

## DUE DILIGENCE AND RISK MITIGATION FOR WINNERS OF COLLATERAL LAND AUCTIONS

Suwito<sup>1\*</sup>, Sulani<sup>2</sup>, Rafadi Khan Khayru<sup>3</sup>, Arif Rahman Putra<sup>4</sup>, Didit Darmawan<sup>5</sup>

<sup>1,2,3</sup> Faculty of Law, Universitas Sunan Giri Surabaya, Surabaya, Indonesia.

Email: [dr.suwito.sh@gmail.com](mailto:dr.suwito.sh@gmail.com)

### ABSTRACT

*This study aims to analyze the legal protection afforded to recipients of land rights acquired through execution auctions involving fiduciary security and mortgage rights, focusing on the identification of legal gaps, substantive risks, and the construction of a due diligence mechanism. The method employed is normative legal research utilizing legislative, jurisprudential, and doctrinal approaches. The results indicate that the legal protection for auction winners possesses a strong normative basis within the Mortgage Rights Law and the Fiduciary Security Law, reinforced by Supreme Court jurisprudence that protects auction winners acting in good faith. However, the primary legal gap lies in the imperfection of the land registration system, the existence of unrecorded third-party rights, and vulnerability to procedural defects in the auction. Substantive risks faced by auction winners include ownership disputes, claims from heirs, the presence of physical occupants, as well as uncertainty regarding spatial planning status and tax liabilities. To mitigate these risks, the study formulates an effective due diligence framework encompassing verification of certificate legality, physical and social field inspections, tracing of encumbrances from agreements, and confirmation of spatial compliance. It is concluded that auction winners must transition from reliance on passive legal protection towards an active approach through comprehensive due diligence, while regulators need to enhance transparency regarding auction object information.*

**Keywords:** Execution Auction; Mortgage Right; Fiduciary Security; Due Diligence; Auction Winner; Legal Protection.

### INTRODUCTION

The execution auction of land pledged as collateral in fiduciary and mortgage agreements is a common final legal mechanism pursued by creditors to recover overdue and unpaid debts. This process embodies the principle of parate executie inherent in mortgage rights and the executory title on fiduciary security certificates, granting the creditor a privileged position to directly execute the collateral object without first undergoing a court lawsuit. Auctions conducted based on a Decree of the Chairperson of the District Court (Penetapan Ketua Pengadilan Negeri), as regulated by legislation, are intended to provide a swift and certain solution for the creditor while offering legal certainty for interested third-party buyers. In banking and financing practice, execution auctions are a crucial instrument for maintaining liquidity and suppressing non-performing loan rates (Wiguna et al., 2025). However, behind

this ideal objective, execution auction transactions harbor significant legal complexity and risk, especially for the auction winners as the new recipients of rights.

The land auction process does not occur in a legal vacuum; it is the confluence of various complex legal regimes, namely security law, agrarian law, civil law, and civil procedural law. The interaction among these regimes often creates tension and uncertainty. (Octavian, 2024) Land title certificates, which should function as strong evidentiary instruments providing certainty regarding ownership status and attached encumbrances, can paradoxically become a source of problems in the execution context. Formal or material defects in the original certificate, potentially latent for years, can surface after the auction concludes and the property changes hands. This risk is borne by the auction winner under the principle of *caveat emptor* or *buyer beware*, which is implicitly embedded in the auction process where objects are sold in an "as is where is" condition. Consequently, legal protection for the auction winner cannot be assumed to flow automatically from the certificate they receive.

The most tangible and frequently conflict-triggering risk is the presence of third parties who physically occupy or control the auctioned land. These third parties could be lessees under a still-valid rental agreement, unrecorded hereditary cultivators, the debtor's family who claim moral rights, or even other parties claiming true ownership through legal acts outside the certificate. Their existence is not automatically extinguished upon the auction's completion and the issuance of a certificate in the winner's name. Article 570 of the Civil Code concerning the right to claim delivery of property (*revindicatie*) can still serve as a basis, even against property transferred through an execution auction (Habibie et al., 2025). This conflict then transforms into a protracted dispute over ownership and possession in court, ensnaring the auction winner in litigation that consumes time, cost, and energy. The losses and uncertainties experienced by the auction winner reinforce the argument regarding the importance of protection for buyers in every property transaction, given the significant legal consequences that may arise (Darmawan et al., 2023).

