

Juridical Review of Mortgage Enforcement on Ships and Its Legal Effects

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Abstract: This study aims to determine what is the legal basis of collateral in general and ship mortgages in particular and legal consequences in this case obstacles in the execution of ship mortgages as collateral for debt repayment due to default. The research method used is Empirical Juridical, which analyzes the procedure for installing a ship mortgage as an object of debt collateral from the aspects of civil law, trade law, Law No. 4 of 1996 concerning Mortgage Rights and especially the legal basis for ship mortgages based on Law No. 17 of 2008 concerning Shipping materially ship mortgages as property guarantees or immovable objects which are treaty legal relationships that have legal consequences in fulfilling the rights and obligations of the parties. In addition, what are the legal consequences in the event of default by the debtor to the creditor (Banking Institution). This research was conducted at the Sorong Class I Harbor Authority and took information from the head of the ship's legal status section as a resource person. This data is analyzed in the form of a qualitative description. Problems in executing a mortgage against debt collateral due to default are the creditor as the owner of the ship has difficulty when wanting to take over, because the ship is always moving and its existence often moves even outside the territory of Indonesia, the cost of taking over the ship to be executed is quite high and when executed the ship is being rented by another party.

Keywords: Mortgage Enforcement; Sea Vessel; Legal Effects.

Abstrak: Penelitian ini bertujuan untuk mengetahui apa dasar hukum jaminan pada umumnya dan hipotek kapal laut pada khususnya dan akibat hukum dalam hal ini hambatan daalam eksekusi hipotek kapal laut sebagai jaminan pelunasan hutang akibat wanprestasi. Metode penelitian yang digunakan adalah Yuridis Empiris yaitu menganalisa tata cara pemasangan pembebanam hipotek kapal laut sebagai objek jaminan hutang dari aspek hukum perdata, hukum dagang, Undang – Undang No. 4 Tahun 1996 tentang Hak tanggungan dan khususnya dasar hukum hipotek kapal laut berdasarkan Undang – Undang No. 17 Tahun 2008 tentang Pelayaran secara materil hipotek kapal laut sebagai jaminan kebendaan atau benda yang tidak bergerak yang merupakan hubungan hukum perjanjian yang menimbulkan konsekuensi hukum dalam pemenuhan hak dan kewajiban para pihak. Selain itu, bagaimana akibat hukum bila terjadi wanprestasi oleh debitur kepada kreditor (Lembaga Perbankan). Penelitian ini dilakukan di Kantor Kesyahbandaran dan otoritas pelabuhan Kelas I Sorong dan mengambil informasi dari kepala seksi status

hukum kapal sebagai narasumber. Data ini di analisa dalam bentuk deskripsi kualitatif. Problematika dalam mengeksekusi hipotek terhadap jaminan utang akibat wanprestasi adalah kreditur selaku pemilik kapal kesulitan ketika ingin mengambil alih, karena kapal selalu bergerak dan keberadaannya sering berpindah-pindah bahkan berada diluar wilayah Indonesia, biaya pengambilalihan kapal yang akan dieksekusi cukup tinggi dan saat dieksekusi kapal sedang disewa oleh pihak lain.

Kata Kunci: *Pembebanan Hipotek; Kapal Laut; Akibat Hukum.*

1. INTRODUCTION

Indonesia as an archipelago characterized by the Archipelago which has sovereignty over the territory and has sovereign rights in its sovereign territory to be managed and utilized to the greatest extent for the prosperity of the people as mandated in the 1945 Constitution of the Republic of Indonesia.¹ In achieving national goals based on Pancasila and the 1945 Constitution and realizing the archipelago's insight, a reliable national transportation system is needed, in order to support economic growth, regional development and strengthen state sovereignty. A good, effective, and efficient national transportation system must also be supported by the management and operationalization of national transport companies that are both competitive and competitive, integrated both intra- and inter-mode which is an integral unit in accordance with fixed routes and non-permanent routes in order to obtain a reasonable share of cargo.

