosse Mortgage Deed is very important for the Mortgage holder or for the lender in protecting their interests. This is as emphasized in paragraph (4) which states: "Grosse Mortgage Deed as referred to in paragraph (3) has the same executive power as a court decision that has obtained permanent legal force". The executive power possessed by the grosse mortgage deed refers to the existence of irahs listed at the top or head of the mortgage deed which reads "For the sake of Justice Based on Belief in the One and Only God". With this irah-irah, if the debtor is negligent in fulfilling his obligations, the creditor without having to file a lawsuit in court can submit a request for execution to the head of the District Court. Before the request for execution is submitted, the debtor will be properly reprimanded. If the debtor still ignores the warning mentioned, the creditor submits a request for execution both orally and in a letter to the Chairperson of the District Court (Tjitrawati, 2010).

Basically, the position of grosse deed in providing legal certainty for creditors is related to protection for the fulfillment of debt payments that can be taken by creditors if the debtor defaults or defaults. Based on Article 224 HIR grosse Mortgage deed has executive power with an executorial title in the form of an irah-irah "For the sake of Justice Based on Belief in One Almighty God", which is equated with a judge/court decision that has permanent legal force. Creditors holding mortgage collateral rights on ships get legal protection for loans given to debtors so that creditors get guarantees for repayment of credit received by debtors. If the debtor defaults, then the ship mortgage as material collateral places the creditor as the preferred creditor who has the right as the preferred creditor in receiving credit repayments. Another form of legal protection is that whoever the object of the ship's mortgage is located does not break the relationship between the creditor and the object of the mortgage. In other words, the creditor's rights remain in the hands of whoever the mortgage object is. Likewise, if the debtor defaults, the creditor can immediately execute the collateral object (ship) without filing a lawsuit in court (Hutagalung, 1990).

The creditor's right to sell ships burdened with mortgages (Article 1178 Paragraph (2) of the Civil Code) in the event that the debtor defaults (jammed), the creditor as the mortgage holder on the ship has the right to sell by auction in public the ships already burdened with Mortgage. The proceeds from the sale of the ship are used as settlement of the debtor's obligations to the creditor. The debtor's obligation to obtain written approval from the creditor, in the event that the ship will be leased to another party (Article 1185 of the Civil Code), acting as the Mortgage holder is the creditor concerned.

Therefore, usually the charterer must also sign a statement stating that he is willing to vacate voluntarily at any time and then hand over the ship in good condition to the creditor, when the debtor defaults. Buyers of ships sold through auctions have the right to request that the mortgage registered on the ship be written off or diroya (Article 1210 of the Civil Code). When the purchase of a ship is made, the proceeds from the sale of the vessel can usually be used to pay off the debtor's debt to the creditor. If so, a royalty process must be carried out as is the case with a mortgage process for mortgage rights.

Ship Mortgage Collateral has formed the character of a ship Mortgage guarantee as a guarantee institution that aims to provide legal protection for creditors as ship mortgage holders. The character of a ship mortgage as a material guarantee gives the creditor special material rights, including absolute or absolute rights that give direct and defensible power to every person on the ship that is used as collateral even though the ship is not physically in control of the creditor. As a right that is absolute or absolute, the creditor as a ship mortgage holder has a direct relationship with the ship which is used as collateral and can be defended against anyone. However, the rights of ownership and physical control of the ship are still in the hands of the debtor or the

Mortgage provider. If a ship is used as collateral in fulfilling debt payment obligations, this means that there is some power that must be released by the ship owner (debtor). In principle, what must be released is the power to transfer ownership rights to ships, such as selling, exchanging and granting.

In the event of default arising through a statement of negligence. Negligence is a message (notification) from the creditor to the debtor by which the creditor notifies at the latest when he expects the achievement to be fulfilled. The state of breaking promises, when he does not fulfill his achievements. Since then, the debtor must bear the adverse consequences caused by non-fulfillment of achievements. So in this case the function of the default determination is a legal effort to determine when a breach of promise occurred. While the statement of default (notification from the creditor to the debtor) aims to set a grace period for the debtor to carry out his achievements with reasonable liability sanctions. A state of negligence arises when the (reasonable) period stated in the statement of default has expired without fulfillment.