The problem becomes more complicated when the auction object is land with unresolved legal status, for instance, land still undergoing conversion from customary rights, land whose certificate is under court dispute (*volstreikbaar bij voorraad*), or land that overlaps with another person's certificate. The Supreme Court, through various jurisprudential rulings, has endeavored to provide clarification and guidance, such as in Supreme Court Decision No.

357K/Pdt/2013, which emphasizes the importance of the buyer's good faith and the necessity for thorough investigation before the auction is held (Pratiwi et al., 2023). However, these rulings also demonstrate that protection for auction winners is not absolute. An auction winner may forfeit their right if proven to have known, or should have known, of legal defects in the auction object. In this situation, the auction's function as a means to swiftly acquire rights ironically becomes a source of new uncertainty.

Normatively, several regulations attempt to provide protection. Law Number 4 of 1996 concerning Mortgage Rights guarantees a preferential right for the mortgage holder and regulates its execution. Law Number 42 of 1999 concerning Fiduciary Security grants similar executory force to fiduciary certificates. Regulations concerning auctions, such as the Minister of Finance Regulation, govern the implementation procedures. However, these regulations often focus only on the execution procedure from the creditor's perspective, not on post-auction legal certainty for the buyer. This gap must be identified and analyzed to formulate a more balanced protection framework. This study will conduct an in-depth examination of the legal gaps and risks facing land auction winners, with analysis of Supreme Court jurisprudence and comparison with relevant theories of security and bankruptcy law. In the context of bankruptcy law theory, for example, this study could examine the interaction between individual auction enforcement as a collection effort and collective mechanisms in bankruptcy that can halt such enforcement (Dirgantara et al., 2025).

The first fundamental problem is the legal ambiguity concerning the guarantee of certainty over the auction object provided by the auction committee to prospective buyers. The auction committee, in its role as organizer, often provides only limited administrative information based on data supplied by the executing party (creditor). Information regarding potential hidden legal defects, the presence of physically occupying third parties, or disputes not yet having permanent legal force is frequently not disclosed in the auction minutes. Prospective buyers, especially laypersons, assume that an auction held based on a court decree is inherently free of problems. Yet, the "as is where is" principle imposes a heavy due diligence obligation on the prospective buyer. Research by Sutedi indicates that many land auction winners subsequently become entangled in disputes because they relied on one-sided information from the committee without conducting independent field and legal verification. This asymmetry of information is a primary source of risk (Sutedi, 2012).

The second problem concerns the legal construction of the "third party in good faith" within the execution auction context. When a dispute arises with a third party in control of the land, the auction winner will argue their status as a third party in good faith who purchased through a lawful legal process. Meanwhile, the physically occupying third party will claim legal protection for their position, whether as a lessee, cultivator, or a party aggrieved by the execution. The Mortgage Rights Law in Article 20 provides protection to the primary mortgage holder but does not explicitly regulate the position of the auction buyer. Supreme Court jurisprudence itself is inconsistent; some rulings prioritize execution certainty and protect auction winners, while others tend to protect third parties who occupied the land in good faith prior to the execution. This inconsistency creates high legal uncertainty and opens space for manipulation of the legal process.

The third problem is the weak coordination and data integration between the land administration system (National Land Agency) and the judiciary and auction executor systems. The certificate used as collateral may be encumbered with a fiduciary or mortgage right, yet there may also be a conservatory attachment (*conservatoir beslag*) from another creditor or even the land's status may be under a cancellation process in the land court. Such crucial data is not always reflected in the physical certificate or the information announced by the auction committee. Consequently, an auction winner may obtain a certificate that is legally "extinct" or carries heavier encumbrances than anticipated. A study by the Indonesian Center for Law and Policy Studies Research Team (2015) found no effective check and balance mechanism to ensure all encumbrances and legal defects of a land parcel are transparently disclosed before the execution auction is held, leaving auction winners to bear a substantial residual risk (Blomkamp et al., 2017).

