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Current Review on Issues and Challenges for the Immovable Property Auction Process In Malaysia

Norshafiqah Shaari¹, Muhammad Azwan Sulaiman^{1*}, Muhammad Nazim Alias¹, Nadia Ayu Rahma Lestari²
** Corresponding Author*

¹ College of Built Environment, Universiti Teknologi MARA Shah Alam, Malaysia

² Department of Architecture and Urban Planning, Tarumanagara University, Jakarta 11440, Indonesia

shafiqahfapp@gmail.com, azwan@uitm.edu.my, nazim@uitm.edu.my, nadiarahma@ft.untar.ac.id 8AN
Tel: 6016 – 297 1068

Abstract

The immovable property public auction process is a legal mechanism used to revoke the rights of original owners who have violated a contract. Banks will sell distressed property when a borrower fails to repay their housing loan. There is a significant knowledge gap in understanding Malaysia's immovable property auction processes. This research aims to address this gap by reviewing existing literature, gathering secondary data, and addressing the need for more standardization in the public auction procedure. The findings have significant benefits for stakeholders in property auctions and aim to enhance the auction process by developing standardized standards.

Keywords: public auction; immovable property; property law; auction regulation

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1.0 Introduction

In Malaysia, the auction market for immovable property can be divided into two main categories: foreclosure auctions, sometimes called public auctions, and non-foreclosure auctions, often known as private auctions (Wong, 2005). The differentiation between these two categories lies in their commencement and objective. Financial institutions, such as banks, usually conduct public auctions to sell distressed or repossessed houses in cases where borrowers fail to repay their housing loans. Conversely, private auctions are initiated willingly by property owners who desire to sell their homes.

Implementing the E-Lelong system in a specific High Court in 2016 marked a significant milestone in the evolution of the property auction process in Malaysia. This digital platform was introduced as a pilot scheme to modernize the auction process, aiming to enhance transparency, efficiency, and accessibility for buyers and sellers. Furthermore, a cyber court was created in September 2016 to oversee cyber operations and handle growing civil and criminal crimes (Babulal, 2016). However, despite the notable advancements brought about by the E-Lelong system, there remains a considerable shortage of comprehensive research addressing the associated issues and challenges in the immovable property auction process. This research paper aims to address this gap by conducting a thorough review of the current practices of immovable property auctions in Malaysia, with a specific objective of identifying and analyzing the various issues and challenges stakeholders face.

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2.0 Literature Review

2.1 Definition of Immovable Property

The actual definition of "property" is vast and complete. It includes not only currency and other tangible items of value but also any intangible privilege seen as an element or component of income or wealth. Property refers to an individual's exclusive rights and ownership over land and personal things. Individuals can thoroughly enjoy and control specific possessions as long as their use does not infringe any legal prohibitions.

"Immovable property" in Malaysia includes land, buildings, and any rights or interests therein (BNM, 2019). The Indian Registration Act 1908 also defines immovable property as land, buildings, hereditary allowances, rights to ways, and other benefits derived from land. The General Clauses Act 1897 (India) also defines immovable property as land, any benefits derived from it, and objects permanently fixed to something connected to the earth. "immovable property" often corresponds to "real property" in common law jurisdictions. It refers to tangible assets categorized as real property or real estate. This comprises both the land itself and any structures or buildings that are permanently attached to it, in simple words. On the other hand, the definition of "movable property" in this context refers to "personal property" in common law jurisdictions. It specifically includes goods that may be physically moved, such as furniture or automobiles.

2.2 Definition of Auction

An auction is a public sale when goods or property are sold to the person who offers the biggest amount of money, with bids increasing until the item is sold to the person willing to pay the highest price (Cambridge Dictionary, 2020). Property auction is a way of selling property in a public market at the most competitive prices possible. Patrick (2007) defined it as where a property is sold to the highest bidder, provided that the reserve price has been met where a property auction is a public sale. Property auction is a remedy allowed by law to the lender if the borrower defaults on the mortgage (Shneyerov et al., 2015).