Domestic Sea Transportation activities are carried out by National Transport companies or called shipping companies using Indonesian flag ships and manned by Indonesian crew members. In the management of the transportation fleet requires financing or a very large business capital to increase the development and procurement of new vessels, replace ships / fleets that have been scrapped because they no longer meet the aspects of safety and feasibility and high operational costs. The efforts of the National Sea Transportation Company are to cooperate with banks and non-bank institutions in the framework of credit guarantees in the form of mortgages on ships in accordance with applicable laws and regulations.² Capital is an important factor of production because capital is needed in business development including business capital engaged in Sea Transportation, in supporting economic activities.³ Banks are financial institutions that are a place for individuals, business entities, private, and state-owned enterprises in credit

¹ Hafizh Siraji, "The Sovereignty of the Air Space and Its Protection in the Perspective of International Law: Some Aliens Intervention in Southeast Asian Countries," *International Law Discourse in Southeast Asia* 1, no. 2 (2022): 159–84, <https://doi.org/10.15294/ildisea.v1i2.58397>.

² Ardi Putra et al., "Rizky Octa Putri Charin," *Jurnal Dinamika Pemerintahan* 7, no. 1 (2024): 31–45.

³ Hailudin Hailudin, "Peranan Badan Usaha Milik Desa (BUMDES) Dalam Pemberdayaan Ekonomi Masyarakat Desa Labuhan Haji Lombok Timur," *Elastisitas - Jurnal Ekonomi Pembangunan* 3, no. 1 (2021): 1–9, <https://doi.org/10.29303/e-jep.v3i1.32>.

transactions. Through precredit activities of various services provided by the Bank to serve financing needs and smooth the payment system for all business sectors.⁴

One of the banking business activities is the provision of credit. Lending is the provision of money loans by banks to members of the public, which is generally accompanied by the submission of credit guarantees by debtors (loans) against the acceptance of credit guarantees related to various collateral laws.⁵ Currently, the granting of security is a mortgage on the ship is still subject to the rules stipulated in article 314 paragraph (3) of the KUHD and the International Convention on maritime receivables and mortgages which has been ratified by Presidential regulation No.44 of 2005 concerning the ratification of the International Convention On Maritime Liens And Mortgages 1993, especially regulations regarding changes in owners, registration, submission and subrogation, forced sale notices, temporary flag changes. This regulation is intended to protect the holders of mortgage rights on ships, especially those sailing between countries.

Mortgage is a property over immovable objects to take reimbursement from them for the payment of an obligation. The right is essentially undivided and lies over all immovable objects that are linked in their entirety the objects remain encumbered with mortgage rights.⁶ According to article 1131 BW all objects or wealth of a person become collateral for all debts but often people are not satisfied with the general guarantee and then ask that a particular object be made dependent. Based on the provisions in article 1168 kuhperdata which states that a mortgage can only be placed or installed by a person who can transfer the collateral object, the action is an act of ownership, so to be able to place a mortgage the person must be able to act have the right or authority.⁷

The subjects of the mortgage agreement are the mortgagor and the mortgagee. The mortgagor is someone who gives property rights over immovable objects in this case they will enter into debt related to the mortgage. While the mortgagee is referred to as Hypotheekbank or Hypotheeknemer.

Mortgage objects regulated in article 1164 of the Civil Code that can be charged with mortgages are immovable objects that can be transferred by the right of use, the right of hitchhiking, and so on. The granting of a mortgage must be given by an Authentic Deed in accordance with Article 1171 of the Civil Code unless otherwise provided by law, this shows

⁴ Windi Arista, "PRUDENTIAL PRINCIPLE DALAM PERJANJIAN KREDIT PERBANKAN," *Jurnal Tripantang*, no. 1 (2011): 27–51.

⁵ Ismi Azis, "Norma Pembiayaan Dan Perwujudannya Dalam Produk Keuangan," *Insan Cendekia, Jurnal Studi Islam Sosial Dan Pendidikan* 2, no. 2 (2023): 11–27.

⁶ Julian Gilbert Marcelino, Novia Kusumawardani, and Adhen Al Hafiedz, "NFT (Non-Fungible Token) Sebagai Jaminan Kebendaan," *Notaire* 6, no. 1 (2023): 19–38, <https://doi.org/10.20473/ntr.v6i1.43767>.

