

INTERNATIONAL LAW ON THE IMPLEMENTATION OF THE SEA SHIP EXECUTION RELATED TO BAD CREDIT

Fera Indriyati, S. H., M. Kn.^{1*}, An An Chandrawulan S. H., LL. M.²

^{1,2}Faculty of Law, Padjadjaran University, Sumedang, Indonesia.

Email: *feraindriyati@gmail.com, ananchandrawulan@yahoo.com

Article History: Received on 18th July 2019, Revised on 27th August 2019, Published on 28th September 2019

Abstract

Purpose: As ocean transportation instrument, the ocean vessel has an important role in improving the growth of economic rate, particularly naval economic business. The high cost of ocean vessel make businessmen difficult to acquire business capital, so they propose the application of credit and ocean vessel is made into mortgage. Although Indonesia is party in International Convention on Maritime Liens and Mortgages 1993, there is not any specific regulation arranging the execution of ocean vessel registered in Indonesia up to now. International Civil Law considers efforts to settle the issues must be started up by contract and agreement in advance. Based on the description, it is necessary to analyse to which extent International Civil Law might settle issues on the execution of ocean vessel and to which extent a court must pay attention and recognize foreign legal verdicts or rights emerged based on Foreign Court Verdicts or laws.

Methodology: This study uses a normative juridical approach, the study of which refers to legal norms contained in the legislation, court decisions and legal norms that exist in society. The research specifications used are descriptive analytics. The sources of legal materials used are primary and secondary data and data collection techniques carried out by means of library research, interviews and observations. Meanwhile, the data analysis technique in this paper uses qualitative analysis.

Main Findings: An international agreement or agreement must contain a legal choice that will be used later because it will be a very complex problem if it is not determined from the beginning of the law which will be used if a dispute occurs. Ships that can be secured by mortgages are registered ships and ships weighing more than 20m³. In carrying out ship executions even though Indonesia has ratified the 1993 International Convention on Liens and Mortgage, the provisions for the execution of ships in Indonesia still refer to the provisions contained in Article 224 HIR or RIB and Article 258 Rbg.

Implications/Applications: This study will be helpful for practitioners and law-making authorities in formulating different policies and amendments in existing international law on the implementation of the sea ship execution related to bad credit.

Keywords: *International civil law, execution, bad credit, ships, maritime, mortgages.*

INTRODUCTION

As the largest archipelagic country, Indonesia has a capable marine potential so that it can be utilized as much as possible for the welfare of the Indonesian people. Business Opportunities in the marine sector are comparative advantages that can be transformed into competitive advantages and as a source of new economic growth for Indonesia. Marine economy business includes capture fisheries, aquaculture, biotechnology industry, mining and energy, maritime tourism, sea transportation, maritime service industry and others ([Apridar, Karim, & Suhana, 2011](#); [Ambikai & Ishan, 2016](#); [Barkatullah, 2017](#); [Boniface, 2016](#); [Chaiya, Janbanklong, & Kerpasit, 2016](#)).

The existence of a promising business opportunity in the field of maritime, of course, attracts the attention of business people to develop their business and open new business opportunities in the field of maritime affairs. Efforts in the field of marine economy require a transportation system that is able to bridge various remote areas in the country so that it can accommodate the needs of people from various regions of the region spread throughout Indonesia.

The implementation of sea transportation currently still faces several obstacles, due to the still low performance, indications of a still marginal national sea transportation business, relatively low service services to ports, the safety of sea transportation is still alarming and the high disturbance of security and sea pollution ([Husseyn, 2015](#)). No less important constraints are the availability of ships as a means of transportation. Given the price of non-cheap vessels on one hand and bank financial institutions or financing, it is still not optimal to provide credit or financing for the purchase of ships on the other side. In practice, this is caused, because ships are a guarantee of illiquid loans. While credit guarantees must be able to provide a guarantee if needed, these objects must be available, easily liquidated or realized and of sufficient value to be able to replace the amount of money owed ([Satrio, 2017](#); [Damaryanti, Hendrik, & Annurdi, 2017](#); [Purba & Yenny, 2017](#); [Purwanto & Purba, 2017](#)).

