

## Legal Duties in Delivering Auctioned Assets as Legal Responsibilities of Execution Auction Sellers: Comparative Perspective

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### Abstract

In execution auctions, delivering auctioned assets to the winning bidder is not merely a procedural formality but constitutes a fundamental legal obligation that directly affects fairness, legal certainty, and the overall integrity of the enforcement system. Although the auction itself may have been formally concluded, various problems frequently occur at the post-auction stage, such as prolonged delays in delivery, outright refusal to hand over assets, or the emergence of legal ambiguities regarding the scope of responsibility among different actors. These issues not only undermine public trust in the auction mechanism but also diminish the value of judicial enforcement as a means of protecting rights and upholding justice. This article specifically examines the legal responsibilities of execution auction sellers, particularly courts, bailiffs, and other appointed officials, in ensuring that the transfer of assets to winning bidders proceeds effectively and without obstruction. Employing a justice-based legal approach, the study combines doctrinal analysis with comparative insights by referencing practices in Indonesia and selected civil law jurisdictions, including Germany and the Netherlands. Such comparison highlights structural weaknesses in Indonesia's regulatory framework, which insufficiently safeguards the rights of winning bidders once the auction has concluded. The findings suggest that legal reform is urgently needed to harmonize procedural law with the principles of fairness, effectiveness, and institutional accountability. Strengthening legal clarity and enforcement mechanisms would not only protect buyers but also reinforce the legitimacy of execution auctions as instruments of justice within the broader system of business law.

## 1. Introduction

Auction of collateral execution is one of the legal mechanisms used to resolve non-performing loans. In the Indonesian legal system, the execution of collateral rights is regulated by Law No. 4 of 1996 concerning Mortgage Rights (Law No. 4/1996). The main purpose of this auction is to provide legal certainty to creditors in obtaining debt repayment from the proceeds of the sale of the collateral object. The auction winner, as the party that has legally purchased the auction item thru official mechanisms, has full rights to that item.<sup>1</sup>

The debtor's dispute over possession of the auctioned object after the auction process is complete indicates an imbalance between legal rights and physical possession. Although the land title certificate has been transferred to the auction winner, in reality, possession often

<sup>1</sup> Sukmaya, M. A., Abubakar, L., & Handayani, T. (2020). Perlindungan hukum bagi pemenang lelang objek hak tanggungan dalam hal eksekusi terhalang oleh gugatan ditinjau dari hukum jaminan. *Jurnal Ilmiah Galuh Justisi*, 8(2), 204-229.

remains with the debtor. This becomes an obstacle to the full utilization and ownership of the auction item. The legal status of the auction winner in this context needs to be examined more deeply. Has the law given the auction winner a strong position to gain physical possession of the object, or are there still loopholes that allow the debtor to retain the object? This ambiguity creates legal uncertainty in practice.<sup>2</sup>

Execution auctions are designed to serve as a final and authoritative mechanism of law enforcement, particularly in debt recovery through the compulsory sale of secured assets. However, the effectiveness of execution auctions is frequently undermined not at the stage of sale, but at the post-auction phase, namely, when the winning bidder is unable to obtain actual possession of the purchased asset due to continued occupation by the debtor, refusal to vacate, or prolonged administrative and procedural delays. In such circumstances, the auction process produces a paradoxical outcome: the buyer obtains formal ownership through state-supervised procedures, yet cannot enjoy the substance of the acquired right. This situation undermines legal certainty, disrupts market confidence in judicial auctions, and ultimately weakens the legitimacy of execution as an instrument of justice.

Normatively, the executory power of the Lien is intended to ensure that enforcement can be carried out quickly, simply, and with legal certainty. In essence, enforcement is not only related to the legal transfer of rights through auction sales, but must also guarantee that the party acquiring the rights, in this case, the auction buyer, can take actual possession of the object free from interference from other parties. Without physical possession, the property rights acquired through auction lose their substantive meaning.

The core legal issue lies in the absence of a coherent framework that clearly assigns responsibility for the delivery of auctioned assets—especially immovable property—after an execution auction has been completed. In Indonesia, the normative landscape governing post-auction delivery appears fragmented, creating disharmony between the goals of execution law and the procedural practices that follow auction results. Law No. 4/1996 emphasizes the executorial nature of mortgage enforcement and reflects the expectation that execution should be fast, effective, and legally certain. Nevertheless, Law No. 4/1996 does not explicitly regulate who bears responsibility for ensuring that the object sold at auction is physically delivered or vacated for the winning bidder.

Despite the legal foundation, the execution of mortgage rights often faces significant practical challenges. One such issue arises when the auctioned property remains occupied by the previous owner, who refuses to vacate the premises—even though the auction has been completed and the winning bidder has fulfilled payment obligations. This refusal prevents the rightful owner (i.e., the auction winner) from taking possession of the property<sup>3</sup>. This often occurs even though the auction is conducted legally through official state mechanisms. Auction buyers are often unable to immediately take possession of the object they have

<sup>2</sup> Supriyatno, B. (2020). *Rekonstruksi regulasi perlindungan hukum terhadap debitor dalam pelaksanaan eksekusi hak tanggungan yang berbasis nilai keadilan Pancasila* (Disertasi Doktoral, Universitas Islam Sultan Agung, Indonesia).

<sup>3</sup> Shohib Muslim et al., "Appraisal Team : Responsibility and Principle of Fairness in Determining the Value of the Auction," *Arena Hukum* 17, no. 3 (2024): 613–38, <https://doi.org/https://doi.org/10.21776/ub.arenahukum2024.01703.7>.

purchased because it is still occupied by the debtor or another party. In such circumstances, the obligation to seek eviction is imposed on the auction buyer, either through an application for enforcement to the court or through other legal means. Imposing the obligation of eviction on auction buyers raises fundamental issues of fairness. Auction buyers are third parties acting in good faith, not involved in credit legal relationships, and not contributing to the default. The buyer has fulfilled all of their legal obligations by paying the auction price, taxes, and other administrative costs. However, they still have to bear additional risks in the form of costs, time, and potential legal and social conflicts in order to obtain physical control over the object they have legally purchased.

Conversely, debtors who have defaulted are in a relatively advantageous position because they can continue to control the object without a valid legal basis. This practice indirectly creates excessive protection for defaulting debtors and creates moral hazard that has the potential to undermine credit discipline and trust in the collateral and auction system. In this context, there is an imbalance between legal burdens and benefits that is not in line with the principles of corrective justice and distributive justice, caused by a lack of norms regarding who has legal responsibility for vacating auctioned objects.

Furthermore, this condition reflects a reduction in the meaning of the executory power of the Right of Lien. Execution that stops at auction sales without being accompanied by a guarantee of physical vacating shows that property rights, which should be strong and provide certainty, have become ineffective. The state, which acts as the auction organizer and holder of the authority to execute, appears to have relinquished its executory responsibility and shifted the burden of enforcing rights to auction buyers.