Furthermore, a subpoena that is not heeded will usually be followed by the next (second) subpoena and if this is still ignored, then the party who feels aggrieved can take legal action such as filing a lawsuit with the competent court or the court appointed/determined in the agreement. In Article 1243 of the Civil Code it is stated that reimbursement of costs, losses and interest due to non-fulfillment of an agreement is required, if the debtor, even though he has been declared negligent, remains negligent in fulfilling the said agreement, or if something that is given or done can only be given or done within the time specified. beyond the specified time limit.

Furthermore, it was reaffirmed in Article 1244 of the Civil Code that the debtor must be punished to replace costs, losses and interest, if he cannot prove that the engagement was not carried out or the timing of the engagement was not due to something unexpected, which cannot be accounted for to him. , although there is no bad faith in him. So it can be interpreted that as long as the debtor cannot prove that he is in default due to something unexpected, and which cannot be accounted for to him, then the debtor must still make compensation even though there is no bad faith from the creditor. This is different when force majeure occurs.

In Article 1245 of the Civil Code, it provides an understanding that in the event of a force majeure event, the party deemed to be in default does not need to make compensation. Matters that can be demanded by creditors against debtors who are declared in default. Subekti said that the debtor can choose between the following possibilities; ask for the implementation of the agreement, ask for compensation only and can demand the implementation of the agreement accompanied by compensation. If the agreement is reciprocal, you can ask the judge to cancel it.

Mortgage Execution is the exercise of the rights of the creditor holding the Mortgage in the event of default by the debtor. If the debtor does not fulfill his obligations as agreed, the creditor has the right to take repayment of the value of the execution mortgage object. Regarding the execution of ship mortgage collateral, Law Number 17 of 2008 concerning shipping states that "Each mortgage deed is issued one grosse mortgage deed which is given to the recipient of the mortgage. The grosse mortgage deed has the same executorial power as a court decision that has obtained permanent legal force. By providing these executive powers it should not be too difficult for financial institutions to carry out executions. Mortgage holders simply ask for assistance from the district court to carry out the execution of the Mortgage object (Jamilus, 2017).

Based on the regulations in force in Indonesia, it turns out that the existing arrangements are not sufficient to provide legal protection to the parties related to the ship. "In a debt agreement that contains material guarantees, execution can be a facility for creditors in terms of paying off debts when the debt is collectible, while the debtor is in default." This is as stated by Sri Soedewi that: "In a debt relationship where there is an obligation to perform from the debtor and the right to achievement from the creditor, the legal relationship will run smoothly if each party fulfills its obligations."

However, in a billable debt relationship (opeisbaar) if the debtor does not carry out the performance voluntarily, the creditor has the right to demand fulfillment of his receivables (execution rights) against the debtor's assets used as collateral. Regarding the method of execution, it is known in three ways, namely;

- a) through executive titles; This execution is mandatory through the court, this execution is based on an irah-irah of a certificate or deed grosse which reads "For the sake of Justice Based on Belief in the One and Only God", where the irah-irah has the same legal force as a court decision that has permanent legal force. Because the inclusion of irahirah is based on the law, the right to execute is born from the law. Furthermore, this execution must be carried out through public sale or auction.
- b) through execution parate; this execution does not need to go through a court, this execution is called the power of attorney to sell, meaning that there is an inclusion of a promise in the guarantee agreement between the debtor and the creditor, that the creditor is given the power by the debtor to sell the collateral object on his own power. On the other hand, if it is not agreed upon, there will be no execution by way of execution. This execution must be carried out through a public sale or auction.

- c) through private sales; This execution is carried out by agreement between the debtor and creditor by finding buyers who are willing to buy at high prices. This execution is based on the consideration that if it is through an auction, it will cost more, and in this way you can get a higher price.

The statement above has similarities with what was disclosed by Sri Soedewi, for several reasons, because the *grosse deed* has executive power, so execution can be carried out by selling it in public. Furthermore, because of the promise to sell on their own power which is written in the deed, which means that the creditor can sell the collateral object in public on the basis of *parateexecution*. In practice, the general sale procedure does not run smoothly and causes a lot of losses for both the creditor and the debtor because the cost of a general sale is quite high, therefore in practice the execution is often carried out by selling underhanded.

