

**ROLE AND FUNCTIONS OF THE PRIEST'S OFFICE AND
BATU AMPAR CLASS 1 PORT AUTHORITY
BATAM IN REGISTRATION
SHIP MORTGAGE**

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ABSTRACT

The ship's mortgage burden ends or is removed after the ship's mortgage deed is written off by the Vessel Registrar and Baliknama Registrar. Writing off a ship's mortgage can only be done if a ship is no longer collateral for a debt with a mortgage, or in other words, the debtor has paid off his credit/debt to the creditor (bank). The writing off of a mortgage on a ship can be carried out based on an application submitted by the recipient of the mortgage on the ship or the transferee of the mortgage on the ship as well as based on an application from the mortgagee on the ship.

In addition, writing off a mortgage on a ship can be done based on a District Court decision or a court decision that has permanent legal force. In the event that a mortgage write-off is requested by the recipient of the mortgage on the ship, the application must be accompanied by the original *grosse* of the mortgage deed of the ship and/or *grosse* of the deed of transfer of mortgage on the ship as well as *the grosse* of the ship's registration deed or *the grosse* of the deed of transfer of the name of the ship.

Grosse deed of transfer of ship mortgage is intended in the event of a transfer of mortgage on the ship to the recipient of the ship's mortgage. Meanwhile, *the grosse* deed of transfer of name to a ship is intended in the event that the ship owner obtains ownership rights to a registered ship.

Keywords: *Mortgage , Ship. Harbormaster*

A. Background of the problem

Indonesia is a maritime country so sea transportation has an important role in connecting the archipelago and driving the economy. Sea transportation functions to

serve the mobility of people, goods and services that connect economic activities between islands and international relations. The role of transportation, especially sea transportation, is that all activities related to sea transportation need to be regulated by the state, so that the implementation of sea transportation activities can be carried out in an orderly manner and protect the interests of all parties involved in it.

Law Number 17 of 2008 concerning shipping was created to accommodate all interests relating to sea transportation, and according to the explanation of Law Number 17 of 2008 concerning shipping, it is intended that the implementation of shipping as a system can provide maximum benefits to all people, nation and state, foster and develop a maritime spirit by prioritizing the public interest and environmental sustainability, coordination between the center and regions as well as national security defense. Shipping is a means of smoothing the wheels of the economy, strengthening national unity and unity, in strengthening the realization of the archipelago outlook, improving and supporting national defense and security, which in turn can strengthen relations between nations.

Apart from that, shipping also plays a role as a supporter, driver and driver for the growth of the Indonesian economy. Shipping businesses in carrying out these business activities certainly require large amounts of capital. The provision of capital is carried out by financial institutions, and is of course accompanied by guarantees. The term collateral law comes from the translation zakerhei-dessteling or security of low. It is stated that guarantee law includes the definition of both material guarantees and individual guarantees. This legal definition of guarantee refers to the type of guarantee, not the legal definition of guarantee. The essence of collateral law is the legal provisions that regulate the legal relationship between the guarantor (debtor) and the collateral recipient (creditor) as a result of the imposition of a particular debt (credit) with a collateral (certain object or person). Guarantee law not only regulates legal protection for creditors as debt providers, but also regulates legal protection for debtors as debt recipients. In other words, collateral law not only regulates creditors' rights regarding debt repayment, it also regulates debtors' rights regarding guarantees for debt repayment.

In Article 1131 of the Civil Code (KUHPer) it is determined that "all movable and immovable property belonging to the debtor, whether existing or future, shall be

collateral for the debtor's obligations." This provision means that every agreement made which then gives rise to certain debts or performance obligations guaranteed to be fulfilled by all assets belonging to the debtor in the future. Then in Article 1132 of the Civil Code (KUHPer) it is stated that "the object becomes a joint guarantee for all those who owe it, the income from the sale of the object is divided according to the balance, namely according to the size of each receivable. , unless there are valid reasons for priority among the debtors." This article implicitly states that the principle of equality between creditors can be overridden by the existence of the right to precedence among creditors. This happens if the creditors who share them have preferential rights, so that the creditor in question becomes or has the position of preferred creditor.

A guarantee that aims to secure credit, until the realization of the credit agreement is carried out in accordance with the agreement. This guarantee will provide legal certainty to the creditor. The guarantee given to the creditor in this case is a sea vessel. According to Government Regulation Number 51 of 2002 on Shipping, ships are water vehicles of any shape and type, which are propelled by mechanical energy, wind energy, or towed, including vehicles with dynamic carrying capacity, vehicles under the surface of the water, as well as floating devices and floating buildings which does not move around. Meanwhile, an Indonesian ship is any sea vessel that has met the requirements to become an Indonesian ship, thus becoming an Indonesian national ship. Ships with a minimum size of 20 m³ (twenty cubic meters) gross can be registered in a ship register and such ships can be mortgaged.