Law No. 4/1996 does not provide explicit provisions on the process of vacating auctioned property during execution proceedings. Instead, this procedure refers to Article 200(11) of the HIR or Article 218(2) of the RBg, which allows the Chief Judge to issue an order for judicial officers, with police assistance if necessary, to enforce the vacating of the property. However, this norm does not necessarily impose responsibility on the state through auctioneers to vacate auctioned properties. At the procedural level, the mechanism of vacating an auctioned object is commonly linked to Article 200(11) of the HIR and Article 218(2) of the RBg, which allow the court to order vacating through judicial officers with possible police assistance. Yet, these provisions are not structured to clarify whether such vacating constitutes an inseparable component of execution auction itself or merely an optional, separate enforcement step that must be initiated independently by the buyer. This uncertainty is reinforced by Supreme Court Circular Letter No. 4 of 2014 (SEMA No. 4/2014), which indicates that buyers may request execution directly without filing a civil lawsuit when the debtor refuses to vacate. However, as a circular letter, SEMA functions more as interpretive guidance than as a firm normative allocation of responsibility, leaving judicial practice inconsistent across cases.

Further ambiguity is found in the auction governance regime under Minister of Finance Regulation No. 122 of 2023 (PMK No. 122/2023). Article 12(1)(j) states that the seller bears responsibility for the delivery of auctioned goods, yet the regulation does not specify whether “delivery” refers merely to administrative transfer (such as issuance of auction minutes and documentation) or also includes physical delivery and ensuring vacant possession. As a result,

a normative vacuum emerges: the state conducts the auction, formalizes the winner's title, and collects payment, yet the winning bidder may still bear the burden of pursuing additional legal processes often costly, time-consuming, and socially conflictual simply to obtain possession of property acquired in good faith through a state-sanctioned auction.<sup>4</sup>

The lack of clarity in the Law No. 4/1996 and related auction regulations regarding the creditor's responsibilities and legal standing to request property evacuation has resulted in significant problems during the sale of mortgage objects. In practice, creditors often sell problematic properties at auction, which contradicts the legal principle of good faith in sales transactions. This legal uncertainty prolongs the auction process, increases litigation costs, and complicates execution procedures. If addressed early (before the auction stage) it would ensure that the property is free from disputes at the time of sale. Unclear legal norms also undermine the core purpose of the Mortgage Law and the auction regime, which were established to ensure certainty, fairness, and efficiency in the enforcement of credit guarantees.

In reality, debtors often resist surrendering the collateral for execution and actively delay the process in hopes of eventually settling the debt<sup>5</sup>. This causes protracted delays in the auction process, resulting in uncertainty and lack of protection for the creditor's rights to recover the debt. Execution auctions serve as a mechanism to enforce court decisions, particularly in the collection of debts through the sale of debtor assets. Once a winning bidder has fulfilled their payment obligations, the fundamental expectation is that the auctioned asset will be transferred without undue delay or complication<sup>6</sup>. However, in practice, this ideal is frequently undermined by legal uncertainties and enforcement failures, which often leave winning bidders without recourse or remedies.

There are no clear and explicit regulations regarding the subject who has legal responsibility to vacate the auctioned collateral and the mechanism for vacating it that is inherent in the execution process. This normative vacuum opens the door to inconsistent practices that have the potential to undermine legal certainty. Therefore, the issue of vacating auctioned objects cannot be viewed as a purely technical matter, but rather as a structural problem that touches on aspects of legal philosophy, theories of justice, and the politics of legal enforcement of collateral.

The core problem addressed in this article lies in the post-auction phase—specifically, the legal duties and responsibilities of the auction seller to ensure successful asset delivery. Execution auction sellers, typically judicial officers or public institutions acting under court supervision, are often viewed as neutral facilitators of sales rather than as parties with enforceable responsibilities. Yet, when delivery is obstructed, due to third-party claims, ongoing possession by the debtor, or administrative inaction, it is the winning bidder who

<sup>4</sup> Mohammad Algifarri Sukmaya, Lastuti Abubakar, and Tri Handayani, "Perlindungan Hukum Bagi Pemenang Lelang Objek Hak Tanggungan Dalam Hal Eksekusi Terhalang Oleh Gugatan Ditinjau Dari Hukum Jaminan," *Jurnal Ilmiah Galuh Justisi* 8, no. 2 (2020): 204–29.

<sup>5</sup> Desminurva Festia Amalia, "Perlindungan Hukum Bagi Pemenang Lelang Apabila Obyek Lelang Disita Dalam Perkara Pidana Fairness and Justice : Jurnal Ilmiah Ilmu Hukum," *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 17, no. 1 (2019): 18–35.

<sup>6</sup> Christina M Sautter, "LSU Law Digital Commons Auction Theory And Standstills : Dealing With Friends And Foes In A Sale Of Corporate Control," *Case W. Res L. Rev* 64, no. 4 (2013): 521–57.



bears the risk and suffers the loss. This article argues that such outcomes represent a failure of justice in enforcement, and that the seller's role must be reconceptualized as bearing a positive legal duty to complete the transfer effectively. Through a justice-based lens and comparative legal analysis, this study seeks to clarify the nature and scope of those responsibilities, and to evaluate whether existing frameworks (particularly in Indonesia) adequately protect the interests of winning bidders.

Academic discussions around execution auctions have traditionally focused on the procedural aspects of auction validity, creditor rights, and the role of courts in initiating asset sales. Foundational Indonesian legal scholars have provided comprehensive insights into civil procedure and enforcement mechanisms, yet their work emphasizes auction legality over post-auction asset transfer obligations. The article by Dwi Ngurohandini and Etty Mulyati<sup>7</sup> provides a comprehensive description of the legal consequences arising from civil lawsuits against the auction of mortgage rights. This description is based on descriptive, analytical, empirical, legal research using data from cases at the KPKNL Bandung. The research looks at lawsuits and counterclaims that cause legal uncertainty for mortgage holders, auction buyers, and other parties involved in the execution of mortgage rights. It is imperative to establish specific legal procedures for the enforcement of mortgage rights, thereby ensuring legal certainty and establishing the auction of mortgage rights as the final recourse for mortgage right holders. Secondly, the study conducted by Ayub Suran Ningsih<sup>8</sup>, which focuses on the auction of mortgage rights through the KPKNL, is viewed as an effective solution for both parties in cases of defaulting debtors, as the KPKNL applies procedures in accordance with applicable regulations that protect the interests of both parties, as the final resort (*ultimum remedium*) for debtors. Thirdly, the study by Tifani Rini et al.<sup>9</sup> tends to analyse the context of inherited property mortgaged by the deceased, where the heirs must fulfil the obligations. In the event of refusal, the bank has the option of auctioning the property. It was determined through the examination of numerous case studies that auction winners frequently encountered challenges in exercising their rights, despite having won the auction in accordance with the law. This underscores the fact that auction winners frequently lack adequate legal protection, particularly in the context of disputes with heirs. Despite the existence of auction regulations, legal uncertainty persists, and the protection afforded to auction winners requires enhancement.

This normative fragmentation produces a structural imbalance of justice. Winning bidders are third parties who are not part of the initial credit relationship and do not contribute to debtor default. They fulfill all financial obligations arising from the auction transaction,

<sup>7</sup> Dwi Nugrohandhini and Etty Mulyati, "Debitor Cidera Janji . Banyak Digunakan Dengan Pertimbangan Lebih Memberikan Rasa Aman ( Secured ) Karena Nilai Mengingat Pentingnya Kedudukan Lembaga Jaminan Dalam Mendukung Dana Perkreditan Maka Sudah Semestinya Pemberi Dan Penerima Kredit Serta Pihak L," *Jurnal Bina Mulia Hukum* 4, no. 114 (2019), <https://doi.org/10.23920/jbmh.v4n1.3>.

