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Legal Ceretainty in the Conduct of Auctions of Movable Property within the Religious Court System

Adam Ramadhan[1], Heru Sugiyono[2]
[1]UPN "Veteran", Jakarta, Indonesia, 2310611019@mahasiswa.upnvj.ac.id
[2]UPN "Veteran", Jakarta, Indonesia, herusugiyono@upnvj.ac.id

Corresponding Author: 2310611019@mahasiswa.upnvj.ac.id[1]

Abstract: The execution of auctions for movable property in the Religious Courts is often hampered by regulatory inconsistency. This study examines the legal certainty of auction execution for movable property in the Religious Courts and the Supreme Court's responsibility regarding such requests. The research methodology employs a normative-juridical approach with statutory, conceptual, and case approaches. The findings indicate that legal certainty has not been optimally achieved due to the absence of technical implementing guidance in Book II of the Supreme Court, notwithstanding the general authority to transfer seized movable property under Article 197 paragraph (9) of the HIR and Article 212 of the RBg. The lack of technical mechanisms regarding the physical possession of movable property auction objects mandated by PMK Number 122 of 2023 triggers practice inconsistencies among courts and reduces legal protection for applicants. In conclusion, this regulatory disharmony creates legal uncertainty, making auction execution highly dependent on the subjectivity of auction officials. The Supreme Court holds a legal-structural regulatory responsibility (regerende functie) to address this regulatory gap. Therefore, it is recommended that the Supreme Court promptly issue technical policies, such as a Supreme Court Circular (SEMA) or a revision of Book II, specifically regulating physical possession procedures for movable property. Additionally, Religious Courts are encouraged to proactively report these implementation obstacles to the Supreme Court.

Keywords: Auction Execution, Movable Property, Religious Court, Legal Certainty

Abstrak: *Pelaksanaan eksekusi lelang barang bergerak di Pengadilan Agama kerap terhambat oleh ketidakselarasan regulasi. Penelitian ini mengkaji kepastian hukum pelaksanaan eksekusi lelang barang bergerak di Peradilan Agama serta tanggung jawab Mahkamah Agung atas permohonan tersebut. Metode penelitian menggunakan yuridis-normatif dengan pendekatan perundang-undangan, konseptual, dan kasus. Hasil penelitian menunjukkan bahwa kepastian hukum belum tercapai secara optimal akibat tidak adanya pedoman teknis pelaksanaan dalam Buku II Mahkamah Agung, meskipun Pasal 197 ayat (9) HIR dan Pasal 212 RBg sesungguhnya memberikan dasar kewenangan umum untuk memindahkan barang sitaan bergerak. Ketiadaan mekanisme teknis mengenai penguasaan fisik objek lelang barang bergerak yang diwajibkan*

oleh PMK Nomor 122 Tahun 2023 memicu ketidakseragaman praktik antar pengadilan dan mengurangi perlindungan hukum bagi para pemohon. Kesimpulannya, disharmoni aturan ini melahirkan ketidakpastian hukum, sehingga eksekusi lelang sangat bergantung pada subjektivitas pejabat lelang. Mahkamah Agung memiliki tanggung jawab regulasi (regerende functie) secara yuridis-struktural untuk mengatasi kesenjangan regulasi ini. Oleh karena itu, disarankan agar Mahkamah Agung segera menerbitkan kebijakan teknis, seperti Surat Edaran Mahkamah Agung (SEMA) ataupun revisi Buku II Mahkamah Agung, yang secara spesifik mengatur tata cara penguasaan fisik barang bergerak. Selain itu, Pengadilan Agama diimbau proaktif melaporkan kendala pelaksanaan ini ke Mahkamah Agung.

Kata Kunci: *Eksekusi Lelang, Barang Bergerak, Pengadilan Agama, Kepastian Hukum*

INTRODUCTION

Human interaction is an inevitable aspect of social life, given that no individual is capable of fulfilling all their needs independently without the involvement of others. A group of people who share the same fundamental human nature and interact with one another constitutes a society. Accordingly, the term *society* refers to a group of individuals who have lived together over an extended period, gradually forming a unified community with a distinct identity and clearly defined boundaries (Itmam, 2021). Interactions within society often give rise to conflicting interests, which may lead to disputes and disrupt the harmony of communal life. To anticipate and resolve such conflicts of interest, legal instruments are necessary to regulate dispute resolution in an orderly and equitable manner through judicial institutions.