The Commercial Code (KUHD) differentiates ships into two groups, namely ships as moving objects and ships as immovable objects. Ships as moving objects are unregistered ships (Article 314 of the Commercial Code). A ship as an immovable object is a ship that has a size of at least twenty cubic meters of gross content and is registered at the office of the Harbor Master and Port Authority of the Directorate General of Sea Transportation, Ministry of Transportation, and with this registration has the nationality of an Indonesian Ship. As a ship, as an immovable object, collateral can be placed on it only in the form of a mortgage. Mortgages are regulated in Book II of the Civil Code (KUHPer) Chapter XXI Articles 1162 to 1232.

This mortgage security must be encumbered and registered. The Shipping Law in Article 60 paragraph (2) states as follows: "Mortgages on ships are carried out by

making a mortgage deed by the Registrar and Registrar of Ship Titles at the place where the ship is registered and recorded in the Master Register of Ship Registration." And this mortgage is registered at the Harbormaster and Port Authority Office (KSOP), in the Regulation of the Minister of Transportation Number: PM 36 of 2012 concerning the Organization and Work Procedures of the Harbormaster and Port Authority Office. This authority is given to the Legal Status of Ships section of the Class I Harbormaster and Port Authority Office as follows. It is stated in Article 13 which states that "the ship's legal status section has the task of preparing measurement materials, registration, transfer of name, mortgage and nationality marks, replacement of the ship's flag and installation of sail marks."

Based on the description which is an overview of ship registration by the Harbor Master's Office and Port Authority above, in this Scientific Work, the author will try to explore and analyze more deeply about ship registration, especially ship mortgage registration, with the title "ROLES AND FUNCTIONS OF THE BOARDSHOWER'S OFFICE AND CLASS PORT AUTHORITY 1 BATAM BATU AMPAR IN THE SHIP MORTGAGE DEED REGISTRATION PROCESS

B. Formulation of the problem

Based on the description above, the problem formulation can be drawn as follows:

1. What is the role and function of the harbormaster's office and class 1 port authority of Batam Batu Ampar in the process of registering a Ship Mortgage Deed ?
2. What are the arrangements regarding the process of registering a Ship Mortgage Deed at the Batam Batu Ampar class 1 harbormaster and port authority office ?
3. What obstacles are faced by Batam Batu Ampar class 1 harbormaster and port authority office in the process of registering the Ship Mortgage Deed ?

C. Research methods

When conducting scientific research, it is clear that you must use methods, because the characteristic of science is the use of a systematic and consistent method in explaining the object being studied. The preparation of the scientific work on the draft regional regulations regarding regional levies was carried out through a juridical-

normative study method (*statute approach*), literature/documentation review (*conceptual and comparative approach*) and discussion. This research is a case study by determining the research location in the Riau Islands Province. The data used is secondary data.

In carrying out this research, the researcher **used** a type of normative legal research. Normative legal research is conceptual legal research as contained in statutory regulations and conceptually existing in other legal rules that exist in society regarding a particular legal problem. In this research, researchers used a type of normative research, namely research carried out by reviewing statutory regulations or other regulations applied in resolving a particular legal problem. Normative research is often called doctrinal research where the object of study is are statutory regulatory documents and library materials which constitute basic data which in research science is classified as secondary data.¹ According to Soerjono Soekanto, legal research can be divided into:² Normative Legal Research, consisting of:

1. Research into legal principles
2. Research on legal systematics
3. Research on the level of legal synchronization
4. Legal history research
5. Comparative legal research

In accordance with the type of research, namely normative legal research (normative juridical), more than one approach can be used. In this research, a statutory approach and a concept approach are used. *The legislative approach* is carried out to examine the statutory regulations that regulate. In the perspective of legal theory, justice is the main goal of the natural law school. Where the natural law school holds the view that law is universal and eternal.³ Based on the description in the background of the problem above, in this paper the author will explore and analyze the role and function of the Batu Ampar Class 1 Harbormaster and Port Authority Office in the Registration of Ship Mortgage Deeds in the context of realizing legal certainty in the process of registering ship mortgage deeds. In connection with this, the scope that will be addressed in this research is as follows: What are the legal regulations regarding ship registration in Indonesia and how to implement the role and function of the Batu Ampar

¹ Soerjono Soekanto, Normative Legal Research, (Jakarta, PT Raja Grafindo Persada, 2003) p.23

² *Ibid* pg 67

³ Lili Rasjidi, *Basics of Philosophy and Legal Theory* , PT. Citra Aditya Bakti, Bandung, 2011, p. 47.

