


Executive vs. Judiciary: Conventional Auction Law in Indonesia and Malaysia**Grace Kezia Caroline, Benny Djaja**

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 grace.217241042@stu.untar.ac.id ***Abstract**

This study offers a comparative analysis of conventional auction law in Indonesia and Malaysia, emphasizing how each country's distinct legal tradition—Civil Law in Indonesia and Common Law in Malaysia—shapes its institutional framework and execution mechanisms. Despite their different foundations, both jurisdictions share fundamental principles: auctions must be conducted publicly, competitively, and under the supervision of officials vested with public authority. These shared principles ensure transparency, maximize market value, and provide strong legal certainty through the issuance of conclusive auction documents such as Indonesia's *Risalah Lelang* and Malaysia's Certificate of Sale. The core divergence lies in the institutional locus of authority. Indonesia adopts an Executive-Centric model, where the Directorate General of State Assets (DJKN) holds centralized regulatory power. Under this structure, the Pejabat Lelang Kelas I (PL I), as an administrative official, may execute *Parate Eksekusi*—a direct sale of collateral without a judicial order. In contrast, Malaysia applies a Judiciary-Centric system governed by the High Court. Forced sales of immovable property require a Judicial Order for Sale, reflecting stronger judicial oversight and greater procedural safeguards for debtors. Differences also emerge in the status and authority of private auctioneers. Indonesia's Pejabat Lelang Kelas II (PL II) is limited to voluntary auctions but produces an authentic deed with perfect evidentiary value. Meanwhile, Malaysian licensed auctioneers may participate more broadly, including assisting in court-directed sales, though their documents do not automatically attain authentic deed status. By highlighting these convergences and divergences, this study contributes to understanding how institutional design influences efficiency, legal certainty, and public trust in auction mechanisms in both countries.

Keywords: Konvensional Auction Law, Parate Eksekusi, Judicial Order For Sale, Legal Certainty, Executive–Judiciary Comparison.

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INTRODUCTION

Socio-economic development in modern society implies an increasing need for land as a strategically valuable resource. This necessity is not limited to fulfilling basic aspects of life, such as housing, but also extends into the economic sphere as a means of investment and business development. In practice, the community actively engages in land transactions to meet these demands. This activity reflects the importance of land in supporting various aspects of life, both as a primary need and as an instrument for managing and developing business activities. Given the high probability of land transactions, the law is essential to protect the public during the sales process, consistent with Indonesia's mandate as a state based on law. This is particularly crucial considering the numerous problems that arise in the process of transferring land ownership, whether based on court decisions or auction procedures, which sometimes still encounter obstacles in their implementation.¹

The principles of Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD 1945) serve as the foundation of Indonesia as a rule of law state. Indonesia is obliged to maintain order, legal certainty, and protect all citizens. This guarantee is reflected through a credible and

¹ Ria Juliana Siregar, "Pelaksanaan Lelang Terhadap Penerapan Prinsip Keadilan Di Indonesia," *Visi Sosial Humaniora* 3, no. 2 (2022): 189–97.

legally accountable system of evidence, where written evidence is one form that must be used in the proving process.² Written evidence holds a strategic position in asserting the validity of legal events or actions.³ A written document contains readable information or symbols that function as confirmation of the legitimacy of a legal claim, thereby ensuring that the legal process can be carried out objectively, accountably, and in accordance with the principles of justice. The existence of written evidence also supports the fair settlement of disputes, minimizes the potential for manipulation or fraud, and guarantees legal protection and strengthens certainty in resolving cases.

In the civil procedure law, written evidence is known as documentary evidence. Documentary evidence holds the strongest position compared to other types of evidence in civil proceedings.⁴ Written documents are considered the primary basis for assessing the truth of a claim due to their concrete nature, verifiability, and higher probative value than other forms of proof, such as witnesses or confessions. In court practice, documentary evidence is recognized by law and is divided into two main groups: deeds and non-deed documents.⁵ Deeds are further classified into authentic deeds, which are drawn up by or before an authorized official, and underhand deeds *akta di bawah tangan*, which are drawn up without the involvement of a public official, as well as other documents not categorized as deeds. Auction is a process of offering and transacting goods or services to prospective buyers before the item is sold to the highest bidder, aiming to achieve the highest possible price. This understanding has long been known in society, but over time, auctions are no longer limited to mere sales transactions. Auctions are now also used as a means to resolve non-performing credit issues, where collateralized goods can be sold through auction to cover unpaid obligations. From an economic perspective, auction is viewed as a series of mechanisms or regulations applied in capital market trading. Auction is officially regulated in the Indonesian legal system to fulfill public needs, especially in the sale of goods or assets through auction procedures according to statutory regulations.⁶ Auction is also recognized as a form of sales agreement applied in both the Civil Law and Common Law systems,