Civil procedural law, derived from the *Herzien Inlandsch Reglement* (HIR) and the *Rechtsreglement voor de Buitengewesten* (RBg), provides formal guidelines for the General Courts and Religious Courts in examining, adjudicating, and resolving cases to ensure legal certainty for all justice seekers and minimize acts of vigilantism. During judicial proceedings, judges may issue judgments, orders, or settlement deeds that must be complied with by both parties. However, if the losing party is unwilling to voluntarily comply with a final and legally binding judgment, the prevailing party has the legal right to submit an application for enforcement to the Chief Judge of the relevant court. This application seeks the compulsory execution of the judgment in accordance with the applicable procedural law (Hatta, 2024).

In Religious Courts, based on the *Guidelines for the Implementation of Duties and Administration of Religious Courts* (Book II of the Supreme Court of the Republic of Indonesia), enforcement is divided into two categories: specific performance enforcement (*eksekusi riil*) and enforcement for the payment of a sum of money, which is generally carried out through an auction or auction enforcement (Direktorat Jenderal Badan Peradilan Agama, t.t.). Specific performance enforcement refers to the execution of a judgment ordering the delivery of property, the vacating of property, the performance of a particular act, or the cessation of an act. Meanwhile, enforcement for the payment of a sum of money is carried out by auctioning the debtor's assets (the enforcement respondent). It may also be applied in the distribution of property, including inheritance or joint marital assets, when direct distribution *in natura* cannot be agreed upon by the parties or is impossible to implement (Manan, 2011).

The enforcement procedure in Religious Courts is regulated in Book II, under the section entitled “Seizure and Enforcement,” on page 736. The procedure begins when the prevailing party submits an application for enforcement to the Chief Judge after the judgment has acquired permanent legal force (*inkracht van gewijsde*). Following the application, the Chief Judge issues an *Aanmaning* order (formal warning), instructing the court bailiff to summon the enforcement respondent and require voluntary compliance with the judgment within a maximum period of eight days. If the respondent remains in default after the deadline,

the Chief Judge issues an enforcement order. This order serves as the legal basis for the court bailiff to take compulsory measures to satisfy the applicant's rights. Such measures may include an enforcement seizure (*executoriaal beslag*), specific performance enforcement, such as the eviction of land, or an enforcement auction where the judgment concerns the payment of a sum of money (Pengadilan Agama Jakarta Barat, 2024).

According to Marianne Termorshuizen (1999), although the Indonesian legal terms for seizure are *sita* and *penyitaan*, their etymological origins can be traced to the Dutch term *beslag* and its Indonesian adaptation, *beslah*. Seizure refers to a legal process in which property is taken and held by state authorities pursuant to a court order (Andri dkk., 2023). Meanwhile, an auction refers to a public method of selling assets through an open process in which the economic value of the goods offered is determined through competition among bidders, with the highest bid establishing the price (Az Zahra dkk., 2025). In the context of auction enforcement, Minister of Finance Regulation No. 122 of 2023 concerning Guidelines for Auction Implementation (PMK No. 122/2023) provides the principal legal framework governing both enforcement and non-enforcement auctions (Republik Indonesia, 2023).

In practice, enforcement auctions may involve both immovable and movable property. In his work entitled *Pokok-Pokok Hukum Perdata* (*Fundamental Principles of Civil Law*), Prof. Subekti, S.H., classifies immovable property (*onroerend*) according to its nature, intended use, and statutory provisions (Nadia, 2022). The concept of immovable property under the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata) is classified according to three principal categories. Article 506 concerns land and permanent features attached to it. Article 507 extends this classification to objects intended to serve the long-term function of a property, such as industrial machinery. Furthermore, Article 508 establishes that certain legal rights or claims whose underlying objects are immovable property are also classified within the legal regime governing immovable property.

Meanwhile, Frieda Husni Hasbullah explains that, under the Indonesian Civil Code, movable property is divided into two principal categories: movable property by nature and movable property by operation of law. Movable property by nature, as stipulated in Article 509 of the Civil Code, comprises objects that can physically change location or be moved, either through their own movement or with the assistance of external forces. Examples include cars, motorcycles, and ships. Movable property by operation of law, as stipulated in Article 511 of the Civil Code, encompasses legal rights and interests that are classified by law as movable property. These include usufructuary rights over movable property, rights to interest on loans, receivables or claims, and ownership of shares or interests in a commercial partnership (Hasbullah, 2002).

The characteristics of movable property present particular complexities because physical possession (*bezit*) often remains in the hands of the enforcement respondent. This differs from immovable property, for which eviction procedures are generally more structured. Under Article 612 of the Indonesian Civil Code, the transfer of ownership of tangible movable property must be effected through actual physical delivery (*traditio* or *feitelijke levering*) (Kusen dkk., 2026). This requirement is consistent with Article 12 paragraph (2) of PMK No. 122/2023, which stipulates: “Where the auction object consists of movable property, the seller must have physical possession of the auction object, except where the auction object consists of uncertificated shares.”