Credit guarantees in the form of ships in practice still cause problems, including those related to the execution, if the debtor fails to pay or there is bad credit, while the ships which are used as collateral have sailed outside the jurisdiction of other countries. This, of course, requires special attention in terms of the existence of a clear and explicit rule relating to the execution of the object of guarantee, namely a ship. To answer this problem, the International Private Law (HPI) considers that the solution must be started from the contract or agreement first. Bearing in mind the essential things of a contract is an agreement (agreement) and rights or obligations to implement something (contractual rights and obligations).

In connection with HPI, the agreement referred to is an agreement containing foreign elements in it (transnational contract), namely the element of freedom of the parties to make legal choices (freedom to choose the applicable law) ([Bayu, 2013](#)). So as to be able to answer all the main problems concerning all legal events that contain foreign elements, namely determining the judge or which law is authorized, and the extent to which the involvement of National judges must pay attention to the decisions of foreign judges ([Sunaryati, 2001](#)), in resolving legal issues in the execution of sea mortgage collateral execution in the event of bad credit.

RESEARCH METHODS

This study uses a normative juridical approach, the study of which refers to legal norms contained in the legislation, court decisions and legal norms that exist in society ([Soerjono, 1994](#)), which includes research on legal principles, legal systematics by looking at synchronizing a rule with other rules in hierarchy, legal history and also reviewing the comparison of laws by comparing Indonesian laws and regulations with the laws and regulations of other countries ([Bahder, 2008](#)).

The research specifications used are descriptive analytics that reveals laws and regulations relating to legal theories that are the object of research so that they can obtain a systematic, factual and accurate description of the facts that exist in society. Related to this research, the facts and conditions in question that caused difficulties in the practice of carrying out the collateral execution of ships, then explained and analyzed the contents and structure of applicable positive law and the principles of Private International Law which are expected to be able to answer the problems that arise.

The sources of legal materials used are primary and secondary data and data collection techniques carried out by means of library research, interviews and observations. Meanwhile, the data analysis technique in this paper uses qualitative analysis.

ASPECTS OF PRIVATE INTERNATIONAL LAW IN THE CREDIT AGREEMENT

HPI is not International Law but National Law. Some experts argue that the HPI rules are actually "supra-national". Its legal sources mean that there is one HPI system for all countries in the world must submit under one type of HPI system ([Soerjono, 1994](#)).

This opinion is in accordance with Gouwgioksiong who said that HPI is not International Law but National Law. The source of the law is not international but the material, namely relations or events which are the international objects ([Sunaryati, 2001](#)). HPI according to Sudargo Gautama:

"The whole rules and legal decisions that show which legal structure applies or what constitutes a law, if relations or events between citizens at a given time show a point of connection with the legal systems and rules of two or more different countries in the environment of power, place, personal and questions".

[Sunaryati \(2001\)](#) argues that HPI can be referred to as International Relations Law, because it is not its civil or international nature that determines the HPI rules, but its association or international relations that determine the style of HPI rules and which need to be considered are for justice and legal certainty in the same relationship must be resolved in the same way ([Sunaryati, 2001](#)).

Based on expert opinions on the notion of HPI, it can be concluded that HPI is ([Bayu, 2013](#)):

"A set of rules, principles and or rules of national law made to regulate events or legal relationships that contain transnational elements (or extraterritorial elements)."

HPI is a law that always follows the development of the needs of modern society. In its development, the HPI gives birth to different teaching, namely

- a. The legal principles based on the territorial principle (2-6 Century AD). The developing principle is:
- b. The principle of *Lex Rei Sitae (Lex site)*, the principle which states, cases involving immovable objects are subject to the law of the place where the object is located;
- c. *Lex Domicile* Principle, which means the rights and obligations of individuals must be governed by law from the place where a person is permanently resident;
- d. The *Lex Loci Contractus* principle, which means that agreements (involving parties from different provinces) apply the law from the place of agreement.
- e. The HPI principle on a genealogical basis (6-10 century AD). The developing principle is ([Cheshire, North, & Fawcett, 2008](#)):
- f. The principle of *actor sequitur forum rei*, that in each dispute resolution process, the law used is legal from the defendant's side;
- g. Determination of the ability to make an agreement for a person must be carried out based on the personal law of each party;
- h. The process of inheritance must be carried out based on the personal law of the heir;
- i. The transfer of ownership rights to objects must be carried out in accordance with the personal law of the transferor;