In other words, it is a method of disposal that is associated with the bidding concept, characterized by a defined set of rules that decide the winner and the amount they must pay. Furthermore, auction regulations may limit involvement and viable bidding, as well as enforce specific codes of conduct (Klemperer, 2010). Ancient Rome used auctions as a means of conducting business transactions, disposing of property, and selling looted spoils of war (Menezes & Monteiro, 2003).

2.3 Overview of Immovable Property Auction Process in Malaysia

Financial institutions in Malaysia follow strict protocols before auctioning properties, including sending warning letters, final notices, and solicitor letters demanding payment within 14 days. Alton et al. (2001) define non-performing loans (NPLs) as loans where borrowers fail to repay the principal and interest by the due date, leading to notifications if payments are missed. Danny (2019) highlights that if borrowers fail to repay, the Bank seeks authorization from either the high court or land administrator to sell the property, with borrowers liable for any shortfall between auction proceeds and the loan balance. Legal proceedings typically occur in the sixth or seventh month, involving court summonses, lawyer consultations, auctioneer selection, and setting a minimum auction price (Wong et al., 2015). This process takes around seven to eight months before the property can be auctioned. Xu (2005) agrees that non-performing loans can be resolved through individual or bulk asset sales, negotiation, or auctions.

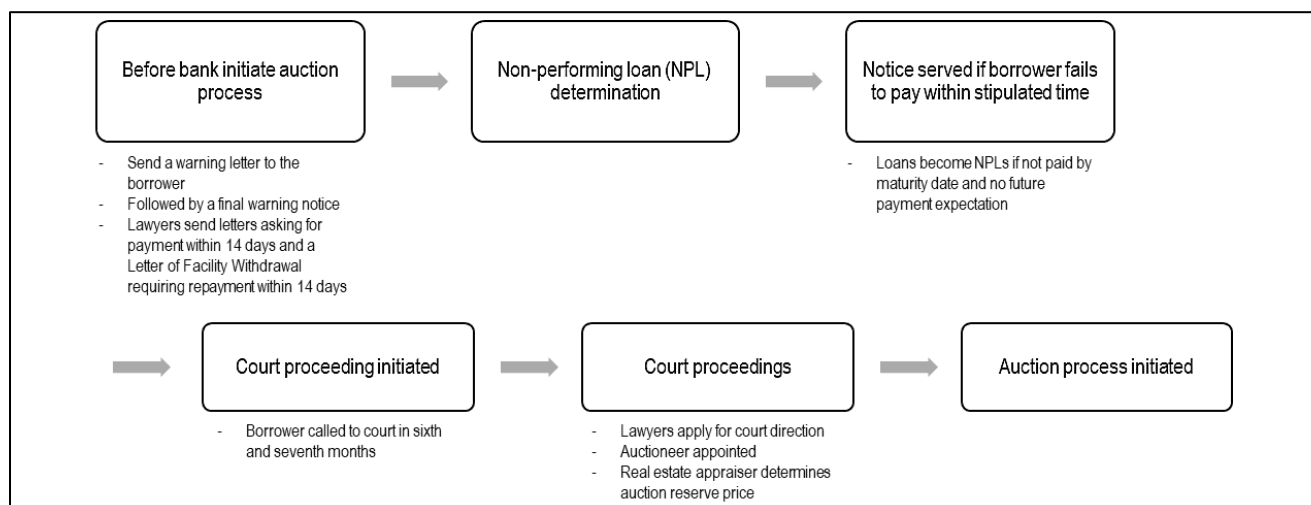


Fig. 1: Process to initiate a public auction for immovable property
(Sources: Alton et al. (2001), Danny (2019), Wong et al., (2015) and Xu (2005))

The public auction practice in Malaysia usually involves the use of procedures and processes to dispose of property auctioned by three bodies: financial institutions, land office, and the High Court. Land offices and the court are under judicial auctions (Yahya, 2008). Public auction by land office only involves land office title, which means the title proved by the mukim grant and mukim lease or by any title documents registered with the land office under the provisions of any previous land law, and the process is done manually as a

conventional public auction process. For high court, court auctions are regulated by the National Land Code 1960 and conducted via an online platform called e-Lelong, currently managed and supervised by the Deputy Registrar/Senior Assistant Registrar at e-Lelong Operation Centre located at Kuantan Court Complex, Pahang.