The principal problem arises from a regulatory gap in the Supreme Court's Book II Guidelines, which do not provide specific guidance on obtaining physical possession when enforcing auctions involving movable property, particularly motor vehicles. Instead, the guidelines address seizure and auction procedures in general terms. This regulatory gap obstructs the implementation of enforcement auctions because the administrative requirements

for conducting an auction under Article 12 paragraph (2) of PMK No. 122/2023 cannot be fulfilled.

The absence of a clear mechanism or procedural guideline undermines legal protection for the parties involved, particularly the enforcement applicant, whose ability to execute the judgment is impeded, and the auction winner, who may encounter difficulties obtaining physical possession of the property after paying the auction price (Prabamantya & Soegianto, 2025). This situation also creates practical difficulties for court bailiffs handling the case in question. In principle, the seller's obligation to transfer possession of the property and its accompanying documents under Article 12 paragraph (2) of PMK No. 122/2023 is designed to ensure formal legal validity and protect the auction process against civil disputes. In practice, however, court bailiffs may merely impose a seizure on movable property without obtaining actual physical possession. This lack of clarity leaves courts reluctant to take measures beyond those expressly provided for in Book II, owing to concerns that such measures might give rise to further legal problems.

One example involves the North Jakarta Religious Court (*Pengadilan Agama Jakarta Utara* or PA JU), which received an application for enforcement by auction involving movable property under application number 03/Pdt.Eks/2025/PA.JU. The object in question was a BMW automobile. In this case, the enforcement auction could not proceed because the Religious Court did not have physical possession of the auction object, which constituted movable property. Meanwhile, the relevant auction official treated physical possession as an absolute prerequisite for auction registration, in accordance with Article 12 paragraph (2) of PMK No. 122/2023. Consequently, the enforcement process was obstructed, leaving the applicant with a sense of legal uncertainty regarding the implementation of the auction. This situation exposed a regulatory inconsistency between the Ministry of Finance Regulation and the Supreme Court's internal guidelines. Ultimately, PA JU returned the application on the grounds that enforcement could not be carried out because the relevant auction official required the court to have physical possession of the auction object; a written statement alone was insufficient.

However, a different approach was adopted in another case at the Central Jakarta Religious Court (*Pengadilan Agama Jakarta Pusat* or PA JP). In enforcement application number 09/Pdt.Eks/2023/PA.JP, one of the disputed assets was a car, classified as movable property. The enforcement auction was permitted to proceed, or the auction process was registered, solely on the basis of a written statement confirming possession of the auction object, without requiring actual physical possession as stipulated under PMK No. 122/2023. This inconsistency has created uncertainty in the implementation of enforcement auctions across Religious Courts and potentially undermines the parties' entitlement to legal certainty.

The regulatory gap in the Supreme Court's Book II Guidelines may also lead to inconsistent practices among Religious Courts. One court may adopt an analogical approach based on general civil procedural law, while another may rely exclusively on administrative procedures. Accordingly, this research is motivated by the urgent need to examine the problems surrounding the enforcement of auctions involving movable property within the Religious Court system. Its primary focus is to analyze legal certainty in the implementation of enforcement auctions involving movable property in Religious Courts and the Supreme Court's responsibility for applications to enforce auctions involving movable property before Religious Courts.

METHODS

This study employs a normative juridical method with qualitative analysis to examine applicable laws and identify regulatory gaps concerning the mechanisms and procedures for Religious Courts to obtain physical possession of movable property subject to auction

enforcement. Normative legal research is appropriate because the study focuses on legal norms rather than social research methodologies (Rohman, 2021; Solikin, 2021). The approaches used comprise the statutory approach to examine relevant legislation (Muhaimin, 2020) the conceptual approach to analyze legal certainty, legal protection, and accountability (Marzuki, 2005), and the case approach to examine relevant cases that have resulted in judicial decisions of enduring legal significance (Marzuki, 2005).

The legal materials consist of primary, secondary, and tertiary sources. Primary legal materials include relevant legislation and judicial guidelines, while secondary materials comprise books, scholarly journals, and legal literature. Tertiary materials include dictionaries, encyclopedias, and reliable online sources (Muhaimin, 2020). Supporting data are also obtained through interviews with relevant Religious Court officials to understand the practical implementation of enforcement auctions.

The data are analyzed qualitatively by interpreting and comparing legal materials and interview findings to identify regulatory gaps between Minister of Finance Regulation No. 122 of 2023 and Book II of the Supreme Court Guidelines. The analysis considers ambiguous legal standards, antinomies, and regulatory vacuums that may affect legal certainty (Muhaimin, 2020) particularly in enforcement auctions involving movable property and the Supreme Court's responsibility regarding related applications submitted to Religious Courts. The findings are expected to provide recommendations for strengthening legal certainty, protecting auction winners, and improving the effectiveness of judicial enforcement.