- j. Settlement of cases concerning illegal acts must be carried out based on the personal law of the perpetrator who violates the law;
- k. Ratification of a marriage must be done based on the law from the husband's side;
- l. The HPI principle on a territorial basis (11-12 century AD). (Stage of growth of Territorial Principles). Countries (Britain, France, and Germany) tend to apply their law exclusively to anyone in their territory ([Graveson, 1974](#)). There is no recognition of foreign rights so that in such circumstances HPI does not develop at all.
- m. Principles of territorial principles (13-15 century AD). The territorial principle is revisited because it will cause problems to the extent that a person's original law can be applied in the area where he is located ([Bayu, 2013](#)).
- n. The birth of the universal HPI theory (19th century AD). According to [Savigny \(1869\)](#), the same legal relationship must provide the same solution whether it is decided by judges of States A or B and if people want to determine what legal rules should apply in a case, the judge is obliged to determine the legal seat of that relationship ([Bayu, 2013](#); [Savigny, 1869](#)). [Savigny \(1869\)](#) thought that the legal seat must be determined first through connecting factors ([Bayu, 2013](#)). This Von [Savigny \(1869\)](#) theory is considered to have pioneered the flow in HPI with the multilateralism flow which is subsequently considered the theory of traditional Continental European HPI. Although essential can be used for various HPI events. The multilateralism approach is mostly used to determine the law that should apply to an agreement (the proper law of contract) ([Juenger, 1998](#)).

According to Sri soedewi Masjehoen Sofwan on Talking about contracts or agreements, is a legal act where someone or more ties himself to another person or more. One type of agreement that is known is the credit and guarantee agreement. According to Article 1 point (11) of Law Number 10 of 1998 concerning Banking (hereinafter referred to as Law 10/1998):

"Credit is the provision of money or bills that can be equated with that, based on an agreement or agreement between the Bank and another party that requires the borrowing party to repay the debt after a certain period of time with interest.

Mariam Darius believes that the credit agreement is a preliminary agreement (voorovereenkomst) from the submission of money which is the result of an agreement between creditors and debtors. This agreement is a consensus of the obligator which is subject to Banking law and the general part of the Civil Code ([Sutan, 1993](#)).

The relationship between HPI in the credit agreement referred to in this paper is when the foreign elements are included in it (transnational contracts). In an international agreement, if it does not contain a choice of law based on the element of freedom of the parties to make a choice of law (freedom to choose the applicable law), it will be a problem if a dispute occurs. The proper law of contract should be applied to regulate the problems in a contract¹.

The lack of choice of law in credit agreements guaranteed by ship mortgages will be a complex problem if the loan guaranteed by the ship is jammed because the ship can move outside the jurisdiction of the country where the vessel is registered, how to carry out the execution of the collateral object? Therefore, the law must be determined which will apply. Regarding this matter, various countries collaborated to form a law that was applied to ships including the issue of guarantees imposed on ships. The law in question is the 1993 International Convention on Maritime Liens and Mortgage (hereinafter referred to as the convention), which was ratified by Indonesia on July 8, 2005, based on Presidential Regulation Number 44 of 2005 concerning Ratification of the International Convention on Maritime Liens and Mortgage, 1993.

The establishment of this convention is to accommodate the differences in the legal system between the Anglo Saxon legal system that adheres to mortgage insurance institutions with a continental European legal system that adheres to a mortgage guarantee institution. According to this convention ships and mortgages can be carried out in countries participating in the convention. In addition, this convention also regulates the forced sale of ships, if the shipowner cannot pay his debt and is ordered by the authorities in a country participating in the Convention.