Non-judicial auctions handled by financial institutions typically entail a Loan and Assignment Agreement, also referred to as a 'loan agreement cum assignment' (LACA). The main difference between LACA and the typical foreclosure process is that the land document of title is unavailable due to the land still being under the control of the master title and not yet divided into separate individual titles (Aris, 2009). With individual documents of title, the settlement process can be executed. To protect the mortgagee's interest in the property, a formal agreement will be made, and the attorney will recommend that the mortgagee file a private caveat on the master title until the separate individual title is released by the Land Office and the mortgage transaction is registered. If the borrower fails to specify the exact amount owed, the financial institution serving as the mortgagee has the right to request that the property be auctioned through a public auction. Nevertheless, these issues are unrelated to the land office and exclusively referred to the licensed auctioneer, Aris (2009).

3.0 Methodology

3.1 Newspaper as main resources

Newspapers, both historical and modern, include a diverse range of material that can be utilized for many purposes, such as entertainment or learning, as well as for scientific investigations. Online newspapers provide abundant resources for sociological research, including reader comments and other relevant materials. Newspapers possess specific values that enable them to be worthy of inquiry in the fields of social sciences and humanities. Academics in various disciplines could gain advantages by accessing meticulously ordered and well-preserved newspaper collections (Sanjica et al., 2014). Late et al. (2021) examine how scholars use these newspapers as primary research sources, which means using them as firsthand testimonies or direct evidence for their historical investigations (Late et al., 2021).

A study conducted by Allen and Sieczkiewicz (2010) revealed that American scholars utilized digitized historical newspapers to verify factual information (such as names, dates, and locations), gather data on significant topics (including elections), and determine popular sentiment. Academics also documented their use of newspapers to address research deficiencies and verify information obtained from alternative sources. Academics emphasized the significance of technology aligning with their work methods, regardless of the instruments used or whether they are dealing with printed or digital material (Given and Willson, 2018; Hughes, 2012). The availability of the digital newspaper collection has expanded the potential for scholars and likely stimulated the exploration of novel research methodologies. Scholars engage in the examination of secondary materials. When the interviewees possessed a preconceived research question, they ascertain the feasibility and methodology of utilizing the newspaper collection as a source of data. The research demonstrates that the enhanced availability of newspaper resources is regarded as more significant than the disadvantages. The purpose of digitization is not only to preserve but also to enhance accessibility (Jarlbrink and Snickers, 2017).

The paper draws its inferences from articles in major newspapers such as the New Straits Times, The Edge Malaysia, Bernama, and The Star, which contain prints from 2016. The Star and New Straits Times are two prominent English-language newspapers in Malaysia, with the Star being the most widely circulated daily newspaper (Nation, 2016). The New Straits Times, established in 1845 under British colonial control, is one of the oldest English-language newspapers in the country. The Edge online caters to corporate and high-end readers in Malaysia. BERNAMA, a trusted and up-to-date news source, is known for its real-time financial information, real-time news, electronic library, press release distribution, event management, and photo and video footage (Hasnita, 2017). Both newspapers are committed to improving their products and services to cater to their respective audiences.

It is important to note that while these newspapers provide valuable insights into the immovable property auction process, almost all auction documents in the High Court, apart from the by-law document, are considered private and confidential. This limited access to documentation within the High Court can impact the transparency and accessibility of information regarding property auctions. Therefore, the content of the newspaper articles serves as a crucial source of information for understanding the property auction landscape in Malaysia.

3.2 Content analysis

Content analysis refers to a dual-purpose approach that covers both data collection and data analysis methods. Archival, historical materials and modern media sources such as news coverage, blogs and images shared on Instagram or Facebook, can all serve as sources for content analysis. Practically everything can serve as the subject matter for analysis. The research approach employed here is qualitative, as it prioritizes the analysis of meanings and interpretations of the content rather than relying solely on numerical counts or variables-based causal modeling (Hurst, 2023).