⁷ Kezia Belinda Imanuela Tiendas; Edwin Neil Tinangon; Victor D.D. Kasenda, "TINJAUAN HUKUM PERSOALAN KEPEMILIKAN ATAS KAPAL LAUT DIKAITKAN DENGAN HAK JAMINAN KEBENDAAN MENURUT HUKUM DI INDONESIA," *Lex Privatum* 13, no. 5 (2024).

that the encumbrance of a mortgage is based on a mortgage guarantee agreement made by the Debtor on his behalf with the Creditor.

Mortgage security only contains the right to repayment of debt and does not contain the right to control the object but can promise to sell on its own power if the debtor defaults. The characteristics of a mortgage are immovable property, the agreement is made in a deed, the execution of the object in the event of default and execution is easy to carry out. Meanwhile, the nature of execution is an *Accessoir* agreement, meaning that the agreement is additional and is associated with the main agreement. The main agreement is a loan and borrowing agreement or debt followed by an additional agreement as collateral. An agreement not only binds things expressly stated therein, but also everything that contains the nature of the agreement is required by customary decisions or laws. All agreements made legally apply as law to those who make them according to article 1338 BW.

The binding of a ship mortgage is based on an agreement or performance to bind things expressly stated therein, but also for everything that is according to the nature of the agreement. The encumbrance of a ship mortgage is preceded by a Deed of Authorization to attach a mortgage by a Notary Public who explains that he has obtained a power of attorney with the right of substitution of a bank or non-bank institution to act on behalf of the Creditor and Debtor as the debtor.⁸ The power of attorney to attach a mortgage from the Notary is useful to ensure the orderly and smooth payment of all debts of the debtor to creditors or banks or non-bank institutions, both principal, interest, objects and other costs arising from or based on credit agreements that have been made between creditors and debtors. The encumbrance of the installation of a ship mortgage is carried out several times according to the credit agreement. The power to attach a ship mortgage must fulfill the conditions stipulated in articles 1178, 1185 and 1210 of the Civil Code and article 297 of the Civil Code.

In Indonesian law, ship mortgages are still regulated separately and have not been codified in special regulations regarding ship mortgages which were previously regulated in Presidential Decree No. 219 of 1958 concerning ship registration and ship name change, thus the ship mortgage process is carried out as an integral part of ship registration carried out by Syahbandar, therefore it is regulated in article 60 paragraph (1) of Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping.⁹

⁸ TAUFIQ ILHAM AZHARI, "KEDUDUKAN AKTA PERJANJIAN KREDIT YANG DIBUAT DIHADAPAN NOTARIS BESERTA AKTA PEMBEBANAN HAK TANGGUNGAN YANG TERDAPAT IDENTITAS PALSU," *UNIVERSITAS ISLAM INDONESIA* (Universitas Islam Indonesia, 2023).

⁹ Hawer Trimaryanto, "Legal Protection From Creditors As The Fiduciary Security In A Financing Associated With The Award Mahkamah Konstitusi No. 18/PUU-XVII/2019," *Jurnal Hukum To-Ra* 7, no. 3 (2021): 355–86.

Mortgage encumbrance on a ship can be proven by a mortgage deed that has previously been registered and also has a deed of registration or deed of transfer of ship name for ships that are Grosse Tonnage 7 (GT) and above and Indonesian flagged and clean from mortgages or have never been mortgaged. Legal protection for creditors needs to be done even though it has been bound by a mortgage guarantee because there are several factors: The value of the ship is difficult to determine considering that there is no market price of the ship, the risk of ship destruction is very large, the ship often changes places so it is difficult to execute if the debtor fails to pay. The destruction of the ship includes the loss of the ship, running aground or sinking the ship. The regulations regarding the ship mortgage system in Indonesia so far need to clearly regulate default and legal responsibility by the debtor if the object encumbered by the mortgage on the ship experiences an accident intentionally or unintentionally committed by the debtor.