<sup>8</sup> Ayup Suran Ningsih, "Kajian Yuridis Efektifitas Penyelesaian Kredit Macet Melalui Lelang Hak Tanggungan," *Arena Hukum*, 2021, 546-66, <https://doi.org/https://doi.org/10.21776/ub.arenahukum.2021.01403.7>.

<sup>9</sup> Tifani Rini et al., "Maintaining Legal Certainty in Indonesia: The Role of Legal Instruments in Protecting Auction Buyer," *Al-Ihkam* 34, no. 2 (2024): 393-418, <https://doi.org/10.21580/ahkam.2024.34.2.22531>.

including payment of the price and administrative requirements, but are often exposed to post-auction risks that should logically remain within the scope of institutional enforcement. Meanwhile, defaulting debtors may remain in occupation without legal basis, effectively receiving indirect procedural advantage. This outcome is incompatible with the principles of fairness, effectiveness of execution, and accountability in state enforcement.

Existing scholarship on execution auctions in Indonesia has primarily concentrated on the legality of auction procedures, creditor enforcement rights, and the vulnerability of auctions to civil litigation. Although these studies provide important insights into procedural compliance and legal protection doctrines, they tend to treat post-auction delivery failures as incidental consequences rather than as a central normative defect of execution law. The prevailing academic focus remains on whether the auction is valid and enforceable in law, rather than whether the enforcement process fulfills its substantive function—ensuring that the winning bidder obtains actual possession and effective enjoyment of the acquired asset. Consequently, the question of whether execution auction sellers—such as courts, bailiffs, or appointed state officials—bear a positive legal duty to complete delivery remains underdeveloped, despite its major implications for justice and enforcement credibility.

For this reason, comparative legal analysis becomes essential. Where Indonesia's framework demonstrates uncertainty and institutional discontinuity, several civil law jurisdictions have developed clearer mechanisms that integrate delivery and possession transfer into the execution auction continuum. Germany and the Netherlands are particularly relevant comparators because both systems reflect mature civil law traditions in which judicial auctions are viewed as a unified enforcement process—where the authority conducting the auction bears continuing responsibility until the buyer receives enforceable possession, not merely formal documentation. These jurisdictions provide instructive models for how legal duties can be structured, how enforcement officers may be empowered to secure delivery, and how institutional accountability can be embedded into execution systems.

This article introduces a novel approach by framing the delivery of auctioned assets not as a peripheral issue, but as a central legal responsibility of execution auction sellers. It questions the adequacy of Indonesia's current legal infrastructure and argues that the absence of explicit post-auction duties weakens the enforcement system and erodes public trust in legal outcomes. Accordingly, this article examines the legal responsibilities of execution auction sellers in ensuring the delivery of auctioned assets to winning bidders, with specific focus on post-auction possession and the protection of good-faith buyers. Employing a justice-based doctrinal approach and comparative insights from Germany and the Netherlands, this study aims to identify normative weaknesses in Indonesia's current framework and propose a stronger, accountability-oriented concept of seller responsibility. By addressing this often-overlooked phase of the auction process, the article contributes to the development of a more comprehensive and just theory of execution law in Indonesia.

## 2. Methods

This research adopts a normative juridical method, which focuses on analyzing legal norms<sup>10</sup> governing the responsibilities of auction sellers in execution auctions and how those norms are implemented and interpreted in practice. This study employs doctrinal (normative) legal research, meaning that the primary object of analysis is law as a normative system, including statutory provisions, implementing regulations, judicial interpretations, and authoritative doctrinal principles. In this context, “doctrinal” does not merely refer to a descriptive reading of legal texts, but functions as an analytical method to examine: (i) the structure and coherence of norms, (ii) the allocation of legal responsibility among legal actors, and (iii) legal consequences and enforceability of obligations arising from execution auction processes. Accordingly, the analysis focuses on normative consistency, legal construction, and justice-based justification of the responsibility of execution auction sellers to ensure effective delivery of auction objects to winning bidders. The doctrinal approach is applied to identify regulatory gaps and normative disharmony, particularly regarding the post-auction phase, where formal ownership does not necessarily translate into physical possession.

The research methodology employs three key legal approaches including Statutory approach: Analyzing relevant legislation such as the Civil Code, the Law No. 4/1996, auction execution regulations, and ministerial regulations; Conceptual approach: Examining legal theories, particularly those relating to justice and legal protection in execution auctions; and Case approach: Investigating relevant judicial decisions and concrete cases involving the delivery of auctioned objects. This study applies a functional comparative approach, consistent with Peter de Cruz’s model, by examining how each jurisdiction addresses the same practical legal problem: the inability of auction winners to obtain effective possession of purchased property. In addition, the research incorporates contextual comparison, acknowledging that enforcement outcomes depend not only on written norms but also on institutional design and implementation mechanisms. This combined method strengthens the relevance of the comparative findings and avoids superficial rule transplantation.

The research uses two primary data collection methods, with a literature review involving the systematic collection and analysis of Primary Legal Materials<sup>11</sup>: Binding sources such as the Civil Code, Law No. 4/1996, auction regulations, judicial decisions, and relevant procedural codes, and Secondary Legal Materials: Supporting materials such as academic journals, legal commentaries, textbooks, research theses, draft legislation, and expert analyses. Case Studies: Examining selected court decisions and real-world disputes involving post-auction delivery failures or complications, to identify patterns, legal reasoning, and institutional responses. The data is analyzed through the following techniques, including Qualitative Descriptive Analysis, Comparative Analysis, and Normative Evaluation. This methodological framework allows the research to move beyond mere textual interpretation, offering a structured, theory-informed legal argument that integrates normative goals with practical enforcement realities.

<sup>10</sup> Mathias M Siems, “Varieties of Legal Systems : Towards a New Global Taxonomy,” *Journal of Institutional Economics* 12, no. 3 (2016): 1–30, <https://doi.org/https://doi.org/10.1017/S1744137415000545>.

<sup>11</sup> Mathias M Siems and Daithí Mac Síthigh, “Mapping Legal Research,” *The Cambridge Law Journal* 71, no. 3 (2012): 1–35, <https://doi.org/https://doi.org/10.1017/S0008197312000852>.

### 3. Results and Discussion

#### 3.1. Legal Framework Governing the Delivery of Auctioned Objects by the Seller to the Winning Bidder

The Indonesian execution auction framework demonstrates a central structural weakness: while the auction mechanism is designed to produce finality in the transfer of rights from the debtor to the winning bidder, the legal framework does not consistently secure the post-auction realization of those rights in the form of physical delivery and vacant possession. This creates a practical enforcement gap, where a winning bidder may obtain formal title through the auction minutes (*risalah lelang*), yet remain unable to enjoy the substantive utility of the object due to continued occupation, resistance to vacating, or delays in execution assistance.