The development of the auction system in Indonesia began with the issuance of regulations that are still applied today, contained in the *Vendu Reglement Staatsblad 1908 Number 189* and the *Vendu Instructie Staatsblad 1908 Number 190*. Adjustments to the dynamics of community needs, economic growth, and changes in legal regulations prompted the government to carry out deregulation in the auction sector. This deregulation includes granting authorization to private sector auction organizers to hold voluntary auctions, official recognition of *Pejabat Lelang Kelas II (PL II)*, and granting creditors the right to execute sales through auction directly without having to go through the District Court process.⁷

The conventional auction systems in Malaysia and Indonesia exhibit fundamental differences in both their mechanisms and the authorities responsible for their conduct. In Malaysia, conventional auctions are generally executed by the Judiciary through the auction process of immovable property. This process remains traditional, where participants are required to be physically present at the location specified by the court, which limits public access and participation. Conversely, in Indonesia, the conventional auction system is implemented by the Directorate General of State Assets (DJKN) under the Ministry of Finance. Auctions are conducted openly, either through open mechanisms (participants present) or sealed bidding (written bids),

² Khansa Laily Az Zahra et al., "Relevansi Kepentingan Alat-Alat Bukti Dalam Proses Penyelesaian Hukum Perdata," *The Juris* 8, no. 1 (2024): 95–104.

³ Asep Saepullah, "Peranan Alat Bukti Dalam Hukum Acara Peradilan," *Mahkamah: Jurnal Kajian Hukum Islam* 3, no. 1 (2018): 141–57.

⁴ Dewa Gde Rudy and I Dewa Ayu Dwi Mayasari, "Keabsahan Alat Bukti Surat Dalam Hukum Acara Perdata Melalui Persidangan Secara Elektronik," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 1 (2021): 167–74.

⁵ Fernando Kobis, "Kekuatan Pembuktian Surat Menurut Hukum Acara Perdata," *Lex Crimen* 6, no. 5 (2017).

⁶ David Leon A Sembiring et al., "Penyelesaian Perjanjian Kredit Macet Melalui Lelang Hak Tanggungan Akibat Wanprestasi Pihak Debitur Kepada PT. Bank Negara Indonesia Cabang Medan (Studi Putusan Nomor 464/PDT. G/2021/PN MDN)," *Jurnal Intelek Dan Cendekiawan Nusantara* 1, no. 5 (2024): 6245–60.

⁷ Adwin Tista, "Perkembangan Sistem Lelang Di Indonesia," *Al Adl Jurnal Hukum* 5, no. 10 (2013).

with prior official announcement to ensure transparency. Every auction must follow strict procedures, leading to the issuance of the *Risalah Lelang* (Auction Minutes) as an authentic deed.

This difference indicates that the auction system in Malaysia is still centered on the judicial authority, whereas in Indonesia, implementation is more structured and regulated by a specific government institution (the Executive Branch), with a greater variety of mechanisms. The contrast between the centralized, administrative-based system in Indonesia (DJKN) and the court-centered system in Malaysia underscores a significant institutional divergence in legal enforcement and property transfer.

Based on this background, this study critically reviews the comparative implementation of conventional auctions in Indonesia and Malaysia. Limited research has previously addressed the comparison of Indonesian auction regulations with those of other countries, particularly focusing on the institutional and legal certainty outcomes. While previous studies have examined non-execution voluntary auctions (e.g., in comparison with the US), the validity of online auctions without officials, and the need for legal reform regarding buyer certainty, this research offers a unique contribution. The novelty of this study lies in its focus on the analysis of similarities and differences to identify transferable elements that could enhance effectiveness, transparency, and legal certainty within Indonesia's future auction legal system, particularly in strengthening legal protection and increasing public trust in the auction mechanism.

METODE

This research is fundamentally characterized as normative legal research. The normative approach is necessary as the study focuses on legal issues related to the comparison of auction implementation laws in Indonesia and Malaysia, requiring an analysis of the statutory regulations that govern the execution of auctions in both jurisdictions.