Class 1 Port Authority and Harbor Master's Office in registering ship mortgage deeds and what factors are obstacles. or obstacles regarding the Role and Function of the Batu Ampar Class 1 Harbormaster and Port Authority Office in Registration of Ship Mortgage Deeds.

D. Research Results and Discussion

1. What is the role and function of the harbormaster's office and class 1 port authority of Batam Batu Ampar in the process of registering a Ship Mortgage Deed?

Making a ship mortgage deed based on a request from the ship owner and the mortgagee (creditor) or the mortgagee himself with the power of the ship owner. The form of power of attorney from the ship owner must be made before a notary which is called a Power of Attorney to Install Mortgage. The application submitted must be accompanied by a credit agreement and the original *grosse* of the ship's registration deed or *grosse* of the ship's transfer of name deed.

Power of Attorney to Install Mortgage (SKMH) on the Ship , the Notary and/or his/her proxy will first clarify the authenticity of *the grosse* of the ship's registration deed at the port office where the ship is registered. The purpose of this check is not only to determine the authenticity of *the grosse* of the ship's registration deed, but also to find out whether the ship is burdened with a mortgage or other security rights. The Registrar and Registrar of the Ship's Baliknama, based on the publicity principle of ship registration, is obliged to provide information or show what is requested by the notary regarding the ship's registration deed.

After receiving the application along with the required documents, the Registrar and Registrar of the Ship's Baliknama will carry out research on the completeness of the requirements within a maximum of 5 (five) working days from the time the complete application documents are received. If the requirements for a mortgage on a ship have been fulfilled, the Registrar and Registrar of the Ship's Baliknama will make a deed of mortgage on the ship.

The ship mortgage deed contains:

1. number and date;
2. Name and place of domicile of the Registrar and Registrar of the Ship's Baliknama;
3. Names and domiciles of mortgage grantors and recipients;

4. Number and date of the registration deed or transfer of name deed;
5. data ;
6. D the basis of the mortgage charge;
7. N mortgage value; And
8. matters agreed.

The ship mortgage deed is signed by the ship owner, the Registrar and Ship Registration Officer, as well as the Ship Registration and Ship Registration Assistant Officer. The signing, numbering, date of the ship's mortgage deed, and recording in the master register must be done on the same date. As proof that the ship has been encumbered with a mortgage, the mortgagee is given *a gross* deed of mortgage of the ship which has the same executorial power as a court decision which has permanent legal force.

Apart from having to fulfill the requirements for each deed made by an agrarian official, the mortgage deed must also fulfill the requirements as stipulated in article 1186 paragraph 2 of the Civil Code (KUHPer) . The promises that are often contained in a mortgage deed are:

1. Promise to sell yourself Article 1178 paragraph 2 of the Civil Code (KUHPer) .
2. Promises regarding the rental of objects which are the object of mortgage rights in article 1185 of the Civil Code (KUHPer) .
3. A promise not to clear the mortgaged object of mortgage rights that exceed the sale price of the object in article 1210 paragraph 2 of the Civil Code (KUHPer) .
4. Insurance promise article 297 of the Commercial Code (KUHD) .

This action of clearing mortgage expenses will certainly bring joy to the mortgage holder, because then there will be no more items used as collateral for the receivables. Therefore, the mortgage holder is then given the possibility to ask for an agreement so that it is "not cleared". But such a promise can only be made in voluntary sales, namely sales that are truly desired by the owner of the object. And can only be done by the first mortgage holder.

Based on several things contained in the ship mortgage deed as mentioned above, the giver and recipient of the ship mortgage can agree on other things deemed necessary to be included in the ship mortgage deed. In practice , the agreement that can be made is as stipulated in Article 1178 paragraph (2) of the Civil Code (KUHPer) , namely a promise to sell on one's own authority (*Parate* execution). If this is agreed in

the ship's mortgage deed, then in the event that the debtor or ship's mortgagee defaults, the creditor or mortgagee has the right to execute the collateral through public sale or auction. However, the obstacle in executing the ship which is used as a security object is that it always moves from one island's waters to another, perhaps even outside the territorial waters of the Republic of Indonesia, making it difficult to carry out the execution.

2. What are the arrangements regarding the registration process for the Ship Mortgage Deed at the Batam Batu Ampar class 1 harbormaster and port authority office?