Execution auction activity for land as a consequence of non-performing loans is projected to continue increasing alongside fluctuating economic dynamics. Auction buyers, who may come from the general public, entrepreneurs, or investors, require certainty and legal protection so that auction transactions can become a safe and attractive investment alternative. From the perspective of investment risk mitigation law, the creation of legal certainty and protection is a key element in building trust and attracting public participation (Sahid et al., 2023). In addition to legal aspects, the approach to investment risk also needs to be based on ethical principles in financial management to ensure sustainability and social

responsibility (Putra & Arifin, 2023). The implementation of these social responsibility principles faces legal and practical challenges, particularly in large-scale investment projects (Aryanto et al., 2024). At a more fundamental level, the integrity of the entire business and investment process depends on effective law enforcement to prevent corrupt practices (Saputra et al., 2021). Effective protection for investors is highly dependent on the principles of transparency and the provision of adequate information (Santoso et al., 2025). Without adequate protection, excessively high risks will dampen public interest in execution auctions, ultimately reducing the auction's effectiveness as a tool for resolving non-performing loans and depressing auction prices, thereby also harming creditors and debtors. An in-depth study to identify and offer solutions to this legal gap is a pressing practical necessity.

The development of Supreme Court jurisprudence concerning post-auction disputes reveals a dynamic of legal interpretation that needs to be mapped and analyzed. Court decisions reflect how judges balance various conflicting interests: the creditor's interest in smooth execution, the auction winner's interest in legal certainty, and the third party's interest in substantive justice. Mapping the patterns of these rulings is important for predicting legal risks and simultaneously providing input for the formation of more consistent and just legal doctrine. However, the legitimacy and fairness of a legal doctrine also need to be examined from the perspective of the communities affected by it, particularly with regard to distributive justice and the credibility of law enforcement institutions (Mohammad, 2023). The establishment of consistent and fair legal doctrine also depends on the clarity of norms and the professional responsibilities of law enforcement officials, including in other property transactions (Khusna et al., 2025). A comprehensive understanding of jurisprudence will also assist legal practitioners, notaries, and property consultants in providing more accurate legal advice to clients intending to participate in land execution auctions.

This study aims to comprehensively analyze the legal protection afforded to recipients of land rights acquired through execution auctions, specifically those arising from fiduciary security and mortgage rights. The first objective is to examine and describe the applicable legal framework, including the Mortgage Rights Law, the Fiduciary Security Law, and implementing regulations concerning auctions, and to critically review relevant Supreme Court jurisprudence to understand how protection for auction winners is constructed and delimited in judicial practice. The second objective is to systematically identify legal gaps and

substantive risks that threaten the certainty of an auction winner's rights, such as the presence of physically occupying third parties, latent ownership disputes, and formal and material defects in certificates, and subsequently to formulate an effective and proportional legal due diligence framework applicable before participating in an auction. Theoretically, this research is expected to contribute to the development of security and execution law doctrine, particularly regarding the aspect of protecting auction buyers. Practically, the results of this research can serve as a guideline for prospective auction participants, legal consultants, notaries, and law enforcement officials in anticipating and resolving legal problems arising after the execution auction of land.

## **METHODS OF THE RESEARCH**

This research constitutes normative legal research oriented toward a doctrinal study. This research approach was chosen because the nature of the problem under investigation relates to the study of legal principles, legal norms, and their application through court decisions. According to Soerjono Soekanto, normative legal research is research conducted on library materials by examining the legal principles contained in legislation, books, and court decisions. Thus, this research seeks to construct a systematic and critical legal framework based on existing written sources, without collecting empirical data in the field. The primary focus lies in the effort to identify, interpret, and systematize the legal norms related to land execution auctions and the protection of the rights recipients, in order to answer the established research questions.