The primary specification of this research is descriptive. Its core aim is to provide a clear and systematic overview of the differences in auction organization and procedures between Indonesia and Malaysia. The data used in this study is exclusively secondary data. This secondary data encompasses three main categories: primary legal materials (such as statutory regulations); secondary legal materials (including books, official documents, and relevant publications); and tertiary legal materials, which offer supplementary explanations for the primary and secondary sources. Data collection is performed through library research (*studi pustaka*), drawing upon the aforementioned legal sources.

This study employs the statutory approach (*pendekatan statuta*). This approach systematically involves analyzing the relevant statutory regulations governing auction law and its application in both Indonesia and Malaysia. The technique utilized for data analysis is descriptive analysis. This technique serves to provide a clear and explicit explanation of the statutory regulations concerning the comparative legal framework of auction implementation in Indonesia and Malaysia.

RESULT AND DISCUSSION

Legal Commonalities in Conventional Auction Implementation

Despite being structured on antithetical legal foundations. Indonesia inheriting the Continental Civil Law system via the Dutch *Vendu Reglement* and Malaysia adhering to the Common Law tradition dominated by the *National Land Code*, the conventional auction systems in both countries exhibit profound convergences in their philosophical underpinnings and core procedural mandates. These commonalities are not coincidental; they stem from the universal requirement that any forced or public sale mechanism must guarantee transparency, maximize competition, and deliver absolute legal certainty to the buyer. This shared purpose establishes auction as a vital, mandatory public sale mechanism within both jurisdictions.

1. Principle of Public Sale and Maximal Competition

The most foundational agreement between the two systems is the concept of the auction as a public sale (*openbare verkooping*), defined as a transaction accessible to the general public and explicitly designed as a competitive mechanism.⁸ In Indonesia, this is formally

⁸ Kwai Hang Ng and Brynna Jacobson, "How Global Is the Common Law? A Comparative Study of Asian Common Law Systems—Hong Kong, Malaysia, and Singapore," *Asian Journal of Comparative Law* 12, no. 2 (2017): 209–32.

articulated as "penjualan barang yang terbuka untuk umum melalui penawaran harga yang semakin meningkat atau menurun guna mencapai harga yang paling tinggi"⁹. Similarly, Malaysian execution sales are fundamentally governed by the rule that the property must be sold to the highest bidder, ensuring maximum market value is achieved for the creditor¹⁰.

This shared philosophical adherence to transparency and competition is manifested procedurally through the mandatory public announcement (*public notification*) requirement.¹¹ In both nations, the auction process must be preceded by strict public notice whether via newspaper gazetting or modern digital platforms within a defined timeframe¹². This procedural mandate is not merely an administrative formality but a substantive requirement. Failure to properly announce the sale can invalidate the entire proceeding¹³, as it directly undermines the principle of maximal competition, thereby preventing the highest possible price from being reached. Consequently, both Indonesia and Malaysia enforce procedural transparency as a non-negotiable prerequisite for auction legitimacy¹⁴.

2. Legal Certainty and the Conclusive Nature of Proprietary Rights

A crucial convergence lies in the extraordinary legal force granted to the resulting auction document. Both systems treat a successful auction not as a mere commercial contract, but as an act of state that decisively transfers proprietary rights (*Hak Kebendaan*). This conclusive legal outcome is intimately linked to the nature of the rights being transferred, which must be enforceable against the world. Legal doctrine in this area emphasizes the absolute nature of the asset transfer: "Menurut Soebekti suatu hak kebendaan (*zakelijk recht*) adalah suatu hak yang memberikan kekuasaan langsung atas suatu benda yang dapat dipertahankan oleh setiap orang."¹⁵

In alignment with this doctrine, the auction document, Indonesia's *Risalah Lelang* (Auction Minutes) and Malaysia's *Certificate of Sale* is endowed with perfect evidentiary power¹⁶. This instrument becomes the sole and conclusive legal basis for registering the new ownership rights, effectively severing all prior claims and encumbrances (except those recognized by law)¹⁷. This mechanism ensures absolute legal certainty for the auction winner, protecting them from potential litigation by previous debtors or third parties, which is paramount for the stability of the financial system¹⁸.

3. Dualism in Institutional Structure and Public Authority

Despite placing different branches of government in charge (Executive vs Judiciary), both countries agree that the auction process requires a licensed official vested with public authority, leading to the dualism of auction officials [12]. Both jurisdictions recognize the necessity for two types of officials: a state/judicial official for mandatory execution sales (e.g., Pejabat Lelang Kelas I in Indonesia, Court Bailiff/Registrar in Malaysia) and a private professional for voluntary sales (e.g., Pejabat Lelang Kelas II and Licensed Auctioneers)¹⁹.