The content analysis applies to diverse data sources, encompassing textual data, visual stimuli (such as images and videos), and audio data. Moreover, the technique is exceedingly versatile as it can be guided by either empirical evidence or theoretical principles. This essay examines contemporary instances of content analysis studies that utilize the data above sources and emphasize growing patterns in this field. Written text is the most commonly utilized data source for content analysis (Krippendorff, 2012). Text-based content

analysis is widely employed in automated essay scoring in education (Shermis & Burstein, 2013). Text-based content analysis tools have been extensively utilized in the field of law enforcement.

3.3 Desktop research

Desk research, often known as secondary data, comprises information that can be gathered without conducting fieldwork (Goundar, 2012). It implies published reports and data, which serve as significant sources. Desk research involves gathering secondary data from various sources such as corporate records, the internet, libraries, trade associations, government agencies, and published reports. Libraries are a common source of published material obtained through desk research. This includes journals and newspapers (Mohajan, 2017). Desktop-based research consisted of a document and database review of available information, statistics, and other data from private, federal, provincial, regional, and local sources. The primary purpose of the desk study was to discover and analyze newspapers, past studies, reports, and documents that have been published to establish an existing knowledge of the issues and challenges of the immovable property auction process in Malaysia.

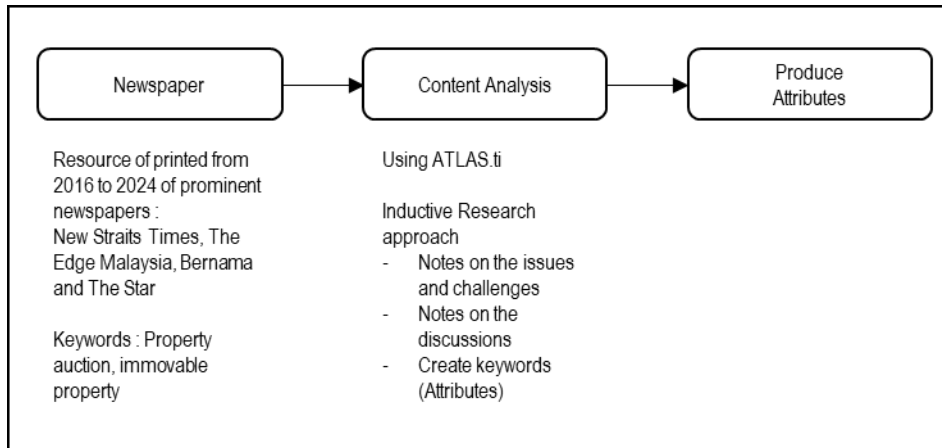


Fig. 2: Process of methodology using Desktop Research

This research gained data from the newspaper prints from 2016 to 2024 of the four most prominent newspapers in Malaysia. This timeframe is significant as it coincides with the initial proposal for the implementation of the e-Lelong system by the Chief Registrar's Office. In July 2017, the e-Lelong system was launched as a pilot scheme. The researcher applies content analysis by using ATLAS.ti to generate attributes. Keywords such as "property auction" and "immovable property" have been carefully selected to align with the focus of the newspaper articles. The inductive research approach is used by the researcher because there is no theory involved. The researcher notes the issues, challenges, and discussions that are stated in the newspaper articles. Then, all the points are combined to create attributes as the findings of this research.

4.0 Findings & Discussion

Table 1: Issues and challenges in the immovable property auction process in Malaysia

Issues	Discussion	Newspaper Name	Keyword
Kathy (2023) 1. Hard deadlines for payments (90days)	Kathy (2023) 1a. Bank provides successful bidders with short-term financing options (6 – 12 months) 1b. Advice bidder to always have 100% funds ready before placing a bid, pay with cash upfront & return to the Bank for refinancing	New Strait Times	Strict payment deadline
Kathy (2023), Wong (2021), Kay (2017) and Nur Azlin (2016) 1. Existence in syndicates, working in teams or individuals benefiting by intimidating real bidders from buying when prices are to the organization's advantage or by "offering assistance" to genuine buyers in exchange for a fee.	Wong (2021) & Kay (2017) 1a. Implementation of online public auction system, e-Lelong, by High Court -to protect bidders from the interference of syndicate Alagesh (2017) 1b. Through the new system, details of the bidders will not be revealed, and the bidders will no longer be required to be present in court to make their bids. Nur Azlin (2016) 1c. Reduce the time spent waiting before starting auctions. The typical wait period is usually around twelve hours to finish the process of auctioning properties. This has enabled the	Bernama New Straits Times The Edge Malaysia	Presence of Syndicate