2. METHOD

This type of research is Juridical Empirical according to Abdul Kadir Muhammad Juridical Empirical Research is research conducted by examining secondary data first. Meanwhile, Empirical Research is used to analyze laws that are not merely a set of normative laws and regulations, but are seen as the treatment of people who always interact in people's lives. Empirical Juridical Research is research that refers to the applicable laws and regulations to reveal the problems in the field under study which adhere to the normative provisions regarding the Mortgage Encumbrance of Sea Ships. Types and Sources of Data are classified into 2 (Two) types of data, namely Primary Data and Secondary Data. The data collection technique used in this research is library research conducted by document study / literature study, the data used as primary legal materials include: Civil Code, Commercial Code, Law Number 17 of 2008 concerning Shipping, Law Number 10 of 1998 concerning Banking, Government Regulation Number 51 of 2002 concerning Shipping, Minister of Transportation Regulation Number 39 of 2017 concerning Ship Registration and Nationality. As well as secondary legal materials, namely legal materials that are closely related to primary legal data, such as books or provisions regarding mortgages on ships.

3. DISCUSSION

3.1. What is the position of mortgage encumbrance on sea vessels for debt security

In civil law, we recognize property rights that are enjoyment in nature and property rights that are giving security, where the right to give security is always directed to other people, both movable and immovable objects. A ship is an object of law.¹⁰ Meaning everything that can become movable property rights including tangible goods. goods that

¹⁰ Andhika Mopeng, "Hak-Hak Kebendaan Yang Bersifat Jaminan Ditinjau Dari Aspek Hukum Perdata," *Lex Privatum* 5, no. 9 (2017): 92–100.

are tangible in accordance with the general provisions of the civil code (bw) article 1162. civil law (bw) article 1162. The definition of a mortgage is a property right or immovable objects to take reimbursement thereof for the repayment of a bond. repayment of an obligation.

The right is essentially indivisible - divide which is located on all immovable objects that are bound in the whole, on each of these objects and on each part thereof. The objects are burdened with the right in the hands of whoever it moves according to article 1171 of the civil law book (kuh perdata) mortgages can only be given by an authentic deed, except for things - things that are expressly designated by law - law. Likewise, the power to grant a mortgage must be made by an authentic deed as well as a requirement in the process of making a mortgage deed in accordance with Law No. 17 of 2008 concerning shipping.¹¹

Regarding the mortgage deed in accordance with Article 1174 of the Civil Code, it is stated that:

"The deed in which the mortgage is placed must contain a specific mention of the object encumbered, as well as its nature and location, which mention must as far as possible be based on official measurements."

In ship mortgages, a very important thing is the size of the mortgage encumbrance value. This is because there is a depreciation of the ship itself every year and will have an impact on the creditor or not greater than the economic value of the ship itself or the estimated price. A mortgage is valid only if the amount of money for which it has been granted is certain and specified in the deed. If the debt is conditional or the amount is not certain, then the granting of the mortgage is valid according to the amount of the estimated price and the parties explain in the deed as stipulated in article 1176 bw.

3.1.1. Mortgage encumbrance of registered marine vessels

One of the requirements for encumbering ship mortgages is only carried out on ships that have been registered. Although the purpose of registration is to have a ship's nationality certificate as a fulfillment of the legal status of the ship itself and indicate which country has jurisdiction and responsibility for the ship itself.¹²

Although in accordance with article 1168 bw, where it is explained that there are no provisions regarding who can give a mortgage, and who receives or has mortgage rights, or can be called the subject of the mortgage, while the object of the mortgage is regulated in article 1164 bw or civil code, among others, namely immovable objects that can be moved and their equipment.

¹¹ Lenny Verawaty SH Siregar, "EKSEKUSI BENDA OBJEK PERJANJIAN FIDUCIA DITINJAU DARI UNDANG-UNDANG JAMINAN FIDUCIA," *Jurnal Ilmiah Simantek* 2, no. 4 (2018): 1–23.

¹² Bakti Trisnawati, "Perlunya Syahbandar Dalam Pelaksanaan Pendaftaran Kapal," *Spektrum Hukum* 21, no. 1 (2024): 10, <https://doi.org/10.56444/sh.v21i1.5174>.