RESULTS AND DISCUSSION

Legal Certainty in the Implementation of Enforcement Auctions Involving Movable Property within the Religious Court System

Legal certainty is one of the fundamental principles of a state governed by the rule of law, requiring clarity of legal norms and consistency in their application (Nurhadi, 2026; Tiffany dkk., 2026). In the context of civil procedural law, legal certainty is not confined to judgments that have acquired permanent legal force but also encompasses the effectiveness of their implementation through enforcement mechanisms (Mertokusumo, 2009). From the perspective of legal theory, legal certainty is one of the principal pillars of the rule of law (*rechtsstaat*). According to Gustav Radbruch's legal doctrine, the law must fulfill three substantive values, namely legal certainty, justice, and utility (or social benefit), with legal certainty standing alongside the other two values (Saradiva, t.t.). According to Radbruch, the principle of legal certainty requires the law to guarantee individuals certainty regarding their rights and the enforcement of those rights (Kusuma dkk., 2025). Without legal certainty, the judicial system loses its normative legitimacy.

Enforcement has been described as the “crown” of the judiciary by a senior judge of the High Religious Court of Palangka Raya. This expression signifies that the authority of a court depends substantially on the effectiveness of its enforcement mechanisms. If this function becomes ineffective, the authority and credibility of the judicial institution will diminish (Mahkamah Agung Republik Indonesia, 2021)Studies on the transformation of civil judgment execution similarly emphasize that the effectiveness of execution determines public confidence in the judiciary and is central to the pursuit of court excellence (Ramadhan dkk., 2025). In this regard, this study focuses on enforcement auctions, which constitute a concrete form of compulsory implementation of court judgments. Accordingly, legal certainty in enforcement auctions must be understood comprehensively through two principal dimensions: (i) **normative certainty**, namely, the conformity of enforcement auction procedures with the internal guidelines governing Religious Courts; and (ii) **factual certainty**, namely, the practical ability to carry out enforcement auctions involving movable property at the request of the applicant. A lack of alignment between these two dimensions may create legal

uncertainty and undermine the effectiveness of the judicial system (Harahap, 2017). This is because legal certainty requires the law to be implemented clearly, consistently, and predictably, without being influenced by subjective circumstances (Rahardjo, 2002).

Minister of Finance Regulation No. 122 of 2023 (PMK No. 122/2023) constitutes the principal regulation governing auction procedures in Indonesia, including enforcement auctions arising from court judgments and fiduciary security enforcement applications submitted to the courts. Under this regulation, auctions serve as a legal instrument for selling property through an open process to obtain the best possible price. Article 12 paragraph (2) of PMK No. 122/2023 explicitly stipulates that the seller must have physical possession of movable property to be auctioned. Accordingly, the seller is responsible for the accuracy of the information concerning the auction object and must deliver the property to the buyer once an auction winner has been determined. This provision implicitly entails the legal consequence that the auction winner is entitled to obtain physical possession of the property acquired, thereby minimizing the risk of subsequent disputes.

However, within the Religious Court system, technical guidelines govern judicial duties and administration, including the enforcement of judgments, namely the *Guidelines for the Implementation of Duties and Administration of Religious Courts* (Book II of the Supreme Court). Upon examination, the author found that Book II does not specifically regulate the mechanism through which courts obtain physical possession of movable property subject to enforcement auctions. The existing provisions address general procedural aspects but do not provide technical guidance on obtaining physical possession of such property. This situation creates a procedural regulatory gap that may lead to inconsistent practices and legal uncertainty for applicants seeking enforcement auctions involving movable property. The procedural regulatory gap arises from the absence of provisions governing the mechanism for obtaining physical possession of auction objects in Book II of the Supreme Court.

Religious Courts also refer to the *Herzien Inlandsch Reglement* (HIR) concerning enforcement procedures, particularly Article 197 paragraph (9), which provides that seized property should, in principle, remain at its original location, with responsibility for the safekeeping and possession of the seized property remaining with the party whose property has been seized or the enforcement respondent. Consistent with this provision, Prof. Sudikno Mertokusumo emphasizes that the custody or responsibility for safeguarding seized property must not be transferred to other parties, such as the plaintiff (applicant for seizure), third parties, or local authorities such as village heads. However, the principle that seized property remains at its original location does not mean that civil procedural law provides no basis for the physical relocation of movable property. Article 197 paragraph (9) of the HIR itself authorizes the court to order that seized movable assets, wholly or partly, be transferred to another adequate storage location, and Article 212 of the *Rechtsreglement voor de Buitengewesten* (RBg) contains a corresponding provision applicable in regions outside Java and Madura. A legal basis for bringing movable auction objects under court-controlled custody therefore exists. What is absent is the technical guidance elaborating how this authority should be operationalized by Religious Court personnel, for instance concerning suitable storage facilities, the costs of safeguarding and transportation, and liability for damage or loss, coupled with the practical constraints faced by individual courts, such as the limited availability of secure storage space and dedicated budgets. It is accordingly necessary to distinguish the absence of legal authority, which does not arise here, from insufficient technical guidance and practical constraints. This distinction also determines the relationship between this general authority and the possession requirement of Article 12 paragraph (2) of PMK No. 122/2023: because the HIR and the RBg already permit seized movable assets to be relocated, wholly or partly, to an adequate storage place, the condition identified in this study should not be characterized as a complete legal vacuum or an outright normative conflict, but rather as a