The normative legal analysis of Indonesia's current auction execution framework reveals a fragmented and incomplete approach to the post-auction phase – particularly regarding the delivery of auctioned assets to winning bidders. Various regulations, including HIR, RBg, Law No. 4/1996 concerning Mortgage Rights, and the Minister of Finance Regulation No. 122/2023, primarily emphasize procedures for seizure, public announcement, and auction sales. However, none of these instruments provide a clear normative provision that explicitly obligates the auction seller – whether that be the bailiff (*jurusita*), public auction official (*Pejabat Lelang*), or execution officer – to ensure that the object is physically or legally delivered to the winning bidder after the auction is finalized.

In practice, the execution seller's role is often considered concluded once the *Risalah Lelang* (auction minutes) has been signed, regardless of whether the buyer has successfully received possession of the property. The system lacks a follow-up enforcement mechanism embedded within the auction procedure itself. This legal omission creates a structural risk wherein buyers may fully comply with payment obligations and obtain formal ownership rights, but fail to acquire actual control or enjoyment of the property due to third-party occupation, debtor resistance, or legal contestations that arise post-sale.

From the standpoint of positive law, Indonesia does not provide a single explicit norm that clearly states: "the seller (auction organizer/official/state authority) is legally obligated to ensure physical delivery and vacant possession of the auction object to the winning bidder." The existing regulations tend to concentrate on the procedural validity of auctions, documentation, payment, and transfer of rights. As a result, delivery is frequently treated as a post-auction "practical matter" rather than as an integral legal obligation embedded within the execution auction itself. This legal void reflects a narrow procedural view of execution auctions, one that focuses on the completion of formalities rather than the realization of rights. In this context, justice becomes procedural rather than substantive, and the protection of the buyer's legal interest is compromised once the state disassociates itself from the consequences of failed delivery.

This research began with the normative assumption that the auction seller, as an arm of state enforcement, should bear a continuing legal responsibility to ensure the delivery of auctioned assets to the winning bidder. This assumption is based on the principle that public legal processes, especially those conducted under court authority, should lead to outcomes



that are both legally valid and practically enforceable<sup>12</sup>. The analysis, however, reveals a significant gap between this assumption and the legal reality. First, the statutory framework fails to extend enforcement duties beyond the payment and documentation stages. For instance, neither the HIR nor Minister of Finance Regulation No. 122/2023 explicitly mandates that a bailiff or auction official assist in vacating property, coordinating eviction, or intervening when delivery is obstructed. Second, judicial practices demonstrate inconsistency. In some instances, courts have proactively issued execution orders to assist buyers in taking possession of auctioned assets, especially when resistance from the debtor is involved. However, in many other cases, courts have ruled that the buyer must pursue an entirely new civil case – such as an unlawful occupation suit (*gugatan perbuatan melawan hukum*) – to obtain control of the property, effectively treating post-auction delivery problems as private disputes, not matters of enforcement<sup>13</sup>. This inconsistency indicates that the legal system has not institutionalized a uniform understanding of auction finality, and thus, the assumption of seller responsibility remains theoretically valid but normatively unfulfilled<sup>14</sup>. The lack of integrated post-auction enforcement mechanisms represents a clear normative gap between expected justice outcomes and the structural capacity of the legal framework to deliver them.

Execution auctions conducted by state officials or under court authority are not private contracts but are instruments of public law enforcement. The seller – whether the bailiff, auction officer, or court – is not merely facilitating a sale but is executing a judicial function on behalf of the state. Accordingly, the seller's role should not end with the financial transaction but must extend to ensuring that the legal rights obtained by the buyer are realized in practice. Legal responsibility in this context must be interpreted beyond textual statutes to include duties derived from legal principles such as Legal certainty, which mandates that lawful rights obtained through formal processes must be respected and executable; Protection of good faith third parties, particularly buyers who have participated in good faith in state auctions; and the principle of effectiveness in enforcement, which holds that enforcement mechanisms must not only be available in theory but effective in actual outcomes. These principles collectively support the argument that auction sellers have a residual legal obligation to guarantee that auctioned objects are delivered. Their failure to do so transforms the auction from a legal remedy into a potential legal trap, where procedural compliance does not result in substantive justice.

Moreover, if the state allows auction sellers to disengage post-sale, it effectively shifts the burden of enforcement onto the buyer, which is not only inefficient but also unjust. Buyers may lack the authority, resources, or procedural avenues to resolve delivery disputes, particularly against uncooperative debtors or possessors without clear legal standing. The legal framework governing the delivery of auctioned objects in execution sales is comprehensively regulated across multiple statutory instruments and auction implementation

<sup>12</sup> Qinghui Guan and Huisu Jang, "A Decentralized Auction Model for Sustainable Housing Rental Market," *Sustainability* 15, no. 21 (2023): 1–29, <https://doi.org/https://doi.org/10.3390/su152115467>.

<sup>13</sup> Heike Gramckow, "Court Auctions Effective Processes and Enforcement Agents," 1-26 (Washington D.C., 2012).

<sup>14</sup> Philipp Hacker and Chris Thomale, "Crypto-Securities Regulation: ICOs, Token Sales and Cryptocurrencies under EU Financial Law," *European Company and Financial Law Review* 15, no. 4 (2018): 645–96, <https://doi.org/https://doi.org/10.1515/ecfr-2018-0021>.

guidelines. These regulations aim to ensure that auction processes are conducted fairly, transparently, and in a manner that guarantees legal certainty for all parties involved<sup>15</sup>.

In execution auctions, the process is typically conducted under the authority of the Chair of the District Court, who acts as the auction seller, pursuant to provisions of civil procedural law such as the HIR. The auction seller is legally obligated to deliver the auctioned object to the winning bidder based on a valid court order and auction documents such as the minutes of auction (*risalah lelang*) and the official auction ruling<sup>16</sup>. The seller must ensure that the object being auctioned is delivered in a condition free from legal disputes or third-party claims that may hinder the winning bidder's acquisition and use of the object. The seller is also obligated to provide accurate and complete legal information about the status of the auctioned object, thereby ensuring that the winning bidder obtains full legal certainty over the property.

The winning bidder is entitled to receive the auctioned object lawfully and without obstruction. In cases where the object remains occupied—such as when a previous owner refuses to vacate—a request for judicial enforcement of eviction can be submitted to the competent court. This may be the District Court or Religious Court, depending on the nature of the object and applicable jurisdiction. This enforcement mechanism constitutes an essential element of legal protection, allowing the auction winner to take effective possession of the object. Following the physical delivery of the object, the legal title (especially in cases involving land and buildings) must be officially transferred through registration at the local land office (*kantor pertanahan*) in accordance with applicable laws. This administrative process is a vital component of legal certainty and serves to validate the new ownership status of the auctioned property. For auctioned assets encumbered with mortgage rights or fiduciary guarantees, the execution and delivery process must comply with additional legal requirements set out in regulations related to fiduciary auction laws<sup>17</sup>. The seller is responsible for ensuring that all necessary documents are complete and that the auction is conducted in accordance with legal procedure to avoid future disputes.

The legal framework obligates the auction seller to deliver the object free of any legal encumbrances, ensuring that the winning bidder receives full legal protection and ownership rights. Coordination among courts, auction officials, and relevant administrative institutions is essential to uphold the principles of fairness and legal certainty in execution auctions.