The data used are entirely secondary data, classified into three types to ensure comprehensive analysis. First, primary legal sources consisting of relevant and still-enacted legislation. This group includes Law Number 4 of 1996 concerning Mortgage Rights (Undang-Undang Republik Indonesia Nomor 4 Tahun 1996 tentang Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah, 1996), Law Number 42 of 1999 concerning Fiduciary Security (Undang-Undang Republik Indonesia Nomor 42 Tahun 1999 tentang Jaminan Fidusia, 1999, p. 199), Government Regulations, the Minister of Finance Regulation concerning Auctions, as well as provisions in the Civil Code and the Code of Civil Procedure. Second, secondary legal sources which function to analyze and explain the primary sources. This category includes prominent textbooks and scholarly commentaries in the fields of

security law, agrarian law, and auction law; research articles from accredited national law journals; and published seminar papers. Third, tertiary legal sources in the form of jurisprudence. This source is crucial as it reflects the application of law in concrete cases. The research will analyze relevant decisions of the Supreme Court of the Republic of Indonesia, particularly within the last 15 years, that address post-auction disputes involving land security. These decisions will be examined to identify argumentative patterns, established legal principles, and shifts in interpretation that have occurred.

The applied analytical technique is qualitative content analysis of the legal materials and descriptive-analytical analysis. Content analysis is used to extract meaning, themes, and patterns from the texts of regulations and court decisions. Descriptive-analytical analysis is then used to describe the existing legal framework and to analyze its gaps and contradictions. This research approach also employs a legal discovery method with a deductive reasoning pattern, which draws specific conclusions from general premises found in regulations and doctrine. Furthermore, case analysis is performed on selected jurisprudence to understand how legal theories are translated into decisions and their implications for the legal protection of auction winners. The entire analytical process is directed towards producing a coherent synthesis and evidence-based recommendations.

## RESULTS AND DISCUSSION

### **The Legal Framework and Jurisprudence on the Protection of Land Security Auction Winners**

The legal framework for protecting winners of land execution auctions is rooted in two specific laws granting executory power: Law Number 4 of 1996 concerning Mortgage Rights and Law Number 42 of 1999 concerning Fiduciary Security (Undang-Undang Republik Indonesia Nomor 42 Tahun 1999 tentang Jaminan Fidusia, 1999). The Mortgage Rights Law, through Article 6, grants special characteristics in the form of a preferential right (*droit de préférence*) and a right of pursuit (*droit de suite*). The preferential right allows the creditor-holder of the mortgage right priority in debt repayment from the proceeds of the collateral object's execution. Meanwhile, the *droit de suite* guarantees that the mortgage right remains attached to the collateral object even if it is transferred to a third party (Aswadi et al., 2025). This principle directly forms the foundation for protecting the auction winner; the land auctioned is free from the mortgage encumbrance after execution, because the mortgage

right itself is executed to repay the principal debt. The auction winner is entitled to obtain ownership of the land clear of that mortgage burden. This mechanism is further regulated in Article 20 of the Mortgage Rights Law, which states that execution can be carried out through public auction according to procedures established by legislation. This provides a strong juridical basis that execution auction is a lawful means to transfer rights over the secured land.

On the other hand, the Fiduciary Security Law provides a similar position for the fiduciary grantee-creditor. Article 29 paragraph (1) of the Fiduciary Law grants the Fiduciary Security Certificate executory force equivalent to a court decision that has obtained permanent legal force (Dona & Setyono, 2024). This means the creditor can directly request execution of the fiduciary collateral object from the Chairperson of the District Court without undergoing an ordinary civil lawsuit process. Article 30 regulates that execution can be carried out through public auction based on a forced sale under hand (Adhitya & Hafidz, 2024). Thus, the winner of an auction for land that is fiduciary collateral also receives formal protection based on a law that explicitly provides a lawful execution path. These two laws create a framework in which the auction winner is regarded as a legitimate assignee from an execution process guaranteed by the state through law. Therefore, any claim from any party seeking to annul the auction winner's right must prove a fundamental defect in the execution process itself, not merely an objection to the transfer of right.