The Registrar and Registrar of the Ship's Baliknama is an official at the office of the Harbormaster and Class I port authority designated as the place of ship registration. This includes those at the Head Office of the Directorate General of Sea Transportation. According to Bambang Sudirman , Assistant Employee Registration and Baliknama of Ships at the Batam Harbor Master's Office and Class I Port Authority , related to the imposition of ship mortgages, the role of the Registrar and Registrar of Ship Baliknama is very important, namely as an official who is authorized to make a Ship Mortgage Deed. The status of the Registrar and Registrar of the Ship's Baliknama according to the law is as a general official who, because of his position, has the authority to make authentic deeds outside the authority of the notary .⁴

If the debtor does not fulfill his obligations (default), namely does not pay his debt as agreed in the credit agreement, then the creditor has the authority to carry out direct execution of the object that is collateral without the mediation of a judge. Such authority arises because of two possibilities, namely:⁵

1. Because the Grosse Mortgage Deed has executorial power. So the object can be executed directly by selling the collateral object in public and the proceeds are calculated to pay off the debt.
2. Because there is a promise to sell on one's own power. This means that the creditor can sell the collateral in public on the basis of an execution parate. Promise to sell under one's own authority as stated in the deed; if registered in the general register, it has the nature of property rights .

⁴ Results of Interview with Bambang Sudirman (Assistant Employee for Ship Registration and Transfer of Ships at the Batam Class I Harbormaster and Port Authority Office, on Friday, April 21 2023 , at 15.10 WIB

⁵ Sri Soedewi Sofwan, *Op Cit* , p. 66.

In practice, the authority to carry out direct execution of collateral objects rarely occurs. If the debtor is in default and after receiving statements several times still does not comply, the bank does not carry out the execution itself but instead asks for intervention from PUPN or the court.⁶

The law states three ways to write off a mortgage as stated in Article 1209 of the Civil Code (KUHPer), namely:

1. due to the elimination of the principal agreement;
2. due to the release of the mortgage by the debtor;
3. due to the determination of levels by the judge.

Several authors have suggested various ways to write off a mortgage, among which PA Stein put forward six ways to write off a mortgage, namely:⁷

1. Elimination of debt, which is secured by a mortgage.
2. Afstand mortgage.
3. Disappearance of the mortgage object.
4. Mixing the positions of mortgage holder and mortgagee.
5. Delisting, due to purge and bankruptcy.
6. Revocation of property rights.

Meanwhile, according to Pitlo, there are ten ways to write off a mortgage, namely:

1. Due to the elimination of debt as the principal obligation.
2. Because the mortgage holder gives up the mortgage.
3. Due to the deletion of the mortgage object.
4. Because the qualifications of the mortgage holder are mixed with the qualifications of the owner of the mortgage object.
5. The end of the mortgage lender's rights as stated in Article 1169 of the Civil Code.
6. Expiration of the term for which the mortgage was granted.
7. Due to the fulfillment of the void conditions for which the mortgage right is granted.
8. Due to revocation of rights.
9. Because of the level determination by the judge (*gerechtelijke rangegeling*).

⁶ *Ibid*,

⁷ Badrulzaman & Marisus Darus, *Op Cit*, p. 75.

10. The mortgage holder's rights end if the execution has been carried out.

If the mortgage has been terminated or terminated, the mortgage registration will be removed (roya). This write-off is necessary so that the debtor can regain his rights to the mortgaged object as it was in the condition before the object was mortgaged. The deletion is carried out with the permission of the interested parties or according to a judge's decision which is handed down at the final stage or which has obtained absolute force as intended in Article 1195 paragraph 2 of the Civil Code (KUHPer) .

The ship's mortgage burden ends or is removed after the ship's mortgage deed is written off by the Vessel Registrar and Baliknama Registrar. Writing off a ship's mortgage can only be done if a ship is no longer collateral for a debt with a mortgage, or in other words, the debtor has paid off his credit/debt to the creditor (bank).

The writing off of a mortgage on a ship can be carried out based on an application submitted by the recipient of the mortgage on the ship or the recipient of the transfer of the mortgage on the ship and also based on an application from the mortgagee on the ship. In addition, writing off a mortgage on a ship can be done based on a District Court decision or a court decision that has permanent legal force.