### 3.2. Legal Responsibility of the Auction Seller to Deliver the Object Free from Legal Disputes from the Perspective of Equitable Law

This section reconstructs the responsibility of the execution auction seller not as a mere normative postulate, but as a doctrinal conclusion derived from systematic interpretation of Indonesian execution law and its institutional logic. Although Indonesian auction governance does not expressly impose an explicit duty on the auction seller to guarantee that the object is

<sup>15</sup> Izzy Al Kautsar and Danang Wahyu Muhammad, "Investigation The Interest Of Creditor And Debtor In Suspension Of Debt Payment Payment Obligations," *Jurnal Hukum Bisnis Bonum Commune* 4, no. 2 (2021): 159–69.

<sup>16</sup> Salim H.S., *Perkembangan Hukum Jaminan Di Indonesia*, Cetakan Ke (Depok: RajaGrafindo Persada, 2019).

<sup>17</sup> Harjono K Dhaniswara, *Peranan Hukum Dalam Pembangunan Ekonomi*, ed. Indri Jatmoko, Pertama (Jakarta: UKI Press, 2021).

entirely “free from disputes,” the absence of such explicit wording cannot be read as an absence of legal responsibility, particularly where the auction is conducted as an instrument of compulsory enforcement under court-supervised authority.

The auction seller bears significant legal responsibility to ensure the auctioned object is delivered to the winning bidder without any legal disputes, in accordance with the principles of substantive justice. This responsibility is both formal and material in nature, meaning the seller is not only required to formally complete the transaction but also to ensure that the object is legally and practically free from encumbrances.

The auction seller is responsible for guaranteeing the authenticity and legality of the auctioned object, including valid ownership documents and physical condition consistent with auction announcements. They are also ensuring the object is free from legal burdens, including third-party claims, liens, or disputes that would interfere with the winning bidder’s right of possession. They also should providing honest and complete information to both the auction officer and the bidder, in accordance with applicable laws such as Minister of Finance Regulation No. 122/2023; and also compensating for losses if the object is found to be defective, legally disputed, or otherwise not in accordance with the published auction details. In such cases, the seller may be subject to civil liability for damages suffered by the buyer.

In Indonesia, auction regulations, the Civil Procedure Code (HIR/RBg), and sectoral laws (e.g., the Law No. 4/1996) provide rules regarding how an auction should be conducted, how notices must be published, how the bidding process operates, and what legal value the *Risalah Lelang* carries<sup>18</sup>. However, these instruments are largely silent on post-auction duties, especially concerning contested or obstructed deliveries. Through a systematic reading of the execution framework (HIR/RBg), the executorial nature of mortgage enforcement, and the doctrine of public function accountability, the auction process must be understood as state-mediated enforcement designed to convert adjudicated or secured claims into realizable rights, not merely to produce formal documentation. Nevertheless, this responsibility must be carefully delimited to avoid over-inclusiveness and to remain consistent with universally recognized auction principles. In execution auctions, buyers are commonly deemed to accept certain inherent risks, reflected in the *as is*, *where is* and *buyer beware* logic, particularly with respect to the physical condition of the object, pre-existing occupation, or factual obstacles that are not fully controllable by the auction authority at the point of sale.

The absence of clear regulation results in a systemic vacuum. In practice, once the auction is concluded and the buyer pays the full amount, the state's role effectively ends unless a specific execution order is sought separately. Courts frequently interpret delivery disputes as falling outside the scope of enforcement, treating them as private civil disputes, despite their origin in a state-conducted auction process. This approach leads to a paradox: the buyer, who enters the auction with state-sanctioned assurances, may leave with only a legal title and no practical benefit, sometimes facing months or years of litigation simply to access what has already been paid for and formally transferred. This weakens the enforceability of rights and

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<sup>18</sup> Nyoman Satyayudha Dananjaya and Kadek Agus Sudiarawan, “Karakteristik Mediasi Perbankan Sebagai Alternatif Penyelesaian Sengketa Perbankan Indonesia (Analisis Aspek Keadilan, Kepastian Hukum, dan Kemanfaatan),” *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 5, no. 1 (2016): 202–18.

disincentivizes participation in judicial auctions, eroding trust in the entire system of civil enforcement. Therefore, the winning bidder cannot reasonably demand absolute risk elimination as though the auction were an ordinary commercial transaction with full private warranties. The key doctrinal distinction, however, lies in separating ordinary auction risks from institutional enforcement failures: where post-auction disputes arise solely from private resistance, the buyer may still need to pursue procedural enforcement; but where the failure results from unclear institutional allocation of execution duties, delayed court action, or judicial abdication in treating delivery as a “private dispute,” the legal problem shifts from buyer-assumed risk to state enforcement accountability.

From the standpoint of equitable law, the legal responsibility of the auction seller is designed to protect the rights and interests of the winning bidder. The principle of good faith demands that the seller acts transparently, responsibly, and truthfully throughout the process. This includes resolving any legal issues involving the auctioned object before the auction takes place, so that the buyer is not left to deal with post-auction disputes. Failure to fulfill this responsibility may result in the auction winner bearing an unfair burden, such as having to pursue eviction through additional legal proceedings or facing delays in acquiring ownership rights. This outcome runs counter to the intended efficiency and reliability of the auction mechanism. Therefore, the legal obligations of auction sellers in execution sales must go beyond administrative compliance and encompass substantive fairness. Ensuring that the object is delivered without complications not only strengthens public trust in the auction process but also safeguards the legal and financial interests of all stakeholders, particularly buyers and creditors.

In theory, execution auctions are designed to serve a simple and final purpose: transforming debtor assets into value that satisfies enforceable legal claims. The winning bidder, having complied with all procedural and financial obligations, reasonably expects not only legal title but also peaceful and immediate possession<sup>19</sup>. However, in Indonesia, the formal handover of rights through the *Risalah Lelang* does not guarantee actual control over the asset, especially in cases where the asset is occupied, disputed, or shielded by procedural delays<sup>20</sup>. This creates a legal disjunction between the formal conclusion of the auction and the substantive realization of its outcomes. This gap must be addressed through a reconstruction of the legal function and responsibility of auction sellers. These actors, often judicial bailiffs or state auction officials (*Pejabat Lelang*), are not mere intermediaries in a commercial transaction. They represent the authority of the state in enforcing court decisions and executing property rights. As such, their duties should logically extend beyond the procedural mechanics of selling the object, encompassing also the responsibility to secure the practical enjoyment of the buyer’s rights, namely, delivery of the object in fact and in law.

<sup>19</sup> Meike Binsneyder and Abraham Ferry Rosando, “Akibat Hukum Pengalihan Hak Tanggungan Tanpa Sepengetahuan Kreditur Dalam Tinjauan Asas Keseimbangan dan Itikad Baik Dalam Putusan Pengadilan,” *Jurnal Hukum Bisnis Bonum Commune* 3, no. 1 (2020): 104–19.

<sup>20</sup> Desak Putu Dewi Kasih and Putu Devi Yustisia Utami, “Standard Contract on Banking Sector : Regulation and Description in Internal Banking Regulations,” *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 2 (2021): 251–63, <https://doi.org/10.24843/JMHU.2021.v10.i02.p05>.