general procedural authority that remains technically unelaborated in Book II and therefore cannot guarantee fulfilment of the administrative requirement imposed by the auction regulation. Because the Religious Court system does not have specific implementing guidelines governing this particular enforcement mechanism, Religious Courts follow the procedural framework applied by the General Courts, namely the HIR.

The author finds that, in practice, the two dimensions previously discussed normative certainty and factual certainty do not always operate in tandem in the enforcement of auctions involving movable property within the Religious Court system. Although auction enforcement proceedings may have been conducted in accordance with the internal judicial guidelines, applications to conduct auctions through the relevant auction offices are frequently rejected. Furthermore, enforcement auctions involving movable property may be obstructed by the absence of guidance in the internal Religious Court guidelines on obtaining physical possession of auction objects to satisfy the requirements of PMK No. 122/2023. This situation demonstrates a gap between formal legality and practical effectiveness, ultimately undermining the very essence of legal certainty. Comparable obstructions have also been documented at the post-auction stage of execution, where the absence of clear time limits and mechanisms for emptying auction objects generates further legal uncertainty for auction winners (Ratmaya dkk., 2025).

One example concerns the North Jakarta Religious Court (*Pengadilan Agama Jakarta Utara* or PA JU), which received an application for an enforcement auction involving movable property in the form of a BMW X7 automobile, registered under enforcement application number 03/Pdt.Eks/2025/PA.JU. In this case, the enforcement auction could not proceed because the relevant auction official required the Court to have physical possession of the movable property to be auctioned. However, the Court was unable to obtain such possession because the technical mechanism for doing so was not regulated in the internal guidelines governing Religious Courts, while the general authority to transfer seized movable property to an adequate storage location under the *Herzien Inlandsch Reglement* (HIR) Article 197 paragraph (9), and its counterpart in Article 212 of the RBg, was regarded as insufficient, without further technical elaboration, to satisfy the administrative requirements of the auction regulation. This issue was also conveyed by the Registrar of the North Jakarta Religious Court in an interview with the author, stating: *"After the matter was submitted to the Court, the Court processed the enforcement auction of the object. However, the process encountered an obstacle because of the requirement that the property to be auctioned must be under the Court's actual, de facto physical possession."*

This problem arises from the absence of a procedure for obtaining physical possession of movable property subject to enforcement auctions in Book II of the Supreme Court Guidelines. Before PMK No. 122/2023 was issued, the previous regulations had also addressed the requirement for sellers to have physical possession of property to be auctioned. However, Book II of the Supreme Court Guidelines had not been revised to reflect the updated auction regulations. This regulatory disharmony indicates a lack of horizontal harmonization between related legal instruments. Under the theory of legislation, such a condition may create legal uncertainty because legal norms cannot be implemented consistently. Before concluding that a legal vacuum or a normative conflict exists, however, the relationship between these instruments must be examined more closely: Article 197 paragraph (9) of the HIR and Article 212 of the RBg provide a general legal basis for relocating and safeguarding seized movable property, whereas PMK No. 122/2023 requires actual physical possession as a condition for auction. The tension thus lies not in two contradictory commands but in a general procedural authority that remains technically unelaborated for Religious Court practice and an administrative requirement that presupposes its effective exercise. Consequently, the enforcement auction application could not proceed and was returned following its rejection by

the State Asset and Auction Service Office (*Kantor Pelayanan Kekayaan Negara dan Lelang* or KPKNL).

The absence of guidance in Book II of the Supreme Court Guidelines concerning physical possession of movable property subject to enforcement auctions has hindered applicants from proceeding with auctions because of objections raised by auction officials. Article 47 letter (l) of PMK No. 122/2023 provides for the cancellation of an auction when the seller in this case, the Court does not have physical possession of tangible movable property offered for auction. Consequently, enforcement auctions become difficult to implement because the applicable regulation imposes a requirement that is not addressed in the internal guidelines governing Religious Courts. However, if an auction is permitted based solely on a seizure order and a written statement confirming the seller's readiness to deliver the property once an auction winner has been determined, the winner may be unable to obtain immediate physical possession of the property. This situation could trigger further disputes and prolong the resolution of the case. Accordingly, legal certainty in enforcement auctions involving movable property has not been fully achieved because of the continuing procedural regulatory gap in Book II of the Supreme Court Guidelines.