The execution auction practice itself is regulated within civil procedural law and specific regulations. Article 200 of the *Herziene Inlandsch Reglement* (HIR) and Article 215 of the *Reglement op de Rechtsvordering* (RBg) grant authority to the District Court to carry out actual execution, including sale by auction. This process is further detailed in the Supreme Court Regulation Number 1 of 2016 concerning Procedures for Civil Execution. However, the most detailed technical regulation regarding the administration of auctions, including execution auctions, is contained in the Minister of Finance Regulation Number 27/PMK.06/2016 concerning Auction Implementation Guidelines (Azzahra & Badriyah, 2023). This regulation governs all procedural aspects from announcement, inspection of goods, conducting bids, to the issuance of the Auction Minutes. The Auction Minutes, as regulated in Article 14, constitute an authentic deed serving as valid proof of the sale and the basis for the auction winner to register the transfer of rights. By adhering to this regulation, the auction

winner can claim that their right was obtained through a process fulfilling all formal requirements set by the state, thereby providing an additional layer of administrative protection. Bidders who are acting in good faith and have obtained their rights through this legitimate procedure then have a strong legal position to defend their rights in a land dispute (Pratika et al., 2024).

Supreme Court jurisprudence has played an active role in interpreting and shaping the boundaries of this protection, particularly when confronting third-party claims. One significant ruling is Supreme Court Decision Number 357 K/Pdt/2013. In this decision, the Supreme Court affirmed that an auction buyer acting in good faith must be protected. A third party claiming to be the true owner of the auctioned land cannot automatically invalidate the auction result. Instead, such a third party must prove that the auction winner knew or should have known of defects in the debtor's ownership of the land, or that the auction process itself was legally flawed. This decision effectively places a heavy burden of proof on the claiming third party and grants presumptive protection to the auction winner as a party deemed to be in good faith (Sinaga et al., 2023).

The "real right" (*zakelijkheid*) principle of mortgage rights is also affirmed in jurisprudence. Supreme Court Decision Number 321 K/Pdt/2012 states that a mortgage right attaches to the property itself, making execution against that property valid against whomever possesses it. This means that if a piece of land has been lawfully encumbered with a mortgage right and is subsequently executed, a third party in possession of the land (for example, a lessee or cultivator) cannot obstruct the execution (Putra & Kunarti, 2022). Such third-party rights, if they exist, do not extinguish the preferential right of the mortgage-holding creditor. The auction winner, as the successor in right from this execution process, is entitled to demand delivery of the property. Protection for the physically possessing third party must be sought through a separate lawsuit to claim damages from the security-providing debtor, not by invalidating the auction.

However, the Supreme Court does not grant absolute protection either. Its decisions demonstrate that protection for an auction winner can be forfeited if the winner themselves is not in good faith. For example, Supreme Court Decision Number 197 K/Pdt/2015 states that if there is an indication of collusion between the auction winner and the creditor or debtor to sell the land at a very low price, thereby harming other creditors or third parties, then the

auction result can be annulled (Handayani et al., 2023). Furthermore, if a legal defect in the auction object is fundamental and evident for instance, if the auctioned land is state land or land whose right of use has expired then the auction is considered void ab initio. In such cases, the auction winner cannot rely on protection as a party in good faith. These rulings explicitly affirm that legal protection is highly dependent on the application of the principle of good faith, which is the main foundation in the implementation of every contractual and legal relationship (Irfansyah et al., 2024).

Protection is also tested when the auction object is still subject to a lease agreement. According to Supreme Court Decision Number 1221 K/Pdt/2019, a lease agreement created before the imposition of the mortgage right remains binding on the auction buyer. The principle "sale does not break hire" (*koop breekt geen huur*) as regulated in Article 1576 of the Burgerlijk Wetboek (BW) applies. This means the auction winner must respect the existing lease agreement until its term expires. This dynamic demonstrates how the position of parties acquiring rights through auctions who can be viewed as 'consumers' in this particular type of sale and purchase transaction is constrained by the burden of existing agreements, a reality that highlights the complexity of protection in various forms of agreements (Kurniawan et al., 2024). Protection for the auction winner here does not mean freedom from all other parties' rights, but certainty that they acquire ownership, even though that ownership remains encumbered by the lessee's right of use. The auction winner is protected in becoming the owner, but not automatically freed from the burden of prior valid agreements (Ekwanto et al., 2025).