Legal responsibility in this context should be guided by the principles of legal certainty, effectiveness of enforcement, and state accountability<sup>21</sup>. If the execution process is fragmented—ending at the auction block without ensuring possession—then the process fails in substance, even if it complies procedurally. The credibility of judicial enforcement is compromised, and the burden unfairly shifts to the private party who relied on the state's guarantee of legal order.

This explains why many courts frame post-auction conflicts as private disputes—often due to a formalistic separation between the auction result and the possession phase—but such reasoning requires critical assessment because it risks contradicting the foundational purpose of execution itself, namely effectiveness and legal certainty in realizing auction outcomes for good-faith third parties. Accordingly, principles such as good faith, legal certainty, enforcement effectiveness, and state accountability must not be invoked declaratively; they must operate as procedural constraints that guide interpretation and limit discretion in execution proceedings by requiring the court and executing officials to treat post-auction possession as part of the enforcement continuum unless lawful exceptions justify postponement. Comparative insights strengthen this reconstruction: civil law jurisdictions with mature enforcement architecture generally link auction finality with structured access to possession through court-controlled enforcement mechanisms, while still recognizing lawful limitations such as tenant protection, due process safeguards, and proportionality review, showing that “delivery responsibility” is typically conditional rather than absolute. In this sense, comparative analysis does not demand transplantation, but supports a doctrinally realistic conclusion for Indonesia: auction buyers may bear inherent auction risks, yet the state—as executing authority—must ensure an effective, predictable pathway to possession through execution law, and cannot legitimately externalize institutional enforcement burdens to winning bidders under the label of “private disputes” when the auction has been conducted as a coercive mechanism of public enforcement.

### 3.3. Comparative Analysis: Legal Responsibility in Execution Auctions and its Relevance with Indonesia Context

Comparative legal systems analyzed reveal that enforcement agents have statutory obligations to transfer possession of auctioned property, legal remedies are available if delivery is delayed or refused, and post-auction delivery is seen as integral to the enforcement process—not as a separate civil claim. This supports the article's conclusion that Indonesia must reform its normative approach and institutional procedures to align with justice-based standards of enforcement. It is insightful to compare the Indonesian legal framework with systems in other relevant jurisdictions, examining how they regulate the legal responsibility of sellers (or auction authorities) in execution sales. The goal is to highlight similarities, divergences, and lessons that may inform reform in the Indonesian context.

This section reformulates the implications of the comparative findings not as an inventory of foreign practices or a rhetorical call to emulate “advanced” systems, but as a dogmatic, problem-oriented comparative analysis that offers a structured framework for

<sup>21</sup> Bagus Hermanto and Nyoman Mas Aryani, “Omnibus Legislation as a Tool of Legislative Reform by Developing Countries: Indonesia, Turkey and Serbia Practice,” *Theory and Practice of Legislation* 9, no. 3 (2021): 425–50, <https://doi.org/10.1080/20508840.2022.2027162>.

reconstructing Indonesia's post-auction delivery regime within the logic of its own procedural architecture. The comparative synthesis is built upon consistent variables – namely the nature of executorial authority, the legal status of auction minutes as enforceable instruments, the allocation of delivery responsibility between state actors and private parties, the scope of enforcement discretion, the existence of occupant-protection exceptions, and the accountability model applicable when possession transfer fails—so that each jurisdiction contributes not as a model to copy but as a doctrinal reference for evaluating Indonesia's internal inconsistencies. In terms of comparator compatibility, civil law jurisdictions such as Germany, the Netherlands, and Switzerland provide the most doctrinally transferable benchmarks because their obligation structures are predominantly statute-based and embedded in codified enforcement design, whereas common law and mixed systems like the United States and South Africa are used more cautiously to illustrate how judge-made doctrines, equity reasoning, commercial reasonableness standards, and constitutional housing or due process guarantees may limit or condition possession transfer.

Importantly, comparative insight shows that even in systems where auctions are conceived as integrated enforcement processes extending to physical possession, delivery obligations are rarely absolute; they are typically conditional upon lawful limitations such as tenant protection regimes, procedural fairness requirements, proportionality review, or the preservation of certain occupancy rights, meaning that a doctrinally sound Indonesian reform must avoid framing delivery as unconditional state “guarantee” while still ensuring a predictable enforcement pathway for good-faith buyers. When reintegrated into Indonesia's context, the implication is not that Indonesia lacks enforcement instruments, but that it lacks normative integration between auction finality and possession realization under the HIR/RBg framework, where execution authority remains centered on the court and operationally coordinated by the Chief Judge of the District Court, while mechanisms such as *parate executie* may accelerate sale but do not automatically resolve the practical problem of vacating and delivery when resistance occurs.

Therefore, the most realistic reform direction is a calibrated model of institutional responsibility in which post-auction delivery is treated as part of execution by default – subject to defined lawful exceptions – and supported by clearer procedural triggers, timeframes, and accountability routes that distinguish binding duties from discretionary administrative powers, thereby strengthening legal certainty and buyer protection without ignoring the necessity of balancing competing rights in enforcement. In this sense, comparative law functions not as a legitimacy tool to label Indonesia “behind,” but as a scientific method to map doctrinal options, clarify the limits of enforceability, and support a system-embedded policy choice framework suited to Indonesia's procedural structure and enforcement realities.

#### 1. Korea: Judicial Enforcement and Asset Disclosure

In South Korea, execution of secured assets (including mortgages) follows a judicial process under the Civil Execution Act, where courts play a proactive role in asset identification

and eviction<sup>22</sup>. The law mandates an assets disclosure procedure: when a debtor defaults, the court may compel the debtor to submit a complete asset inventory under oath<sup>23</sup>. If disclosure is insufficient, the court employs an assets check process, enforcing compliance with sanctions like fines or imprisonment.

This contrasts with Indonesia's reliance on circular guidance and procedural code references to authorize eviction orders. Korea's reliance on explicit statutory tools ensures that creditors—and thus auction winners—face fewer uncertainties in taking possession. Introducing express disclosure or court-driven eviction powers into Indonesian law could streamline resolution of occupancy disputes and reinforce the auction seller's duty to deliver uncontested possession.

## 2. Germany and Switzerland: Rigid Foreclosure Auctions and Clear Duties

In Germany, foreclosure (*Zwangsversteigerung*) is formally ordered by the execution court (*Vollstreckungsgericht*). Properties are seized and auctioned publicly, and surplus proceeds are distributed to creditors. The court-ordered sale operates under rigorous procedural oversight to ensure legal clarity of title and public trust Global Practice Guides. To address these deficiencies, it is instructive to compare how other civil law systems—particularly Germany and the Netherlands—structure legal duties in execution auctions. These systems provide clear models for how auction sellers' responsibilities can be defined comprehensively and coherently.

In Germany, execution auctions of immovable property are governed by the *Zivilprozessordnung* (ZPO) and *Gesetz über die Zwangsversteigerung und die Zwangsverwaltung* (ZVG). The key feature of the German system is its understanding of enforcement as a continuous, integrated process, from seizure to actual delivery. Once the auction is finalized and confirmed, the buyer receives not only legal ownership but also the right to be placed in possession of the property.