To forcefully sell the ship, this must be informed to the registrant official in the ship registration country, the mortgage holder on the registered vessel, and the shipowner.

However, the implementation of forced sales in accordance with the convention cannot be carried out, because both the registrar and registration countries, as well as the country where the ship is based as the object of a forced sale, must be a participant in the convention. In addition, the law in each country has also arranged this according to the convention.

In fact, Law Number 17/2008 on shipping has not accommodated this matter. Therefore, if there is a bad credit guaranteed by a ship, based on which legal rules, the settlement process can be carried out? To find a solution to the disputes over credit agreements that contain international content, according to the author there are several possibilities regarding the law which should apply including:

- a. Law from the place where the guarantee holder (the creditor) becomes a citizen or domiciled;
- b. The law of the place that has the most substantial connection with the parent agreement;
- c. The law chosen by the parties as to the applicable law in the parent agreement or in the case of no legal choice, then the law constitutes the proper law of the contract of the parent agreement.

¹ The proper law of contract "can be understood as a practical and concise understanding to describe the concept of law which regulates most things that affect a contract or the law that is applied by a forum to determine rights and obligations arising from a contract, ([Bayu, 2013](#)).

SEA SHIPS AS THE OBJECT OF MORTGAGE GUARANTEES IN CREDIT AGREEMENTS

Ships not only function as a means of transporting sea transportation but can also be used as Mortgage Guarantees. According to Hartono Hadisoeparto Mortgages are material rights that provide guarantees. Material rights are rights that give direct power to an object that can be defended against everyone (Hartono, 1984). According to article 1162 of the Civil Code Mortgage is a material right for immovable objects, to take from him for repayment of an agreement.

Regarding the mortgage object regulated in Article 1164 of the Civil Code, namely immovable objects that can be transferred along with all equipment; Usufructuary rights to objects on these objects along with all their equipment; Coral mining rights and business rights; Land interest, whether paid for with money or paid for with land products; Flowers as before; and Markets that are recognized by the government, along with the privileges attached to them.

Ships, categorized as immovable objects as mortgage objects. Article 314 of the KUHD (Indonesian Commercial Law) states that registered ships are mortgage objects. The intended ship is a sea vessel whose gross contents are at least 20 m³ in size, including ships which are still under construction. Ships that can be registered in Indonesia are (Salim, 2014):

- a. Ships with a gross size of at least 20m³ of which are rated the same as that;
- b. Owned by an Indonesian citizen or an Indonesian legal entity domiciled in Indonesia (Article 46 paragraph 2 of Act Number 21 of 1992 Jo Law No. 17 of 2008 concerning Shipping).

The purpose of ship registration is to obtain a Ship Nationality Certificate abbreviated as STKK, and as one of the requirements can be burdened with mortgages. With the STKK, the ship can sail by raising its national flag so that the flag state sovereignty applies in full on the ship and the person on board must submit to the rules of the flag State. In addition to this, the legal status of the ship becomes clear.

The legal basis for marine registration is regulated in article 314 paragraph (1) of the KUHD which states that "Indonesian ships measuring at least 20 m³ of dirty contents can be recorded in a vessel register according to the provisions to be stipulated in a separate law". Provisions regarding ship registration are also regulated in:

- a. Law number 21 of 1992 number 17 of 2008 concerning Shipping;
- b. Government Regulation Number 51 of 2002 concerning Shipping;
- c. Minister of Transportation Decree Number 6 of 2005 concerning Ship Measurement;
- d. Minister of Transportation Decree Number 1 of 2002 concerning Completion of Minister of Transportation Decree Number 14 of 1996 concerning Simplification of Procurement Procedures and Ship Registration

Registered ships can be pledged with marine mortgages. The terms of a ship can be hypnotized are:

- a. Vessels owned by Indonesian citizens or legal entities established under Indonesian legal provisions and domiciled in Indonesia;
- b. The Indonesian-owned vessel which is a joint venture whose majority shares are owned by Indonesian citizens;
- c. Vessels that have been registered with the Registrant Official and the Recipient of the Ship Name determined by the Minister;
- d. Performed by making a mortgage deed at the place where the original ship was registered.