Submission of the execution process to the court through executorial titles. In Mortgages, this method of execution is regulated in Article 224 HIR Jo. Article 195 HIR. Based on Article 224 HIR *irah-irah* contained in the Mortgage deed *grosse*, if it is listed for the sake of justice based on belief in one and only God, then the mortgage is attached to an executive power (*executoryekracht*) because the law itself equates it with a judge's decision or justice that has permanent legal force. Thus, if the debtor defaults, the creditor can immediately request a fiat of execution, either verbally or in writing, to the Chief Justice based on Article 224 Jo. Article 195 and Article 196 HIR. As an authentic deed, the *grosse deed* must be made by or before an authorized official.

The *grosse* of the ship mortgage deed is made by the Registrar and Registrar of Ship Transfer and for the *grosse deed* of acknowledgment of debt is made by a Notary. Therefore, for deeds made privately, *grosse* cannot be made. As a copy or quotation, the contents of the *grosse deed* must be exactly the same as the original minutes/deeds with an editorial addition at the bottom of the sentence which reads "given as the first *grosse*" by writing the name of the person to whom the *grosse* requested it was given and the date it was given. With the existence of an *irah-irah* for the sake of justice based on belief in one and only God, the *grosse deed* contains executorial powers like a court decision that has permanent legal force so that it can directly ask the court to carry out the execution without the need for fiat execution.

The narrow opinion is held by the Supreme Court, which holds that regarding the *grosse deed*, it can only be made from a debt acknowledgment deed and a mortgage deed. This opinion is based on the provisions of Article 224 HIR and Article 440 Rv. With the enactment of Law Number 30 of 2004 Concerning the Position of a Notary (UUJN), it has emphasized what deeds a notary can make *grosse*, that is, they only apply to deed of acknowledgment of debt, as also specified in Article 224 HIR. Meanwhile, other deeds that can be made *grosse* according to Article 224 HIR are mortgage deeds which currently based on existing laws and regulations only apply to mortgages for ships of a certain size and mortgages for airplanes. Referring to the provisions of Article 224 HIR, besides the *grosse deed* of acknowledgment of debt, there is also what is called the *grosse deed* of Mortgage. In other words, Article 224 HIR restrictively determines that the *grosse deed* can only be made in the form of a *grosse deed* of mortgage and *grosse deed* of acknowledgment of debt. Both the *grosse deed* of acknowledgment of debt and the *grosse* of a mortgage deed both have executorial power, such as a court decision that has permanent legal force with the title "For the sake of Justice Based on Belief in the One and Only God".

The enactment of Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects related to Land has clarified the status of Mortgage which no longer applies to land but applies to Ship Mortgages. Thus the *grosse* of the Mortgage deed mentioned in Article 224 HIR must be interpreted as the *grosse* of the Mortgage deed of ships and/or aircraft. However, based on a historical approach, later discussions will still touch on matters related to mortgages on land, bearing in mind that from a material legal point of view they still refer to Book II of the Civil Code which also applies to ship mortgages.

The two forms of deed *grosse* contained in Article 224 HIR, namely *grosse deed* of mortgage (*grosse deed* of *van hypotheek*) and *grosse deed* of acknowledgment of debt (*notarieeschuldbriefven*), each stand alone may not be mixed up or overlapping in the same debt object, but must choose one. If you have chosen the *grosse* acknowledgment of debt, the credit agreement in question may no longer use the form of a mortgage agreement. On the other hand, if they have chosen the form of a mortgage, they are not allowed to follow it up with a deed of acknowledgment of debt *grosse*. The attachment of the executive power to the mortgage as stipulated in Article 224 HIR, only materializes after the registration of the Mortgage is carried out followed by the issuance of the Mortgage certificate. This Mortgage Registration is viewed from the point of view of legal theory referred to as the general principle of Mortgage, namely the need for Mortgages to be registered with the aim of making the Mortgage agreement open to the public. The wider community with an interest can check and find out that the land in question is being burdened with a mortgage agreement.

4. Conclusion

The existence of a mortgage guarantee institution with a marine object in the guarantee legal system in Indonesia is still unable to provide protection and legal certainty to creditors because the mortgage guarantee institution is still not completely and detailed regulated in a separate law, nor is the regulation yet are in a legal system of material guarantees as a whole but are still partial.

The grosse position of the ship mortgage deed in providing protection and legal certainty to creditors through the executorial title contained therein, has not been implemented because the implementation of the execution of collateral objects based on Article 224 HIR is too convoluted because they have to follow the procedural procedures as in the execution of other cases, even though the execution collateral objects the context is different.

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