The *Gerichtsvollzieher* (court enforcement officers) have a legal obligation not only to conduct auctions but also to physically transfer possession to the winning bidder. If delivery is obstructed, the enforcement officer is empowered to initiate eviction or enforcement measures without requiring the bidder to pursue separate litigation. The enforcement officer (*Gerichtsvollzieher*) is empowered by law to take steps to ensure this delivery. If the property is occupied or the former owner refuses to vacate, the officer may initiate eviction procedures as part of the same execution. This does not require the buyer to initiate new civil proceedings; instead, the delivery is part of the court's enforcement authority. Furthermore, German law treats the auction record as a title of enforcement, meaning it carries the same force as a judgment in granting possession. The buyer does not need to prove entitlement again—the system presumes that all formal and substantive requirements were fulfilled within the auction process itself.

<sup>22</sup> Myungkou Shin, "Nonparametric Estimation of Court Auction in South Korea 한국 법원 경매에서의 비모수적 추정" (서울대학교, 2017).

<sup>23</sup> Dai-won Kim, "Do Reserve Prices Yield Reference Price Effects in Korean Court Auctions of Residential Real Estate?," *International Real Estate Review* 20, no. 1 (2017): 75–104.

This model reflects a legal culture that places high value on execution as an institutional guarantee, not merely a private process facilitated by state mechanisms. The enforcement officer is thus both a procedural actor and a substantive guarantor of the buyer's post-auction rights. Similarly, Swiss law provides for mortgage realization by public auction, conducted by Debt Collection Offices (DCOs). Here too, legal clarity about the collateral and title transfer is maintained throughout the process, limiting third party claims after purchase.

Compared to Indonesia, where responsibility for evictions remains ambiguous under Law No. 4/1996 and related regulations, these jurisdictions impose statutory obligations on execution authorities to clear defects and confirm clean title before transfer. Adapting clearer statutory rules regarding eviction and title assurance could increase legal certainty for auction winners in Indonesia.

### 3. The Netherlands: Unified Procedural Continuity and Bailiff Authority

In the Dutch legal system, the *Wetboek van Burgerlijke Rechtsvordering* (Rv) similarly embeds institutional responsibility in execution procedures<sup>24</sup>. The auction process is overseen by judicial officers or court bailiffs (*gerechtsdeurwaarders*), who are obligated not just to manage the sale but to deliver the object physically and legally to the buyer.

When delivery is obstructed—due to occupation, refusal to vacate, or dispute—the bailiff has the authority to execute eviction under the same enforcement title<sup>25</sup>. There is no requirement for the buyer to file a separate *onrechtmatige daad* (tort) claim or initiate a new case for delivery. The law recognizes the *proces-verbaal* (equivalent to the *Risalah Lelang*) as sufficient legal basis for possession<sup>26</sup>.

The Netherlands also emphasizes state responsibility in ensuring that enforcement is not only lawful but effective. The failure to enforce delivery, if attributable to procedural or institutional inaction, can result in state liability. This reflects a strong normative framework where access to justice includes access to practical outcomes, not just legal formalities. Similarly, in the Netherlands, enforcement through judicial auctions includes institutional continuity from seizure to transfer, ensuring the winning bidder's rights are upheld in full. These systems reflect a conception of execution as a unified legal process, in which the role of the auction seller is not discharged until possession is transferred. Such practices underscore the necessity of redefining the seller's responsibilities in Indonesia to reflect international best practices and ensure that enforcement achieves both formal legality and substantive justice.

### 4. United States: Commercial Reasonableness and Creditor Duty under UCC Article 9

Under the U.S. Uniform Commercial Code (UCC) Article 9, secured creditors conducting a sale of collateral must do so in a “commercially reasonable” manner. This requires adequate

<sup>24</sup> Marco Kujiper and Ruud Katmann, “Land Tenure Questions Tenencia,” *Land Tenure Journal* 15, no. 2 (2016): 47–62.

<sup>25</sup> Paul Klemperer, “Auction Theory: A Guide to the Literature,” *Journal of Economic Surveys* 13, no. 3 (1999): 227–86.

<sup>26</sup> Anita Anand and Anita I Anand, “Regulating Issuer Bids : The Case of the Dutch Auction Regulating Issuer Bids : The Case of the Dutch Auction,” *McGill Law Journal* 45, no. 1 (2000): 133–54.



marketing, notice, and opportunity for bidders to ensure fair value, and prevents deficiencies caused by undervaluation<sup>27</sup>.

While UCC 9 applies mainly to personal property rather than real estate, its principles embody several key duties analogous to your concept of fair and transparent auction conduct. Indonesia might consider articulating analogous duties in regulation—such as mandatory notice procedures, appraisal thresholds, and value disclosure—to complement the seller’s responsibility for clean delivery.

#### 5. South Africa: Seller Duty to Provide Defect-Free Goods

Under South African common law (informed by Roman-Dutch tradition), the seller must deliver the *res vendita* free from defects<sup>28</sup>. Should the object have hidden or latent defects, the buyer may seek remedies, including rescission or damages, especially if misrepresentation or fraud is involved.

Applied to execution auctions, this principle underscores the substantive obligation of the auction seller (or execution authority) to ensure that the property is delivered without latent or legal defects, aligning well with your advocacy for material responsibility beyond mere formal transfer.

#### 6. Implications for Indonesia’s Legal Framework

Implications for Indonesia’s Legal Framework, including: first, Statutory Eviction and Asset Disclosure Powers. Korean and German models show that empowering courts to order disclosure and eviction ensures successful and efficient delivery to auction winners. Incorporating specific eviction authority into Law No. 4/1996 or related regulations would mitigate the current vacuum that delays possession in Indonesia. Second, Mandatory Commercial Reasonableness and Appraisal Requirements. U.S. models with Article 9 UCC emphasizes fairness in collateral sale. Instituting analogous requirements—such as requiring open advertising, minimum appraisal thresholds, and fair bidding procedures—would strengthen borrower protection while reinforcing seller accountability. Third, Material Warranty Against Defects. South African doctrine mandates a defect-free delivery. Embedding a material warranty standard (e.g. explicit liability for latent legal encumbrances or undisclosed disputes) into Indonesian auction regulations would align with equitable principles and protect buyers. Fourth, Clean Title Guarantee. German and Swiss systems presume clear title post-auction. Indonesian law should explicitly guarantee that auctioned properties are free from third-party claims upon delivery; any defects should trigger restitution or compensation by the seller or execution authority.

Fifth, The German and Dutch systems share several key characteristics that Indonesia lacks statutory mandate for post-auction delivery, embedded within enforcement law, not separated as a private dispute; authority of enforcement officers to act autonomously to secure possession, including through forced eviction; recognition of the auction record as an enforceable instrument, removing the need for redundant litigation; unified procedural

<sup>27</sup> Neil Fligstein, *Markets as Politics: A Political-Cultural Approach to Market Institutions*, ed. Nicole Woolsey Biggart, First Edit (Malden, Massachusetts, USA & Oxford, UK: Blackwell Publishing, 2013), <https://doi.org/10.2307/2096398>.