After all the requirements are met, several procedures and requirements that must be considered in the implementation of loading ship mortgage mortgages are as follows:

- a. Ships loaded with mortgages must be clearly stated in the mortgage deed;
- b. An agreement between a creditor and a debtor is indicated by a credit agreement (which is a condition for making a mortgage deed);
- c. Credit value which is the total value received based on the collateral (e.g., land, house and ship);
- d. Mortgage value is devoted to the value of the ship (the bank is carried out by the apparatus);
- e. Installation of mortgages should be in accordance with the value of the ship and carried out with any currency in accordance with applicable laws and regulations.

The procedure that must be fulfilled to submit a request for a mortgage is the presence of parties facing the shipowner (debtor) and creditor (bank or other financial institution); creditor, namely as the owner of the ship (debtor) and as creditor; and shipowner (guarantor / not creditor) and creditor. The requirement for the shipowner (debtor) and creditor (bank or other financial institution) to face the authorized official (syahbandar) is to bring the grosse registration certificate / name and temporary credit agreement conditions for the creditor, namely as the owner of the ship (debtor) and as creditor is carrying a deed of authority to install mortgages; grosse or registration / return name and credit agreement. Whereas the conditions for shipowners (guarantor / non-debtor) and creditors are deeds of power of attorney to install mortgages; grosse registration certificate/rename, and credit agreement.

The terms and procedures for loading shipbuilding mortgages as mentioned above, are scattered and arranged partially in various laws and regulations, both the level and the lower hierarchy. This is very unfortunate because, with a problem that is so complex and has a high economic value, it has not been supported by single legislation that specifically regulates Mortgage Ships. The legislation in question is:

- a. Civil Code Article 1162 up to Article 1232;
- b. The Commercial Law Act (KUHD) Article 314, 315 and 316;
- c. NBW Netherlands Articles 1208 to article 1268;
- d. Article 49 of Law 21 of 1992 concerning Shipping;

According to [Yahya \(2014\)](#), there are several principles of Marine Ships, including ([Yahya, 2014](#));

- a. Absolute property rights, namely credit agreements Mortgage Ships are not individual rights (in personam) but are material rights (in brakes). Material rights are absolute, can be maintained to anyone; stay in the hands of whoever the mortgage object is or Droit De Suite;
- b. Has a rating based on registration (Article 315 KUHD and Article 1181 of the Civil Code)?
- c. Having Preferential Rights and Separatist Rights. Article 1133 of the Civil Code states that the right to take precedence among people with debt is issued from the privileges of Pawn and Mortgages. The position of preferential and separatist rights is not affected by the actions and circumstances of the seizure (collateral seizure or seizure) bankruptcy or liquidation ([Yahya, 2014](#)).
- d. Publicity Principle. This principle goes hand in hand with the principle of specialty (specialiteit beginsel), which is the principle of the birth of a marine boat mortgage from the date of registration of the mortgage deed; Ship mortgage mortgages are made by generalship registration officials; Grosse Ship mortgage mortgages are made by generalship registration officials;
- e. Assessor Principal. According to this principle the position and existence of the ship's mortgage depends on the principal agreement; the expiration of the ship's mortgage agreement depends on the termination of the principal agreement, namely the Credit Agreement, so that the ship's mortgage cannot be transferred separately but must be in conjunction with the Principal Agreement.
- f. Executorial Kracht. Regarding the executorial power attached to the ship's mortgage deed is regulated in Article 224 HIR, Article 440 Rv. Grosse Mortgage deeds are given an executive title "For Justice Based on the One and Only God" as well as the decision of a judge/court that has permanent legal force. If the debtor is injured, the creditor can immediately ask the Chair of the District Court to execute.
- g. Prohibition of Beding. Article 1178 paragraph (1) of the Civil Code stipulates that all promises with which the debtor is authorized to have objects given in the mortgage are null and void. The purpose of this prohibition is solely to protect the Debtor, in the case of the price of a ship which is guaranteed the possibility that the ship's price is much higher than the principal debt plus interest and execution costs.