In the mortgage property guarantee, there has been a transfer of control / ownership of the object used as the object of the mortgage guarantee. Based on Article 314 of the Commercial Code (Kuhd) in general, it explains that a ship with a size or gross content of 20 m3 can be registered to be used as an object of mortgage.¹³

Registration of Indonesian vessels can be registered at all ports in Indonesia as designated by the minister of transportation. Ships that are registered must first be measured in order to have a measurement letter or ship measurement letter to determine the size of the ship or the gross tonnage of the ship which is used to carry out other ship document processes or to obtain an identity as an Indonesian ship owned by an Indonesian citizen or Indonesian legal entity, then the ship is registered and recorded in the register of registration and transfer of ship names in accordance with the provisions referred to in law no. 17 of 2008 concerning shipping article 158 paragraph (2) which contains: a. Ships with a gross tonnage of at least gt.7 (seven gross tonnage), b. Ships owned by Indonesian citizens or legal entities established under Indonesian law and domiciled in Indonesia, c. Ships owned by Indonesian legal entities which are joint ventures whose legal majority is only owned by Indonesian citizens.

As proof that the ship has been registered by the shipowner, the shipowner is given a grosse deed of ship registration which also functions as proof of ownership rights over the registered ship. Registration of property rights to ships is carried out by making a registration deed by a registrar and ship registrar appointed by the minister of transportation. The registration deed according to article 23 paragraph (1) of government regulation no. 51 concerning shipping contains the following matters; a. The name of the ship and ship size data, b. The name and date of the deed, c. The name and domicile of the acting ship registrar d. The name and domicile of the owner, e. The name and domicile of the owner, e. The name and domicile of the owner. Name and domicile of the owner, e. Brief description of ship ownership. Meanwhile, the requirements for registering ship ownership rights must be completed with the following documents: a. Owner's application letter, b. Proof of ownership, c. Owner's identity, d. Ship measurement letter, e. Vessel identification number. Ship measurement letter, e. Taxpayer identification number, f. Proof of payment of ship name transfer duty.¹⁴

In addition to Indonesian ships that are the object of registration, new ships built abroad can be registered to obtain a temporary registration letter in Indonesia provided that the physical construction of the ship has reached the stage of completion of the hull

¹³ Djoni Sumardi Gozali, "DASAR FILOSOFIS DAN KARAKTERISTIK ASAS PUBLISITAS DALAM JAMINAN KEBENDAAN," *Jurnal Hukum Dan Kenotariatan* 5, no. 4 (2021): 590–609.

¹⁴ Rachmat Ade Putra, "Analisis Hukum Pendaftaran Jaminan Hipotek Terkait Objek Yang Sedang Dalam Sengketa Di Pengadilan (Studi Putusan Pengadilan Tata Usaha Negara Samarinda Nomor: 1/G/2020/Ptun.Smd)," *Jurnal Law of Deli Sumatera Jurnal Ilmiah Hukum* 2, no. 2 (2023).

building, main deck, and all superstructures have been built. Provided that the ship owner submits a registration application to the ship registration and name transfer officer (syahbandar) to process the temporary registration certificate in accordance with article 14 paragraph (1) of the regulation of the minister of transportation of the Republic of Indonesia number 39 of 2017 concerning registration and nationality of ships.

The purpose of ship registration is as follows: a. To determine the legal status of the owner of the registered ship, b. To fulfill the requirements for obtaining a ship's nationality letter, c. The registered ship has the status of a non-permanent object. And enforced as a property right in the event of sale and purchase and transfer of rights, d. The registered ship can be encumbered by a mortgage, in other words, the ship is used as credit security.

Registration of property rights to ships is an action that provides legal certainty. Based on the provisions of international law, ship registration is known as public registration and has consequences. a. The ship is under the jurisdiction of the flag state (flag state) relating to the regulation of the seaworthiness of the ship (safety) and the crew and crimes on board, b. The flag state of the ship is obliged to carry out international obligations on ships that carry the flag or fly the national flag, c. Registration registers are considered evidence of ownership (evidence of title), although in various countries the evidence is not absolute, this all indicates the effective control of the flag state of the ship.¹⁵

3.1.2. Sea Vessel as an Object of Mortgage Guarantee

Ships that have been registered in the Indonesian ship registry can be used as debt collateral by encumbering a mortgage on the ship. Mortgage encumbrance on a ship as mortgage collateral is carried out by making a ship mortgage deed by the official registrar and registrar both the name of the ship in the place where the ship is registered and recorded in the master list of the ship concerned.¹⁶

Ships are used as collateral or collateral objects either for debt repayment. In civil law, there are property rights that provide enjoyment and property rights that provide security. Property rights that are collateral in nature are always directed to other people, both movable and immovable objects. According to Saleh Adiwinata quoted by Anis Idham who uses the term fixed objects and fixed objects registered and unregistered.