In practice, Religious Courts have sometimes substituted the requirement for actual physical possession of movable property with a written statement certifying that the property is under the Court's possession, even though the property physically remains with the enforcement respondent. However, acceptance of such documentation depends on the auction official handling the case. Some officials accept it, while others strictly adhere to the written requirements. One example is the Central Jakarta Religious Court (*Pengadilan Agama Jakarta Pusat* or PA JP), which handled an enforcement auction involving a BMW automobile under first-instance case number 356/Pdt.G/2022/PA.JP and enforcement application number 09/Pdt.Eks/2023/PA.JP. In this case, the auction process had nearly reached completion, having progressed to the auction stage, although no buyer had yet been found. This raises the question of why the enforcement auction involving movable property at PA JP could be registered, whereas the application at PA JU could not proceed on the basis of a written statement alone. In fact, to satisfy the requirement concerning physical possession of movable property, PA JP had uploaded only a written statement to the online auction platform. A closer examination of this practice, however, requires a distinction between a declaration documenting actual possession and a declaration purporting to substitute for possession that does not exist. Article 12 paragraph (2) of PMK No. 122/2023 imposes a substantive requirement that the seller have physical possession of the movable auction object; the statement letter or certificate of physical possession contemplated by the regulation functions to document that existing condition, not to create or replace it. Where the property in fact remains with the enforcement respondent, the uploaded declaration does not, by itself, satisfy or displace the substantive possession requirement, and the cancellation ground under Article 47 letter (l) of PMK No. 122/2023 remains applicable.

These circumstances suggest that the implementation of enforcement auctions also depends on the discretion of the auction officials handling them. In the case at PA JP, the relevant auction official recommended submitting a written statement confirming possession of the property together with the seizure order. This was also explained by the Junior Registrar for Claims at the Central Jakarta Religious Court, who stated: *"Yes, the online auction platform has an upload field for Article 12 paragraph (2) of PMK No. 122/2023. The field is entitled 'Statement Letter/Certificate Confirming Physical Possession of the Auction Object.' When I asked the official about it, they said it was acceptable for the auction object to remain with the respondent, provided that the property could be brought to the office once an auction winner had been determined."*

Accordingly, if auction officials strictly enforce Article 12 paragraph (2) of PMK No. 122/2023, applications for enforcement auctions involving movable property that remains in the possession of the enforcement respondent may be unable to proceed because the seller in this case, the Court is required to have physical possession of the auction object. Conversely, where the relevant auction officials interpret the provision more flexibly, the administrative acceptance of a written statement enables applicants to proceed with enforcement auctions involving movable property; such acceptance, however, does not by itself establish that a more flexible approach promotes legal certainty. Whether the practice constitutes a defensible interpretation or potential non-compliance depends on the actual content of the declaration, the custody arrangements it describes, and the legal basis upon which its acceptance rests: a declaration that faithfully documents a genuine arrangement for securing and delivering the property stands on an entirely different footing from a declaration certifying possession that does not in fact exist. In the latter situation, the cancellation ground under Article 47 letter (l) of PMK No. 122/2023 remains intact, and the acknowledged risk that the auction winner may be unable to obtain delivery of the property persists. Abdullah, the Registrar of PA JU, and Etik Korniawati, the Junior Registrar for Claims at PA JP, have both emphasized that the handling of these cases is significantly influenced by the auction officials responsible for the relevant jurisdiction. As a result, the solutions adopted for similar problems may differ from one region to another.

These circumstances create legal uncertainty in the implementation of enforcement auctions involving movable property and undermine the principle of legal protection. This situation disadvantages parties seeking enforcement auctions, particularly those attempting to obtain rights that have not yet been fulfilled. According to Philipus M. Hadjon, the essence of legal protection lies in safeguarding the dignity and fundamental rights of legal subjects. This protection is realized through legal instruments that serve as safeguards against arbitrary actions and establish normative arrangements to protect one party's interests from interference by others (Hadjon, 2007). In his view, legal protection encompasses two principal dimensions: preventive protection, which seeks to prevent violations through clear regulations, and repressive protection, which aims to restore rights or impose sanctions after a violation has occurred. Both dimensions must be supported by effective law enforcement mechanisms to ensure that justice and order are realized in practice (Zulfikar, 2025) In the auction context, legal protection for auction winners similarly depends on the availability of clear and coherent legal instruments governing the auction process (Rini dkk., 2024).