With the existence of mortgage guarantees in the form of ships, it can guarantee repayment of certain debt so that it can provide security and guarantee legal certainty for creditors if the debtor breaks promises (defaults) or if there is a bad credit, the auction can be carried out in public in order for the mortgage collateral. achievement of repayment of the principal debt, interest and other costs. In addition to public auctions can also be requested for the execution of ships that are objects of mortgage guarantees, which will be discussed in the next sub-chapter.

THE EXECUTION OF SHIPS IS ASSOCIATED WITH PRIVATE INTERNATIONAL LAW

The provision of credit facilities from the Bank contains a lot of risk from congestion in repayment of credit installments until the Debtor does not fulfill its obligations at all to make installment payments set by the Bank. If bad credit has occurred, a credit guarantee for Debtor repayment will be disbursed, the guarantee that the Debtor has submitted to the Bank will be sold either through Auction or sold voluntarily by the Debtor and the proceeds will be paid to the Bank for repayment of Debtor debts. It will be a complicated problem if the object being collateral is in the form of a ship because the ship can move, even outside the jurisdiction of the ship registering country. This brings legal consequences to the legal regulations of the countries it crosses.

Difficulties in the execution of ships registered and located outside the region (foreign), can be understood because the execution of ships abroad is related to international legal instruments. This international legal instrument is related to the existence of ships in the jurisdiction of other countries that are not countries that accept vessel registration and mortgage registration. In the International Convention on the 1993 Convention on Maritime Liens and Mortgages in article 11 (hereinafter referred to as the convention), it is stated: "If the shipowner cannot pay his debt and there is an order by the authorities in a convention participating country to sell the vessel, then this is mandatory. informed to registrant officials in the ship registration country, mortgage holders on ships that have been registered and ship owners.

The International Convention on ships has a very important meaning for Indonesia. In addition to the convention, there is another convention, namely the Convention for Certain Rules Relating to the Arrest of Sea-Going Ship (vessel detention) (hereinafter referred to as the Convention on vessel detention) held in Brussels in 1952. According to The Convention on Ship Detention, the court can order to hold a ship that will be seized for execution to not be able to sail until there is a request from the owner to release it by giving bail ([Deasy, 2015](#)).

Indonesia has been a party to the Convention, and has ratified it, but until now there has not been a single law that specifically regulates the execution of ships registered in Indonesia which are sailing outside the territory of Indonesia or otherwise the execution of ships which registered in a foreign country in Indonesia ([Parthiana, 2015](#)). In addition, not all

countries in the world have become participants in the convention, so that execution based on the convention cannot be carried out. Thus the conditions of execution in Herzien Inlandsch Reglement (HIR) or the updated Indonesian Regulations (RIB) apply to the execution of ships ([Parthiana, 2015](#)).

Problems re-arise regarding the execution of ships in foreign countries where continental borders between two countries overlap and cause disputes. Therefore, it is very important to determine the continental shelf boundary between countries. The problem of the continental shelf boundary between two or more countries has been regulated in Article 6 paragraph (1), (2), and (3) of the Convention on the continental shelf 1958 (hereinafter referred to as the Continental Shelf Convention) and regulated in Articles 83 and 84 The 1982 UN Law of the Sea Convention, but the arrangement has not guaranteed complete settlement. because the continental shelf boundary line always contains differences, such as differences in the geographical situation and conditions of the coastal countries and their continental shelf.

Grosse mortgage deeds have executorial power, so they can be executed without going through a court process. Execution of grosse mortgage deeds can be carried out with two choices, namely through court proceedings or through auction sales. Execution through the court is done by submitting an application to the Chief Justice After the application is received, the court will then give a warning (Aanmaning) to the respondent or debtor, so that within 8 (eight) days pay the debt to the applicant. If within the said period, the respondent neglects the warning, the Chairperson of the Court instructs the bailiff to confiscate the goods which are collateral for the sale of the auction office. The auction office in carrying out auction orders is subject to the provisions of the Minister of Finance Regulation Number 27 / PMK.06 / 2016 concerning Auction Implementation Guidelines.