<sup>28</sup> Charl Hugo and Elmiën du Plessis, “Sales in Execution of Immovable Property, the Rules of Court and the Consumer Protection Act Regulations: Back to the Drawing Board?,” *Stellenbosch Law Review* 25, no. 1 (2017): 55–71.

framework that treats auction sale and delivery as a single enforcement continuum; and institutional responsibility and accountability, backed by legal remedies when enforcement fails. In Germany, under the *Zivilprozessordnung* (ZPO), court enforcement officers (*Gerichtsvollzieher*) are responsible for conducting auctions and delivering the object to the buyer. If the object is not voluntarily vacated or transferred, the enforcement officer is legally empowered to execute eviction or forced possession on behalf of the buyer, without requiring the buyer to initiate separate litigation. Similarly, in the Netherlands, the *Wetboek van Burgerlijke Rechtsvordering* (Rv) recognizes the auction buyer as having an enforceable right not just to ownership, but to possession, and the bailiff has a legal duty to ensure that delivery occurs. Courts in these jurisdictions recognize that delivery is a continuation of execution, not an independent process.

These comparative insights highlight that auction execution in mature legal systems is understood as a complete process, encompassing not only the sale but also the effective transfer of rights and control. This reflects a commitment to procedural and substantive justice and strengthens public trust in the legal enforcement system. The comparison shows that Indonesia's system lags in ensuring institutional continuity from auction to delivery. It lacks the tools, procedures, and legal mandates to support winning bidders, thereby allowing enforcement to end in form but fail in substance.

These characteristics reflect a coherent vision of justice that does not end at legality, but demands practical effect<sup>29</sup>. In Indonesia, by contrast, the institutional fragmentation of the enforcement process—separating auction, delivery, and dispute resolution into disjointed legal steps—results in uncertainty, delay, and economic loss<sup>30</sup>. Reform is needed not only in regulatory form but also in institutional culture, to align procedural mechanisms with the principles of substantive justice and legal finality.

These comparative jurisdictions reveal that clear statutory mandates, court-led enforcement, and material warranties significantly enhance legal certainty and fairness in execution auctions. Indonesia's current legal framework, particularly Law No. 4/1996 and PMK 122/2023, lacks detailed statutory clarity regarding eviction authority, seller liability for defects, and commercial fairness in sale execution. By learning from systems in Korea, Germany, Switzerland, the United States, and South Africa, Indonesia could empower courts with clear eviction and asset disclosure powers; require transparent and fair sale procedures; codify a material warranty obligation against defects; and ensure auctioned objects come with legally assured titles. Such reforms would foster procedural justice, discourage post-auction disputes, and reinforce public trust in the auction system.

#### 4. Conclusions

This article demonstrates that the core weakness of Indonesia's execution auction regime does not primarily lie in the absence of an auction mechanism, but in the normative disintegration between auction finality and effective post-auction possession. The analysis

<sup>29</sup> M Ichsan Alfara, Aloysius Yanis Dhaniarto, and Widodo Suryandono, "Hak Tanggungan Dalam Hal Objek Lelang Yang Tidak Sesuai Dengan Pengumuman Lelang ( Studi Kasus Putusan Pengadilan Negeri Manado Nomor 123 / PDT . G /," *Indonesian Notary* 2, no. 1 (2020): 622–45.

<sup>30</sup> Hikmah Nurul Hidayah and Siti Malikhatus Badriyah, "Prosedur Eksekusi Objek Lelang Hak Tanggungan Dimana Objek Masih dikuasai Pihak Lain," *Notarius* 15, no. 1 (2022): 350–64.

confirms that Indonesian positive law does not contain an explicit and directly enforceable provision imposing an absolute duty on the auction seller or auction officials to guarantee that the auctioned object will be delivered in vacant possession to the winning bidder. This normative lacuna produces inconsistent institutional responses and divergent judicial approaches, allowing winning bidders—often good-faith third parties outside the original debt relationship—to obtain formal title while remaining unable to enjoy the object in practice. At the same time, the study clarifies that this gap should not be overstated as requiring the State to eliminate all risks inherent in auction purchases, since execution auctions are widely associated with the *as is, where is* and *buyer beware* logic, where certain factual obstacles, including occupation and resistance, may remain foreseeable risks assumed by purchasers.

However, the existence of buyer-assumed risks does not justify institutional abdication in the enforcement phase. Through systematic doctrinal interpretation of the execution framework (HIR/RBg), the executorial character of mortgage enforcement, and the structural purpose of compulsory execution as a state-mediated mechanism for realizing rights, the article argues that post-auction delivery must be understood as part of the enforcement continuum and not treated merely as a private dispute detached from execution. In this regard, principles such as legal certainty, good faith protection, effectiveness of enforcement, and state accountability operate not as abstract declarations, but as interpretive constraints that require courts and executing authorities to ensure a predictable pathway toward possession once auction validity and finality are established, subject only to lawful and clearly defined exceptions. The study further classifies patterns of judicial reasoning that either affirm execution-based delivery or shift the burden to the winning bidder through separate litigation, and it concludes that the latter approach tends to undermine the integrity of execution auctions by converting compulsory enforcement into procedural uncertainty. The comparative perspective reinforces this reconstruction by demonstrating that many legal systems treat execution auctions as integrated processes extending toward possession, but also reveals that delivery obligations are generally conditional rather than absolute, being limited by tenant protection, due process safeguards, proportionality, and other occupant-related rights. Importantly, comparative law is not used to assert Indonesia's backwardness or to legitimize indiscriminate transplantation, but to clarify doctrinal models of enforcement responsibility and to identify which model is realistically compatible with Indonesia's procedural structure. Based on this analysis, the most feasible policy direction for Indonesia is a system-embedded "conditional integrated enforcement" model: delivery should be treated as part of execution by default under court-coordinated authority particularly through the role of the Chief Judge of the District Court—while postponement should be permitted only on explicitly defined legal grounds. Such a framework would strengthen the credibility and effectiveness of execution auctions, increase legal certainty for good-faith buyers, and reduce unnecessary post-auction litigation, while preserving procedural justice and lawful occupant protections. Ultimately, improving post-auction delivery is not merely a technical administrative reform, but a doctrinal necessity to ensure that execution auctions function as a genuine instrument of justice rather than a formal transfer mechanism detached from enforceable reality.

Based on the findings, the following recommendations are proposed first, to amend the relevant auction and enforcement regulations (e.g., HIR/RBg, Law No. 4/1996, and

Ministerial Regulations) to explicitly impose a post-auction delivery obligation on execution sellers or state enforcement officers. Second, The Supreme Court and Directorate General of State Assets (DJKN) should issue technical guidelines assigning clear duties to bailiffs and auction officials to facilitate asset handover, including coordination with security or enforcement units. Third, establish an administrative complaint or review mechanism for bidders who fail to receive assets after payment, allowing quicker resolution without resorting to separate litigation. Fourth, encourage courts to interpret the *Risalah Lelang* not merely as a formal deed, but as a basis for execution, enabling direct enforcement of asset delivery. Fifth, strengthen the capacity of enforcement actors through training programs focused on justice-based approaches, comparative law practices, and bidder protection principles.

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