A mortgage is a property right over an immovable object to take reimbursement thereof for the repayment of an obligation. Thus the mortgage is only contains the right of debt repayment only (verhaa / strecht) and does not contain the right to control / own the object.

¹⁵ Brilian Jafet Anis, "Perlindungan Hukum Terhadap Kreditur Pemegang Hak Jaminan Hipotek Kapal Akibat Wanprestasi Debitur Dalam Perjanjian Kredit," *Lex Privatum* VI, no. 7 (2018): 155–62.

¹⁶ Azra Balqis et al., "Pembebanan Hak Tanggungan Dan Hipotik Kepada Debitur Sebagai Bentuk Perwujudan Perlindungan Hukum Bagi Kreditur," *Diponegoro Private Law Review* 9, no. 1 (2022): 1–17.

Article 1178 bw or kuh perdata clearly provides the right to guarantee the payment of debt with the provision that in the event of default on the principal money is not repaid he is absolutely authorized to sell in order to repay the principal money and interest and other costs as an object.¹⁷

To carry out mortgage encumbrance as a collateral object, there are several requirements, among others: a) Mortgagor's application letter; b) Credit agreement letter; c) Grosse original ship registration certificate / grosse deed of ship name change; d) Ship owner's power of attorney in the form of a deed of power to install a mortgage made by a notary.

Based on the application of the mortgagor, the process of researching the completeness carried out by the registrar and registrar of the ship's name within 5 (five) working days. And if the requirements have met the formal requirements, the official, registrar and registrar behind the name of the ship makes a ship mortgage deed containing the following matters: a) The number and date of the deed; b) The name and date of the position of the registration official and the registrar of the ship's name; c) The name and domicile of the grantor and the mortgagee; d) The number and date of the deed of registration or the deed of transfer of the ship's name; e) Axe data according to the ship's measurement letter; f) The basis for the installation of the mortgage encumbrance; g) The value of the mortgage; h) Other matters agreed upon.

The ship mortgage deed as proof that the ship remains encumbered by a mortgage and is given a grosse deed that has the same executorial power as a court decision that has obtained permanent legal force. In the event that the mortgagee consists of several creditors who constitute a syndicate, then the provision of a grosse deed of ship mortgage is given simultaneously with a grosse deed of ship registration or a grosse deed of ship name transfer to one of the creditors of the syndicate member who is authorized to represent the syndicate.¹⁸

The ship's deed to install a ship mortgage can be done several times, namely the first, second and so on ship mortgage ship installers depending on the parties with the conditions stipulated in article 1178, article 1185 and article 1210 of the civil code (bw) and article 297 of the trade law code (kuhd).

In accordance with article 37 of the ministerial regulation of ri regulation no. 39 of 2017, ships that are no longer used as debt collateral by encumbering mortgages on ships are subject to mortgage revocation (roya), mortgage revocation (roya) is carried out based on: a) Application of the recipient of the mortgage on the ship; b) Application of the

¹⁷ Zainuddin Yasin Daulay, "Pengaturan Perlindungan Hukum Terhadap Kreditur Dalam Eksekusi Objek Hipotek Kapal Laut Yang Dijaminkan Ke Bank Berdasarkan Perspektif Perundang-Undangan," *Recital Review* 4, no. 1 (2022): 114–39.

¹⁸ Peraturan Menteri Pehubungan No. 39 Tahun 2017 hal 22

mortgagor of the ship; c) Determination of the district court or court decision that has permanent legal force.