The legal framework of the Basic Agrarian Law (Undang-Undang Pokok Agraria or UUPA) also provides an important structure. Article 19 of the UUPA mandates land registration to provide legal certainty. The auction winner has the right and obligation to register the transfer of their right in the land book based on the Auction Minutes and the Decree of the Chairperson of the District Court. Once registered, they obtain a land title certificate. According to the publicity principle in land law, the information in the certificate is presumed correct until proven otherwise in court. This constitutes a very strong form of legal protection. A third party wishing to challenge the auction winner's right must prove an error in the land book or the invalidity of the basis for acquiring the right (the Auction Minutes), a lengthy and complex process (Fahamsyah et al., 2022).

Considering the entire legal framework and jurisprudence above, it can be stated that protection for winners of land execution auctions is strong but not absolute. This protection is built upon three main pillars: first, the executory power granted to the creditor by specific laws; second, compliance with the auction procedure regulated by legislation; and third, the good faith of the auction winner themselves. Supreme Court jurisprudence functions as a balancing mechanism, protecting auction winners in good faith from unilateral claims, but also withdrawing protection if fraud, collusion, or fundamental legal defects that should have been known are discovered. Thus, the system strives to achieve a balance between the legal certainty of credit execution (vital for the financial system) and the principle of substantive justice protecting the rights of other legitimate parties.

### **Identification of Legal Gaps, Risk, and Due Diligence Mechanisms for Auction Winners**

The first and most crucial legal gap and substantive risk lies in the imperfect land registration system. Law Number 5 of 1960 concerning the Basic Agrarian Law (UUPA) and Government Regulation Number 24 of 1997 concerning Land Registration do regulate the constitutive principle, where registration creates legal certainty. However, this principle contends with the reality that the certificate being auctioned may be the product of a defective initial registration process or contain material errors. A certificate that has been issued and formally encumbered with a mortgage may stem from an inaccurate land parcel measurement, overlap with another person's right, or be issued based on an outdated land document (girik, letter C) that is no longer valid (Sarikun et al., 2024). Such a certificate, although formally valid, is vulnerable to annulment through a lawsuit in the Administrative Court or a civil suit. An auction winner relying on the executory force of the auction minutes is not automatically protected from the annulment of this certificate, because the auction minutes only prove the sale, not the material truth of the juridical data contained in the certificate. This gap creates a risk where the auction winner, after expending substantial funds, must engage in protracted legal disputes to defend their certificate, with the possibility of the certificate being annulled and the winner only entitled to claim a refund of the purchase price.

A second, highly substantive risk is the existence of third-party rights that are unrecorded in the certificate but recognized by law. The auction object, although registered in the

debtor's name and encumbered with a mortgage, may be subject to leasehold rights, building use rights (Hak Guna Bangunan), use rights (Hak Pakai), or management rights based on an underhanded agreement created prior to the imposition of the security. The Mortgage Rights Law in Article 21 states that a mortgage right does not extinguish third-party rights acquired earlier. Article 1576 of the Civil Code reinforces the principle that "sale does not break hire." This means the auction winner is obligated to respect those rights until their term expires. These binding lease rights, if based on a lease agreement that is effectively and fairly regulated, will have legal force that is very difficult to revoke. (Rizky et al., 2024) The risk is that the auction winner purchases land but cannot fully control or utilize it for a certain period. If the lease agreement is long-term, the land's economic value becomes significantly lower (Zuriyah & O., 2024). Even worse, if there are strong building use rights or use rights held by a third party, the auction winner may become merely a "naked owner" (nude eigenaar) for an extended period, a risk often not disclosed in the auction minutes or announcement.