In the event that a mortgage write-off is requested by the recipient of the mortgage on the ship, the application must be accompanied by the original *grosse* of the mortgage deed of the ship and/or *grosse* of the deed of transfer of mortgage on the ship as well as *the grosse* of the ship's registration deed or *the grosse* of the deed of transfer of the name of the ship. *Grosse* deed of transfer of ship mortgage is intended in the event of a transfer of mortgage on the ship to the recipient of the ship's mortgage. Meanwhile, *the grosse* deed of transfer of name to a ship is intended in the event that the ship owner obtains ownership rights to a registered ship.⁸

3. What obstacles are faced by the harbormaster's office and class 1 port authority of Batam Batu Ampar in the process of registering the Ship Mortgage Deed

If the person requesting to write off the mortgage on the ship is the mortgage provider, then the application must be accompanied by an original letter of approval from the recipient of the mortgage on the ship, the grosse of the mortgage deed of the ship and/or the grosse of the deed of transfer of mortgage on the ship as well as the

⁸ Hendri Raharjo, *Op Cit* . matter. 152

grosse of the ship's registration deed or the grosse of the ship's transfer deed. An application for writing off a mortgage (roya) and a letter of approval for writing off a mortgage (roya) submitted or given by a mortgagee for a ship which is a foreign legal entity, must be legalized by a Notary at the place where the application or letter of approval is made.

Writing off a mortgage (roya) is carried out by making a note regarding the end of the mortgage charge on the ship and crossing out the note previously made regarding the mortgage charge on the ship in the master list of the ship concerned. Notes regarding the end of the mortgage on the ship are then copied into the grosse of the ship's mortgage deed. The grosse of the ship's mortgage deed is then returned to the ship owner along with the grosse of the ship's registration deed or the grosse of the ship's transfer deed.

The abolition of a mortgage or writing off a mortgage by article 31 Stb 1834: 27 is called "roya", which means writing off. This means that the termination of the mortgage is recorded in the relevant documents, especially in the certificate of title where the existence of the mortgage is recorded. So if the debt borne by the mortgage has been paid in full, then at the request of the interested party a write-off or roya is carried out on the mortgage in question.

Regarding the function of mortgage custodian employees in carrying out roya, according to the opinion most commonly held, the mortgage custodian employees in this case only act as administrative employees; This means that the act of roya does not constitute an absolute deletion of a mortgage holder's rights, so that if it happens that the write-off that has been carried out turns out not to be in accordance with the actual situation, so in the event that a mistake has been made, then that is the actual situation. recognized by the judge.

Mortgage roya is usually done voluntarily with the mortgage holder's consent, but if the mortgage holder is unwilling to give his consent, then the roya can also be ordered by a judge. Also, after an execution carried out by a judge is completed with the distribution of auction proceeds, the judge will order a roya to be carried out.

E. Conclusion

Based on the descriptions in the previous chapters, several conclusions are obtained, including the following:

1. The imposition of a mortgage on a ship is carried out by making a ship mortgage deed by the Registrar and Registrar of the Ship's Baliknama at the place where the ship is registered and recorded in the master register of the ship concerned. One of the offices of the Registrar and Registrar of Transfer of Ship Names is the Batam Class I Port Authority and Harbor Master's Office.
2. The legal regulation of ship registration in Indonesia is contained in several statutory regulations, namely the Commercial Code, Law Number 17 of 2008 concerning Shipping, especially in the sixth part which regulates the Legal Status of Ships starting from Article 158 to Article 161. Apart from that, it is also regulated in several regulations. implementation, namely Government Regulation Number 51 of 2002 concerning Shipping and Minister of Transportation Regulation Number PM 13 of 2012 concerning Ship Registration and Nationality. In general, it can be said that ship registration is so that each ship can always be identified throughout its operational life, therefore any changes to the name, ownership, size and specifications, other signs of the ship must be honestly reported to the ship registration official where the ship is registered.
3. The problem in the field in the process of registering a ship mortgage is that the ship being used as collateral for the mortgage is not currently in the area of the Class 1 Harbor Master and Port Authority Office of Batam City, so the certainty of the existence of the ship being used as collateral in the credit agreement is difficult to prove materially.

F. Suggestion

1. Legal regulations regarding ship registration should be regulated comprehensively in one piece of legislation, either in the form of an Act or in the form of a Government Regulation. So as to provide legal certainty to the parties, both to the ship owner and to other parties who have an interest in the ship.
2. The mortgage on the ship should be carried out by making the ship's mortgage deed by the Ship's Registrar and Registrar's Office in the place where the ship in question is located so that the ship is easy to prove materially.

3. In an effort to provide legal certainty in ship registration, it is necessary to improve and organize the legal system of ship registration in Indonesia so that it is more effective and efficient.



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**Law Journal Borobudur International
Vol 1 No 1, July 2024**

ISSN: 2809-9664

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**Law Journal Borobudur International
Vol 1 No 1, July 2024**

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