The stages of the installation of a marine ship mortgage are as follows: a) The first stage: the parties can bind themselves, in this case the creditor and the debtor, in a credit agreement, one of which is to submit the ship as a mortgage guarantee; b) The second stage: there is a power of attorney to install a creditor mortgage with the debtor or bank and go to the syahbandar as an official registrar and recorder of ship names in accordance with the law to process the ship's mortgage deed; c) The third stage: the mortgage deed is recorded in the master list and registered and the rights of the mortgage holder are born.¹⁹

With the birth of mortgage rights, mortgage holders are entitled to exercise their rights and if the debt has been completed, roya is carried out. In connection with the process of encumbering marine vessel mortgages at the office of the maritime and port authority of Sorong. The author gets data from the research results as in the table below:

Table 1

No	Year	Mortgage		
		encumbrance amount	Ship type	Ket
1	2020	4 (four) deed	Fishing Boat	Roya
2	2021	3 (three) deed	Fishing Boat	Roya
3	2022	4 (four) deed	Fishing Boat	Roya
4	2023	2 (two) deed	Fishing Boat	
5	2024	1 (one) deed	Fishing Boat	

From the number of installations of ship mortgages based on the table above, it is very less for shipowners to carry out credit guarantees through the installation of mortgages at the port of Sorong. According to the author, there are things related to the lack of installation of marine ship mortgages at the port of sorong, among others: a) The installation of marine ship mortgages has a very high risk because the ship is a moving object and can experience damage or accidents or disasters that have an impact on default; b) Ships domiciled in the port of sorong are mostly wooden construction ships which are at high risk for the installation of ship mortgages; c) Ship owners in managing ship operations are quite effective and efficient in financing or in terms of finance are quite

¹⁹ Lina Kamilah Tsani and Nynda Fatmawati O., "Keabsahan Pendaftaran Kapal Sebagai Objek Jaminan Hipotek," *Dewantara: Jurnal Pendidikan Sosial Humaniora* 3, no. 1 (2024): 205–21, <https://doi.org/10.30640/dewantara.v3i1.2227>.

established so that they do not do an installation of marine ship mortgages that will be at risk with debt and credit.²⁰

3.2. How are the obstacles in the execution of ships as mortgage collateral due to default?

An object that is used as debt collateral for both ship mortgages, as well as movable and immovable objects must first choose a legal certainty and legal protection because it is related to various problems that will be faced by the parties in accordance with what is agreed.

For legal certainty and legal protection according to Sudikno Martokusumo that the law can function properly, then people who have rights need to get a direct decision from the legal decision itself. In the theory of preventive legal protection m. Hadjon provides an analysis that the state must guarantee legal protection for all parties, especially creditors in terms of arrangements regarding the implementation of marine ship mortgage guarantees when the parties enter into a credit agreement starting from the application and continuing until disbursement.²¹

In the implementation of the installation of ship mortgages, defaults often occur and at the time of execution it is very difficult and can be detrimental to the creditor due to several things: a) The creditor as the owner of the ship has difficulty when wanting to take over the ship while the ship is moving and its existence is often moving - moving even outside the domicile area; b) The cost of taking over the ship to be executed is quite large; c) The ship to be executed is being rented by another party.

These obstacles need legal certainty in the form of laws on ship mortgages or government regulations that are strictly regulated so as to provide protection and legal certainty for parties holding marine collateral. The installation of ship mortgages is narrowly regulated in Law No. 17 of 2008 concerning shipping which is only a formal requirement.²²

Execution basically refers to the act of fulfilling obligations imposed on parties who have been deemed to have failed or defaulted. In the execution of collateral assets, the challenge faced is the mobility inherent in ships that move from one place to another, some even deliberately eliminate the ship by sinking the ship.

In civil law, the term default is known as the debtor's negligence or in fulfilling the agreement or failure to fulfill the performance that has been determined in an agreement. Default as explained in article 1238 of the civil code is a condition in which the debtor is

²⁰ Siregar, "EKSEKUSI BENDA OBJEK PERJANJIAN FIDUCIA DITINJAU DARI UNDANG-UNDANG JAMINAN FIDUCIA."

²¹ Putra, "Analisis Hukum Pendaftaran Jaminan Hipotek Terkait Objek Yang Sedang Dalam Sengketa Di Pengadilan (Studi Putusan Pengadilan Tata Usaha Negara Samarinda Nomor: 1/G/2020/Ptun.Smd)."