⁹ Direktorat Jenderal Kekayaan Negara (DJKN). Peraturan Menteri Keuangan Nomor 213/PMK.06/2020 tentang Petunjuk Pelaksanaan Lelang. Jakarta: Kementerian Keuangan Republik Indonesia; 2020.

¹⁰ 4] Siregar R. J. Pelaksanaan Lelang Terhadap Penerapan Prinsip Keadilan di Indonesia. *Visi Sosial dan Humaniora (VSH)*. 2022;3(2):190.

¹¹ Eng Siang Tay, Ging Yee Ling, and Kwok Whee Chung, "Statutory Lien: Pre-and Post-2016 Amendments to the Malaysian National Land Code," *F1000Research* 11 (2022): 123.

¹² Peraturan Menteri Keuangan Nomor 213/PMK.06/2020, Pasal 10. [6] *Vendu Reglement Staatsblad 1908 Nomor 189*

¹³ *Vendu Reglement Staatsblad 1908 Nomor 189*.

¹⁴ Hosen S. A Comparative Study of Civil and Common Law Systems in Southeast Asia. *Asian Law Journal*. 2022;15(2):112-135. [8] Soebekti. *Hukum Kebendaan*. Jakarta: Intermedia; 1980

¹⁵ Soebekti. *Hukum Kebendaan*. Jakarta: Intermedia; 1980

¹⁶ Peraturan Menteri Keuangan Nomor 189/PMK.06/2017 tentang Pejabat Lelang Kelas II, Pasal 20.

¹⁷ *Certificate of Sale* (Malaysia), High Court Rules 2012.

¹⁸ Az Zahra K. L., et al. Relevansi Kepentingan Alat-Alat Bukti dalam Proses Penyelesaian Hukum Perdata. *Jurnal Ilmu Hukum THE JURIS*. 2024;8(1):96.

¹⁹ iregar M. H. Tracing the Vendu Reglement: Administrative Roots of Indonesian Auction Law. *Indonesian Law Review*. 2018;12(1):45-68.

The essential commonality here is the requirement that these officials must be conferred with public authority (*publieke macht*), enabling them to legally execute the alienation of property rights²⁰. This public mandate ensures that the process is impartial and that the resulting legal instrument is recognized universally by the state apparatus (e.g., the Land Office/BPN), thereby cementing the legal validity of the transfer²¹.

Legal Divergences in Conventional Auction Implementation

The fundamental differences in the conventional auction systems of Indonesia and Malaysia are pronounced, directly stemming from the opposing legal traditions: Indonesia's adherence to the Civil Law/Continental system (Executive-Centric) and Malaysia's adherence to the Common Law/English system (Judiciary-Centric). This divergence significantly impacts the regulatory authority, the status of auction officials, and, most critically, the mechanism employed for the compulsory execution of secured collateral.

4. Divergence in Primary Legal Sources and Regulatory Authority

The structural asymmetry begins with the foundational law and the institutional hierarchy responsible for regulation. The Indonesian system is uniquely characterized by its adherence to the colonial legacy of the *Vendu Reglement* (1908), which remains the fundamental basis (*hukum dasar*) for conventional auctions under the transitional provisions of the 1945 Constitution. This gives Indonesian auction law a continuous public administrative character. Consequently, regulation is centralized under the Ministry of Finance (DJKN), an Executive Branch body that acts as the sole national regulator and supervisor. The DJKN issues mandatory technical rules (*Peraturan Menteri Keuangan/PMK*) that apply uniformly nationwide.

In sharp contrast, the Malaysian system's legal foundation for execution is the modern National Land Code (NLC). Regulatory authority is decentralized and split: the High Court governs all execution proceedings, making the process Judiciary-centric, while the authority to license private auctioneers rests regionally with State Governments. This bifurcated structure reflects the Common Law emphasis on judicial oversight for forced sales of property.

5. Divergence in Official Status and Execution Mechanisms

The split in regulatory authority (Executive vs. Judiciary) creates the most impactful difference concerning the state official and their power to compel a sale.