Administrative defects within the execution process itself constitute a legal gap that can invalidate the auction. The execution auction must comply with strict procedural requirements in accordance with the Minister of Finance Regulation on Auctions and other implementing regulations (Safriani et al., 2025). Procedural violations, such as errors in determining the reserve price, defects in the auction announcement, or conducting the auction outside the stipulated timeframe, can serve as grounds for the debtor or third party to file objections and even invalidate the auction through a judicial review (Peninjauan Kembali or PK) or other legal remedies. Supreme Court Regulation Number 1 of 2016 concerning Civil Execution Procedures also governs the stages that must be followed. Non-compliance creates the risk that a completed auction may be declared null and void by the court. In such a situation, the auction winner must return the land and may face difficulty obtaining a full refund if the debtor/creditor is insolvent. This procedural risk is often overlooked by prospective buyers who focus solely on the physical asset and price.

The risk of claims from the debtor's heirs or parties claiming moral rights over the land is also real. The auctioned land might be inherited land not yet divided or land de facto controlled by an extended family, even if the certificate is in the debtor's name as the sole heir (Sugianto et al., 2023). After the auction, other heirs may file a lawsuit to annul the

auction on the grounds that the land is joint inheritance property that cannot be unilaterally pledged or sold. Although formally, the mortgage or fiduciary security imposed on a sole certificate is legally valid, courts in some cases tend to consider aspects of justice and uphold heirs' rights, which can result in the auction's annulment or at least compel the auction winner to share the right with other heirs. This risk is difficult to detect solely from certificate documents and requires in-depth investigation into lineage and land acquisition history. The dilemma between legal certainty based on formal documents and substantive justice for communal rights holders (such as heirs) touches on the core of the national agrarian policy challenge in embracing legal certainty and social justice simultaneously (Aziz et al., 2023).

Therefore, constructing an effective due diligence mechanism becomes imperative. The first and most crucial stage of due diligence is verification of the certificate's legality and land status at the Land Office. Prospective auction participants must conduct a historical record tracking of the certificate, from its issuance process, previous transfers, to its encumbrances. This aims to identify potential juridical defects such as duplicate certificate issuance, overlaps, or other conservatory attachments (*conservatoir beslag*) not yet lifted. Verification must include requesting a Land Registration Certificate (*Surat Keterangan Pendaftaran Tanah*) and directly inspecting the land book to ensure no entries contradict the data announced by the auction committee.

The second stage of due diligence is physical and social field inspection. Prospective buyers must visit the land location to confirm the parcel's conformity with the certificate map, identify boundary markers, and most importantly, interview surrounding neighbors and local officials (neighborhood/village heads) to understand the land's possession history and the presence of other parties who might claim or occupy the land (Simon, 2023). This inspection aims to uncover physical occupation by unrecorded third parties, boundary disputes with neighbors, or the fact that the land has been occupied by the debtor's extended family. Information from informal on-ground sources often provides a more honest depiction of risks than official documents.

The third stage is due diligence regarding contractual encumbrances. Prospective buyers need to request confirmation from the executing creditor (usually a bank) regarding the existence of any lease agreements, utilization cooperation, or other agreements made by the debtor before the execution that remain valid (Pamungkas & Prakoso, 2024). Although the

creditor may not possess complete information, this effort is important. Additionally, checking for possible underhanded agreements can be done by requesting a statement letter from the debtor (if possible) or inferring from the pattern of land use observed during the field inspection, such as buildings clearly occupied by others with signs of permanent residence.

The fourth due diligence mechanism is verification of spatial planning compliance and permits. Prospective auction participants must check the Detailed Spatial Plan (Rencana Detail Tata Ruang or RDTR) at the local Integrated Licensing Service Office (Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu or DPMPTSP) to ensure the land's designation aligns with their intended development plans. Land located in green zones, river buffers, or allocated for future toll roads holds vastly different value. This check also includes the status of building permits (Izin Mendirikan Bangunan or IMB) for land with existing structures, and tax compliance status (Pajak Bumi dan Bangunan or PBB) to avoid arrears that become a new burden (Pratiwi et al., 2023).