²² Iwan Permadi and Fadhli Rahman Arif, "Agrarian Conflicts After the Establishment of the Land Bank Agency in Indonesia," *Justisi* 11, no. 1 (2025): 36–47, <https://doi.org/https://doi.org/10.33506/js.v11i1.2810>.

declared negligent by warrant or by similar deed or based on the strength of the obligation itself, namely when this obligation causes the debtor to be considered negligent with the specified time.²³

While article 1234 of the civil code (bw), the required performance is generally in the form of three things, namely giving something, doing something, and not doing something. The conditions in an agreement must be carried out by the parties, which is called an achievement related to the responsibility of the parties, negligence or negligence called default of a debtor which is categorized into 4 (four) types, namely: a) Not doing what has been agreed to be done; b) Carrying out what was promised, but not as promised; c) Doing what was promised but late about the promised time; d) Doing something according to the agreement is not allowed or not ordered.

The urgency of default is the negligence or negligence of the debtor from the transaction. In the act of agreement, every available tool must be used and based on good and proper intentions to not fulfill an agreement. If the debtor objects, it is resolved in court by the judge. But before that it was discussed in more depth with the debtor. Before continuing what is default or not because according to R Subketi default has a very important weakness, therefore the problem is discussed before taking a legal action. Legal consequences in default refer to any action taken to deal with a result that has been approved by the law and remains agreed upon by the actors and legal regulators.²⁴

The actions used are legal actions or actions used to overcome situations that are in line with the law. In other terms, legal consequences are all consequences in various legal actions carried out by legal subjects against legal objects or other consequences caused by certain events by law that are determined or considered as legal consequences.²⁵

If a debtor has been expressly promised but does not perform the performance, it is said that the debtor is in default. Sanctions as a result of legal default are compensation. Compensation contains 3 (three) different elements, namely costs, losses or losses and interest. Every expense or cost that has been given is the largest interest for damages. Loss is a loss due to damage to goods, on the other hand interest is a loss caused by failure to receive profits that have been predicted or borne by the creditor.

Article 1247 of the Civil Code states that the debtor is only obliged to reimburse costs, losses, and interest that were clearly foreseeable when the obligation was born,

²³ Happy Permata Sari, Joni Emirzon, and Putu Samawati, "Financial Services Authority Intervention as an Effort to Protect Declared Bondholders Bankrupt in by Corporations Commercial Court," *Justisi* 11, no. 1 (2025): 151–62, <https://doi.org/https://doi.org/10.33506/js.v11i1.3733>.

²⁴ Rahul Pieter S Yapen, Wahab Aznul Hidayat, and Muharuddin Muharuddin, "The Role of Correctional Institutions in the Development of Prisoners to Prevent Recidivism of Crimes in Sorong City," *Journal of Law Justice* 2, no. 3 (2024): 162–76, <https://doi.org/https://doi.org/10.33506/jlj.v2i3.3354>.

²⁵ Lina Kamilah Tsani and Nynda Fatmawati O., "Keabsahan Pendaftaran Kapal Sebagai Objek Jaminan Hipotek."

unless the non-fulfillment of the obligation was due to a deception committed by him.²⁶ In the legal remedies for default, the only option is to issue a summons/reprimand on the act of breaking the promise. In practice, the summons is usually given several times, and if the debtor does not respond, the settlement is carried out through the court.

CONCLUSION

Ship Mortgage is an important property right in financing special investments in the shipping world to make the object of the ship Mortgage must be registered and or change the name of the ship as evidenced by the Grosse Deed of registration and change the name of the ship issued by the registration officer and the registrar of the transfer of the name of the ship which is the authority in accordance with the law carried out by the Syahbandar where the ship is registered. The Ship Registration System in Indonesia is closed in the sense that registered ships are Indonesian citizen shipowners and Indonesian legal entities and cannot be registered in other countries. And if registered in another country there must be a sale and purchase transaction and crossed out from the country where the ship was first registered, as mandated in Law No. 17 of 2008 concerning Shipping. For the legal certainty of mortgages on ships which are movable objects that always move from one place to another, a risk sometimes arises for creditors. The Law on Services governing ship mortgages is still considered not strong in legal certainty for the parties involved, especially for creditors or banks on how to execute in the event of default by debtors who have dishonest intentions.

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²⁶ Pasal 1247 KUH Perdata

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