While execution through auction sales carried out by creditors based on Article 1178 paragraph (2) of the Civil Code. On the basis of the power of attorney to creditors to sell their own mortgage goods without court interference if the Debtor breaks the promise or defaults. However, even if the sale is carried out by the Debtor by disregarding Article 224 HIR, sales must be made in public and requested by the auction office.

The execution of ships, often experiencing obstacles, because ships always move across one country to another. In addition, there are two seizure principles that can hinder the execution of seizure (executoriale beslag) objects of marine mortgages, namely:

- a. Principle of Rijdende Beslag. This principle is regulated in Article 559 Rv which states that those who may be confiscated are executives (beslag), only limited to their vessel facilities; seizure guarantee or seizure on the ship, may not hamper the activities of the company or may not shut down the operational activities of the debtor and seizure companies placed on the ship, may not hinder or hinder the operational activities of ships to sail within the territory of Indonesia or abroad. Even though it has been confiscated, the ship is still free to sail anywhere the debtor wants.
- b. The principle of freedom to control and operate ships. In this principle, there are two systems that can be taken to carry out seizure executions, namely the first by seizure of execution based on a judge's decision or other executive rights. Based on this provision, seizure execution can only be carried out based on a decision or determination of a judge or court, or based on other executive rights. The two seizures are executed in an urgent condition stipulated in Article 599 paragraph (3) of the RV. The urgent situation is if there is a concern that the vessel will immediately leave for another place and in such a case, the creditor can ask permission from the head of the district court to order the seizure and detention of the ship and permission is given based on orders without being set forth in advance.

These two principles contain weaknesses because in practice they can cause difficulties in auction sales (verkoop executoriale) so that they can experience uncertainty. This uncertainty is due to Indonesia not yet being a member of the Convention on vessel detention so that it cannot give a detention order on the ship when auction execution will take place. In the end the auction execution was suspended.

The completion of the execution of ships is inseparable from an understanding of the various legal harmonies which also contain foreign elements, namely the existence of links between events with more than one legal system or rule of law of different countries.

To avoid inter-state conflicts, especially for countries that have become part of international conventions, it cannot be denied that Private International Law can play an active role in efforts to resolve conflicts in which ships that are objects of mortgage guarantees have crossed other countries' borders. So that the solution can be sought by referring to which Judge or Judicial Agency has the authority to settle legal cases that contain foreign elements and which laws are applied to regulate and / or resolve legal issues that contain foreign elements and the extent to which a court must pay attention and acknowledging foreign legal decisions or recognizing rights issued under the law or the Decision of a Foreign Court.

CONCLUSION

An international agreement or agreement must contain a legal choice that will be used later because it will be a very complex problem if it is not determined from the beginning of the law which will be used if a dispute occurs.

With the existence of mortgage guarantees in the form of ships, it can guarantee the repayment of certain debt so that it can provide security and guarantee legal certainty for creditors if the debtor breaks the promise (default) or in the event of bad credit. Ships that can be secured by mortgages are registered ships and ships weighing more than 20m3.

In carrying out ship executions even though Indonesia has ratified the 1993 International Convention on Liens and Mortgage, the provisions for the execution of ships in Indonesia still refer to the provisions contained in Article 224 HIR or RIB and Article 258 Rbg.