²⁰ Peraturan Menteri Keuangan tentang Pejabat Lelang Kelas I, Pasal 3

²¹ Peraturan Menteri Keuangan tentang Pejabat Lelang Kelas I, Pasal 4. [15] Tista A. Perkembangan Sistem Lelang di Indonesia. *Al'Adl.* 2013;5(10):46–47.

a. State/Public Officials and Execution Authority

In Indonesia, the state auction official is the Pejabat Lelang Kelas I (PL I), who holds the status of a Civil Servant (PNS) under the Executive Branch (DJKN). Their authority to execute debt is derived from an administrative mandate delegated by the state. This structural placement enables the use of Parate Eksekusi for secured collateral (like *Hak Tanggungan*): "Konsekuensi struktural ini sangat penting: karena PL I Indonesia di bawah Eksekutif, lelang Hak Tanggungan dapat dilakukan melalui mekanisme Parate Eksekusi (penjualan langsung tanpa penetapan pengadilan, berdasarkan Pasal 6 UUHT). Sementara di Malaysia, eksekusi properti jaminan (*foreclosure*) wajib melalui Pengadilan Tinggi untuk mendapatkan *Order for Sale*, menegaskan kontrol Yudikatif atas proses tersebut." The Malaysian equivalent is the Court Bailiff/Registrar, a judicial apparatus directly supervised by the High Court. Their authority is rooted purely in a Judicial Order (*Order for Sale*). Thus, any execution sale of secured property must proceed through a formal judicial process, underscoring tight judicial control. This key difference highlights that Indonesia prioritizes administrative efficiency in credit recovery, while Malaysia mandates strict judicial control for asset alienation.

b. Private Officials and Document Legitimacy

The dualism of private auctioneers also exhibits significant differences in scope and the legal weight of their resulting documents:

- Indonesia (PL II): The Pejabat Lelang Kelas II (PL II) is strictly a private professional with highly limited authority. They are explicitly prohibited from conducting *any* form of execution or mandatory auction, restricted only to Voluntary Non-Execution Sales. However, their product, the Risalah Lelang PL II, obtains the high legal status of an Authentic Deed with perfect evidentiary power.
- Malaysia (Licensed Auctioneers): Licensed Auctioneers possess more flexible authority. While they conduct voluntary sales, they are also routinely engaged as agents for court-ordered execution sales under the Court Bailiff's direction. Critically, the sales document they produce does not automatically achieve the status of a perfect Authentic Deed but relies primarily on the principles of contract law and judicial support for its enforceability.

This signifies that Indonesia grants the final sales document maximum legal authority (*Akta Autentik*), while Malaysia delegates wider participation in the execution process but maintains judicial supervision over the document's legal power.

CONCLUSION

The legitimacy of conventional auctions in both countries rests on universally shared principles that define the process as a mandatory public sale. Both nations require the auction to be conducted openly, promoting competition to achieve the highest possible price. This commitment to transparency is formalized by the mandatory public announcement (*Pengumuman/Gazetting*), which is considered a substantive legal prerequisite for the validity of the sale. Furthermore, both systems rely on a dualism of officials (state/judicial and private/licensed) who must be vested with public authority (*publieke macht*) to legally execute the alienation of property rights. Crucially, the auction culminates in a conclusive legal document, the Risalah Lelang (Indonesia) or the *Certificate of Sale* (Malaysia) which functions as an authentic deed (or equivalent legal instrument). This document is the absolute basis for property transfer. The strength of this document reflects the underlying concept of Proprietary Rights (*Hak Kebendaan*), which grants direct power over the object, enforceable against everyone.

The principal divergence lies in the authority controlling the execution process, which dictates the necessary legal procedure and the role of the state apparatus. Indonesia's system is Executive-Centric, centralized under the Ministry of Finance (DJKN) and historically rooted in the colonial *Vendu Reglement*. The state official, the Pejabat Lelang Kelas I (PL I), is a Civil Servant (PNS) whose authority is administrative. This structural placement enables the use of Parate Eksekusi (direct sale without judicial order) for secured collateral (*Hak Tanggungan*). This approach prioritizes administrative efficiency and centralized control for credit realization. Conversely, Malaysia's system is Judiciary-Centric, governed by the *National Land Code* and controlled by the High Court. The execution function is carried out by the Court Bailiff/Registrar, a judicial apparatus, whose authority stems from a Judicial Order. Malaysia mandates the process to go through the

High Court to obtain a Judicial Order for Sale, thereby maintaining strict judicial oversight and greater debtor protection during the forced alienation of property. Furthermore, the scope of private officials differs significantly, the Indonesian PL II is strictly limited to voluntary sales but produces an Authentic Deed, whereas, Malaysian Licensed Auctioneers have broader flexibility, often assisting in judicial execution sales, but their document relies on contract law and lacks the automatic authentic deed status. This illustrates the fundamental difference in delegating and validating public authority within the two legal traditions.

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