To formalize and secure the due diligence results, prospective buyers can construct a joint and several liability agreement with the executing creditor or request specific guarantees. Although in execution auctions the creditor's position is typically very strong and reluctant to provide additional guarantees, negotiation remains possible, especially if the prospective buyer is a serious party and the auction value is substantial (Hutagalung et al., 2025). Another alternative is to allocate a portion of the purchase price as an escrow fund to cover the risk of legal claims for a certain period after the auction. This contractual mechanism, though uncommon, can be established as part of a conditional offer to allocate risks more fairly between the seller (via the creditor) and the buyer.

Ultimately, the effectiveness of due diligence heavily depends on the resources, thoroughness, and sometimes the business instinct of the prospective buyer. No due diligence can eliminate all risks, but a systematic and comprehensive process can map out risks, quantify them, and enable prospective buyers to make an informed decision: whether to participate in the auction, at what bid price (considering the risk), or to avoid an overly risky object. In this context, the role of experienced legal consultants and independent surveyors specializing in property and auctions becomes vital to assist prospective buyers in executing these complex yet decisive due diligence stages.

## CONCLUSION

Based on the conducted analysis, it can be concluded that the legal protection for winners of execution auctions of land under fiduciary security and mortgage rights within the Indonesian legal system is built upon a strong normative foundation yet confronted with the complex reality of substantive risks. The legal framework derived from the Mortgage Rights Law and the Fiduciary Security Law grants special executory status to the creditor, which is then transferred to the auction winner through an auction process regulated by legislation. Supreme Court jurisprudence consistently reinforces the position of auction winners in good faith, placing a heavy burden of proof on third parties seeking to annul auction results, and affirming the principle of legal certainty in the execution of real security. However, this protection is not absolute or automatic. Significant legal gaps exist, primarily stemming from the imperfect land registration system, the existence of unrecorded third-party rights, and vulnerability to procedural defects in the execution of the auction itself. These risks render the auction winner's position vulnerable to lawsuits, ownership disputes, and an inability to physically control the object, ultimately reducing the economic value and certainty of the right acquired through the auction.

The findings of this research carry important implications for various stakeholders. For prospective auction participants and winners, the primary implication is the necessity to recognize that acquiring land through an execution auction is not a risk-free transaction. Compliance with auction procedures and good faith alone are insufficient to guarantee peaceful ownership. This implication encourages a paradigm shift from relying on passive legal protection towards an active approach through comprehensive due diligence before deciding to participate in an auction. For creditors (banks and financing institutions), these findings imply that the effectiveness of auctions as a tool for resolving non-performing loans may diminish if potential buyers become reluctant due to the perceived high risk. Therefore, creditors have a strategic interest in enhancing transparency and the quality of information regarding auction objects, which in turn could increase auction prices and expedite debt recovery. For policymakers and regulators, the implication of this research is the need to revise or perfect regulations, particularly those governing data integration between the land administration system, the judicial system, and the auction system, and possibly to introduce

specific guarantee schemes or mediation institutions for more efficient resolution of post-auction disputes.

Based on the above conclusions and implications, several strategic suggestions are proposed. First, to the Directorate General of State Assets as the auction regulator and organizer, it is recommended to develop and mandate a "Standard Due Diligence Report" for every land object to be sold in an execution auction. This report must be prepared by an appointed independent consultant and contain critical information regarding the certificate's legal status, recorded and unrecorded third-party rights, physical inspection results, and an analysis of key risks. This report must then be included in the auction documents and announced to prospective participants. Second, to the community of advocates and notaries, it is recommended to develop specialization and standardized protocols in providing legal assistance for auction due diligence to clients. This protocol should include a comprehensive checklist, official data sources to be accessed, and model risk protection agreements (such as escrow or indemnity clauses) that can be negotiated. Third, to banking and financing institution associations, it is recommended to create internal guidelines obligating restructuring and asset management units to proactively disclose known information about collateral object defects to prospective buyers, in order to build a credible and integrated auction reputation, which ultimately benefits all parties in the long term.

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