REFERENCES

1. Ambikai., & Ishan, Z. (2016). Comparative analysis of the law on tort of deviant behaviors in Malaysia and India. *Journal of Advances in Humanities and Social Sciences*, 2(4), 243-249. <https://doi.org/10.20474/jahss-2.4.5>
2. Apridar, Karim, M., & Suhana, (2011). *Ekonomi Kelautan dan Pesisir*. Yogyakarta, Indonesia: Graha Ilmu.
3. Bahder, J. N. (2008). *Metode Penelitian Ilmu Hukum*. Bandung, Indonesia: Mandar Maju.
4. Barkatullah, A. H. (2017). Implementation of limited liability principles and doctrine of piercing the corporate veil in management of local liability companies. *Journal of Advanced Research in Social Sciences and Humanities*, 2(6), 348-357. <https://doi.org/10.26500/JARSSH-02-2017-0602>
5. Bayu, S. H. (2013). *Dasar-dasar Hukum Perdata Internasional Buku kesatu*. Bandung, Indonesia: Citra Aditya Bakti.
6. Boniface, A. E. (2016). Animals: 'Objects' or 'sentient beings'? A comparative perspective of the South African law. *Journal of Advances in Humanities and Social Sciences*, 2(3), 143-155. <https://doi.org/10.20474/jahss-2.3.3>
7. Chaiya, K., Janbanklong, T., & Kerpasit, P. (2016). Factors affecting policy implementation of student loan funds, case study: Suan Sunandha Rajabhat University. *International Journal of Business and Administrative Studies*, 2(5), 118-123. <https://doi.org/10.20469/ijbas.2.10001-5>
8. Cheshire, G. C., North, P., & Fawcett, J. J. (2008). *Private International Law*. Oxford, UK: Oxford University Press.
9. Damaryanti, H., Hendrik, and Annurdi. (2017). Remission for the corruptor (Between the human right and the spirit for eradication corruption). *Journal of Advanced Research in Social Sciences and Humanities*, 2(6), 358-362. <https://doi.org/10.26500/JARSSH-02-2017-0603>
10. Deasy, E. (2015). *Kapal Laut sebagai jaminan hutang dalam perjanjian kredit* (Unpublished thesis). University of Indonesia, Depok, Indonesia.
11. Graveson, R. H. (1974). *Conflict of laws- private international law*. London, UK: Sweet and Maxwell.
12. Hartono, H. (1984). *Pokok-pokok hukum perikatan dan hukum jaminan*. Yogyakarta, Indonesia: Liberty.
13. Husseyn, U. M. (2015). *Hukum Maritim dan Masalah-masalah Pelayaran di Indonesia*. Jakarta, Indonesia: Fikahati Aneska.
14. Juenger, F. K. (1998). Need for a Comparative Approach to Choice-of-Law Problems. *Tul. L. Rev.*, 73, 1309.
15. Parthiana, I. W. (2015). *Landas Kontinen Dalam Hukum Laut Internasional*. Bandung, Indonesia: Mandar Maju.
16. Purba, C. S., & Yenny A. S. (2017). The urgency of local act draft on corporate social responsibility (CSR) in Way Kanan. *Journal of Advances in Humanities and Social Sciences*, 3(2), 69-81. <https://doi.org/10.20474/jahss-3.2.1>
17. Purwanto., and Purba, C. S. (2017). Legal aid compliance for poor local community. *Journal of Advanced Research in Social Sciences and Humanities*, 2(6), 363-370. <https://doi.org/10.26500/JARSSH-02-2017-0604>
18. Salim, H. S. (2014). *Perkembangan Hukum Jaminan di Indonesia*. Jakarta, Indonesia: Raja Grafindo Persada.
19. Satrio, J. (2017). *Hukum Jaminan Hak Kebendaan*. Bandung, Indonesia: Citra Aditya Bakti.
20. Savigny, F. C. V. (1869). *A treatise on the conflict of laws and the limits of their operation in respect of place and time*. London, UK: Stevens and Sons.
21. Soerjono, S. S. M. (1994). *Penelitian Hukum Normatif suatu tinjauan singkat*. Jakarta, Indonesia: Raja Grafindo Persada.
22. Sunaryati, H. (2001). *Pokok-pokok Hukum Perdata Internasional*. Bandung, Indonesia: Cetakan Kelima,
23. Sutan, R. S. (1993). *Kebebasan berkontrak dan perlindungan seimbang bagi para pihak dalam perjanjian kredit di Indonesia*. Jakarta, Indonesia; Institut Bankir Indonesia.
24. Yahya, H. (2014). *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata edisi kedua*. Jakarta, Indonesia: Sinar Grafika.