In the author's view, these circumstances demonstrate the inadequacy of legal certainty and legal protection in the implementation of enforcement auctions involving movable property, particularly because the outcome depends on the subjective discretion of the relevant auction officials. The situation may also affect auction winners when an auction is permitted on the basis of a written statement confirming possession of the auction object. In such circumstances, the winner may have to submit a separate application to the Court for enforcement of the delivery of the property before being able to exercise their rights fully (Rosita dkk., 2026). Therefore, further regulation is needed concerning procedures for implementing enforcement auctions involving movable property, harmonized with the general auction procedures established under PMK No. 122/2023. Such regulation would provide courts with a stronger legal basis for performing their duties without undue concern about complaints submitted by the parties to judicial oversight bodies. It would also help realize the principle of legal certainty articulated by Gustav Radbruch.

The Supreme Court's Responsibility for Applications for Enforcement Auctions Involving Movable Property in Religious Courts

Judicial power in Indonesia is exercised by the Supreme Court and the four judicial branches under its jurisdiction, namely the General Courts, Religious Courts, Military Courts, and State Administrative Courts. In addition to exercising judicial authority, the Supreme Court holds the highest supervisory authority over the administration of justice across all these judicial branches (Safa'at dkk., 2024). Religious Courts serve as courts of first instance that handle cases falling within their jurisdiction, including the enforcement of court judgments (Haris dkk., 2024). In the context of applications for enforcement auctions involving movable property, such as disputes over joint marital assets, inheritance, and the enforcement of mortgage or fiduciary security interests in Islamic economic matters, the Supreme Court's responsibility does not extend to the technical implementation of auctions in the field. Rather, it is manifested in a form of juridical and structural responsibility, namely its regulatory responsibility (*regerende functie*)(Munaf, 2015). This responsibility is grounded in Article 79 of Law No. 14 of 1985 concerning the Supreme Court, which grants the Court the authority to further regulate matters necessary to ensure the effective administration of the judiciary.

The Supreme Court's regulatory responsibility is exercised through the establishment of operational technical regulations (*court rules*) intended to address regulatory gaps or deficiencies in inherited colonial procedural law, particularly the *Herzien Inlandsch Reglement* (HIR), which does not comprehensively anticipate the complexities of modern seizure and enforcement auctions involving movable property. Through its statutory authority, the Supreme Court is responsible for issuing standardized enforcement guidelines, such as Book II of the Guidelines on Judicial Technical and Administrative Procedures and Supreme Court Circular Letters (*Surat Edaran Mahkamah Agung* or SEMA). With respect to movable property that can easily be transferred or concealed, the Supreme Court is responsible for formulating mechanisms and regulations for Religious Court personnel, including procedures for courts to obtain physical possession of movable property serving as the object of an enforcement auction, in order to prevent procedurally defective auction practices. One example is SEMA, which, based on its intended recipients, such as judges and court registrars, is generally classified as a policy rule or *beleidsregel* (Harahap, 2017; Hidayat, 2025). Accordingly, such regulatory measures are essential to addressing the problems associated with enforcement auctions involving movable property.

Although PMK No. 122/2023 establishes the requirement for physical possession of movable property subject to auction, the procedures for implementing this requirement have not yet been regulated in Book II of the Supreme Court Guidelines. This is because Religious Court personnel are required to perform their duties in accordance with Book II. The Supreme Court Decree concerning the Implementation of Book II of the Guidelines on Judicial Technical and Administrative Procedures instructs all judicial personnel to implement these guidelines responsibly (Cahyadi, 2014).

This issue was also raised by the Registrar of the South Jakarta Religious Court, who explained that the Court cannot take physical possession of the auction object without a clear legal basis in Book II of the Supreme Court Guidelines or a Supreme Court Circular Letter (*Surat Edaran Mahkamah Agung* or SEMA) serving as a technical guideline (Mahkamah Agung Republik Indonesia, 2021). In practice, Religious Courts submit auction applications on the basis of judgments or orders that have acquired permanent legal force and follow the enforcement auction procedures stipulated in Book II until the auction is registered. Subsequently, the State Asset and Auction Service Office (*Kantor Pelayanan Kekayaan Negara dan Lelang* or KPKNL) examines the completeness of the required documents, determines the auction schedule, announces the auction, conducts the public bidding process,

and issues the official auction record (*risalah lelang*) as an authentic instrument documenting the auction (Haidar, t.t.).