	<p>syndicate to utilize the waiting period to engage in negotiations with legitimate bidders and acquire them out of the bidding process.</p> <p>1d. Increase the level of discretion of court officers handling the foreclosure auctions to protect bidder registration details and reduce unnecessary contact.</p> <p>1e. Offer a designated area for authorized bidders to wait, equipped with security monitoring to discourage any unauthorized individuals from engaging with them. If any questionable or unusual patterns of activity are detected during bidding, it is advisable to remove the property from consideration and place certain bidders on a blacklist.</p> <p>1f. The High Court should verify the deposit needed to register bidding interest using a bank draft or banker's cheque instead of relying on a court officer, like a bailiff, for verification.</p>		
<p>Wong (2022)</p> <p>1. One significant factor contributing to the low selling prices of auctioned properties is their market value being significantly higher. The discount is provided to successful bidders as a way to account for potential significant repairs that were not confirmed in the auction sales agreement.</p> <p>Wong (2021)</p> <p>2. Auction/foreclosure regulations do not allow potential buyers to examine the internal state of a property, there is no assurance of vacant possession and clean titles, and there is limited freedom in determining the auction reserve price.</p>	<p>Wong (2022)</p> <p>1a. consideration to inspect foreclosed properties prior to the auction date should be made possible will hopefully increase the selling price</p> <p>Wong (2021)</p> <p>2a. The government needs to revise the outdated auction laws that prevent foreclosed properties from being sold at a fair price</p> <p>2b. Can consider Australia's auction model of making sellers responsible for providing good & clean property titles</p>	Bemama	Internal Inspection
<p>Wong (2021)</p> <p>1. Public mindset towards auction properties</p> <p>Aisyah (2018)</p> <p>2. Properties on auction have been associated with unfair terms like inauspicious, cheap bargains or foreclosure.</p> <p>3. After winning the bid, you have to pay in full within a short period, usually in 90-120days</p>	<p>Wong (2021)</p> <p>1a. Informing the public about auctions as a viable method for selling both foreclosed and non-foreclosed homes is an important option in the long term.</p> <p>Aisyah (2018)</p> <p>2a. Do thorough research to better prepare before buying an auction property</p> <p>3a. Before buying an auction property, the bidder needs to prepare for it by looking into their eligibility for a loan, and whether the CCRIS score is looking good to ease the process of getting the auction property desired.</p>	<p>Bemama</p> <p>The Star</p>	Societal stigma
<p>Aisyah (2018)</p> <p>1. In conventional auction, some manipulation might occur between bidders and auctioneers</p>	<p>Aisyah (2018)</p> <p>1a. The online auction process is more clear. By converting the procedure into digital format, the auction becomes more equitable for all participants. During a hybrid auction, the auctioneer establishes a designated period for three auction calls. Both in-person and virtual bidders will have an equal opportunity to place a bid simultaneously.</p>	The Star	Possible manipulation
<p>Nur Azlin (2016)</p> <p>1. During a live foreclosure, the court officer, plaintiff (or attorney), and bidders are present as witnesses, ensuring that the process is open and transparent. This could become obsolete if the auction is conducted solely online.</p> <p>2. What happens if there is an internet issue that causes the platform to freeze when someone is placing a bid for a property online?</p> <p>3. What will occur when the e-Lelong system is not functioning? Is there going to be a backup system? Supposing that the auction is called off and rescheduled, the plaintiffs (Bank) could be affected as this increases their ownership. price</p> <p>4. The implementation of e-Lelong should be reconsidered as there is currently limited public understanding of the auction procedure. The auction market in Malaysia is not as advanced as those in developed countries like Australia.</p> <p>5. An approachable intermediary, like a certified auctioneer, who assists potential bidders in understanding the auction process, would not be present if e-Lelong is implemented.</p> <p>Audrey (2021) and Nur Azlin (2016)</p> <p>6. About 1,600 licensed auctioneer livelihoods will be affected.</p>	<p>Kay (2017)</p> <p>1a. The Deputy Chief Registrar assures bidders that they need not be concerned about any tampering or hacking of the system during the auction process. They have had at least four interactions with the Malaysian Bar, financial institutions, auctioneers, the Malaysian Anti-Corruption Commission, the Malaysian Institute of Integrity, and cyber-security experts to ensure the system's integrity.</p> <p>2a. If there are any issues during the online auction process, they are caused by the bidder and are not the responsibility of or under the control of the e-Lelong Operation Centre.</p> <p>2b. If the e-Lelong Operation Centre has any issues like a power outage or loss of internet connection, the auction will be rescheduled for a different date and time.</p> <p>CRO rebuts Malaysian Auctioneers Council claim over e-Lelong (2018)</p> <p>6a. There should be an addition on amendment of clause 31A of the 2012 Rules of Court that enables traditional auctioneers and the new online system to work together</p> <p>Nur Azlin (2016)</p> <p>6b. Create e-live bidding platform that combines electronic and traditional auctions. The auctioneer will administer the whole process and accept bidders online.</p>	The Edge Malaysia	Existing loopholes in the court system (e-Lelong)

In summary, this study provides an essential investigation of the issues and challenges underlying Malaysia's immovable property auction system. The researcher discovered six main keywords, namely the presence of syndicates, strict payment deadlines, internal property inspections, societal stigmas, possible manipulations, and existing loopholes in the court system, particularly the E-Lelong implementation.

5.0 Conclusion & Recommendations

The research method includes browsing newspapers as sources of information, analyzing content, and conducting desktop research. The results obtained from a thorough examination of the literature and analysis of the content not only show current practices but also provide valuable insights into areas that require improvement and adjustment. This study is that these releases provide valuable information on the real estate auction process because most auction documents in the High Court, with the exception of the by-law document, are regarded as private and confidential. This limited access to papers in the High Court might impact the ease of accessing and obtaining information concerning property auctions. This study proposes additional investigation into the problems and difficulties encountered by bidders and auctioneers in the property auction process in Malaysia, utilising qualitative research methods. The goal is to collect firsthand perspectives and pinpoint the most important issues and challenges in order to allocate resources and provide specific solutions to enhance efficiency in property auctions in Malaysia.

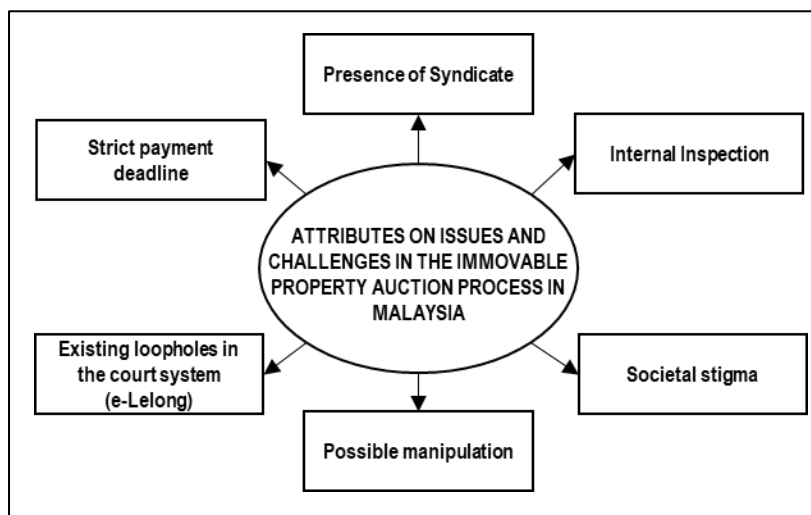


Fig. 2: Attributes on issues and challenges in the immovable property auction process in Malaysia

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Paper Contribution to Related Field of Study

The study highlights the necessity for regulatory modifications to improve the current immovable property auction process. The insights obtained from this research not only provide a significant scholarly contribution but also offer a clear guide for industry professionals especially auctioneers and real estate experts, policymakers, bidders, and investors to manage the issues and challenges of the real estate auction market in Malaysia.

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