This issue needs to be brought to the attention of the Supreme Court through reports from Religious Courts and Sharia Courts across Indonesia concerning obstacles to enforcement auctions involving movable property. These reports should highlight the absence of specific provisions authorizing or guiding courts in obtaining physical possession of auction objects. A growing body of reports could encourage the Supreme Court to formulate an appropriate regulatory response, such as issuing a SEMA to harmonize enforcement auction practices with the governing regulation, PMK No. 122/2023, or revising Book II of the Supreme Court Guidelines. Such measures would help ensure that enforcement auctions involving movable property are no longer obstructed solely because the necessary procedures have not been established in Book II. This would constitute an expression of the Supreme Court's responsibility to ensure consistent implementation of enforcement auctions involving movable property across Religious Courts in different regions, while safeguarding compliance with the principle of due process. It would also strengthen legal certainty and legal protection for all parties concerned.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

The implementation of enforcement auctions involving movable property in Religious Courts has not fully upheld the principle of legal certainty due to the absence of specific procedural provisions in Book II of the Supreme Court Guidelines. This regulatory gap creates disharmony with Article 12 paragraph (2) of Minister of Finance Regulation No. 122 of 2023 (PMK No. 122/2023), which requires the seller, in this case the court, to possess the physical auction object. Although Article 197 paragraph (9) of the HIR and Article 212 of the RBg provide a general legal basis for transferring seized movable property, wholly or partly, to an adequate storage location, this authority remains technically unelaborated in Book II, so the deficiency is more accurately characterized as insufficient technical guidance accompanied by practical constraints rather than a complete absence of legal authority. The lack of clear mechanisms for obtaining such possession has hindered auction implementation, resulted in inconsistent practices among Religious Courts, as reflected in the cases of the North Jakarta and Central Jakarta Religious Courts, and increased reliance on the subjective discretion of auction officials, potentially weakening legal protection for enforcement applicants. Accordingly, the Supreme Court bears juridical and structural responsibility through its regulatory function (regerende functie) to address these deficiencies by establishing technical guidelines that harmonize judicial practices with the applicable regulatory framework.

To resolve these issues, the Supreme Court should promptly issue operational policies through a Supreme Court Circular Letter (Surat Edaran Mahkamah Agung or SEMA) or a revision of Book II of the Supreme Court Guidelines. These provisions should establish clear procedures and mechanisms for Religious Courts to obtain physical possession of movable property intended for enforcement auctions in accordance with PMK No. 122/2023. Furthermore, every Religious Court and Sharia Court in Indonesia should report implementation barriers arising from the absence of regulations governing physical possession of auction objects. Such coordinated reporting would provide the Supreme Court with a basis for formulating harmonized procedures, thereby strengthening legal certainty, enhancing legal protection for justice seekers, and improving the consistency and effectiveness of enforcement auctions.

Limitations

This study has several limitations. First, the case analysis is primarily focused on enforcement auctions involving movable property within the Religious Court system, particularly the cases of the North Jakarta Religious Court and the Central Jakarta Religious Court. Therefore, the findings may not fully represent enforcement auction practices across all Religious Courts in Indonesia. Second, the empirical insights are supported by interviews with a limited number of court officials, which may not capture the full range of perspectives from auction officials, auction winners, and other relevant stakeholders. Third, this study adopts a normative juridical approach, focusing on statutory provisions, judicial guidelines, legal concepts, and selected cases. Consequently, it does not provide a comprehensive empirical assessment of the implementation of enforcement auctions across different jurisdictions or over an extended period. These limitations should be considered when interpreting the findings and their broader applicability.

Recommendations

Future research should examine enforcement auction practices involving movable property across a wider range of Religious Courts and include perspectives from court officials, auction officials, enforcement applicants, and auction winners. Further studies could also investigate the implementation of Minister of Finance Regulation No. 122 of 2023 and the Supreme Court's Book II Guidelines in greater depth to identify practical challenges and potential regulatory inconsistencies. From a regulatory perspective, the Supreme Court should consider issuing technical guidelines through a Supreme Court Circular Letter (*Surat Edaran Mahkamah Agung* or SEMA) or revising Book II to establish clear and standardized procedures for obtaining physical possession of movable property subject to enforcement auctions. Such measures would help harmonize judicial procedures with the applicable auction regulations, promote consistency across Religious Courts, and strengthen legal certainty and legal protection for all parties involved.

Author Contributions

Adam Ramadhan contributed to the conceptualization of the study, legal research, collection of supporting materials, analysis of legal provisions and relevant cases, interpretation of findings, and preparation of the manuscript. Heru Sugiyono contributed to the supervision of the research, critical review of the legal analysis, refinement of the theoretical framework, and revision of the manuscript. Both authors reviewed and approved the final version of the manuscript for publication.

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During the preparation of this manuscript, the author(s) used Deepl to assist with English translation and language editing. The author(s) reviewed and revised the translated content to ensure its consistency with the original Indonesian manuscript and take full responsibility for the accuracy, integrity, and final content of this publication.

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