



Legal Remedies for Auction Winners Based on Justice in the Mediation of Disputes over the Vacating of Mortgage Rights Objects

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Article History

Manuscript submitted:
13 April 2026
Manuscript revised:
27 Mei 2026
Accepted for publication:
17 Juni 2026

Keywords

Auction;
Mediation;
Mortgage Rights.

Abstract

One form of security is mortgage rights, which may be executed through an auction when the debtor defaults. In practice, however, obstacles frequently arise when the debtor, as the party whose property is auctioned, continues to retain physical control over the auctioned object of mortgage execution, even though the proprietary right has been transferred to the auction winner. This study aims to analyze the legal remedies available to auction winners in resolving disputes concerning the vacating of auctioned objects under mortgage execution, as well as the application of the principle of justice in the mediation process for such disputes. This research employs a normative legal approach by examining secondary data as the primary legal material, supported by primary data obtained through interviews. The collected data are then analyzed using a qualitative juridical method. The most constructive legal remedy for auction winners in disputes over the vacating of objects subject to mortgage execution is to pursue mediation before the District Court. Although forced execution under Article 200 paragraph (11) of the HIR is legally possible, such a mechanism often imposes additional time and financial burdens on auction winners. The application of the principle of justice through mediation enables the voluntary and dignified transfer of physical control over the object, thereby producing substantive justice that balances the formal rights of auction winners with the factual circumstances of the auctioned party while preventing potential social conflict.

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Introduction

Indonesia, as a state that adheres to the civil law system, or Continental European legal tradition, places written law as the primary source of law, with binding characteristics because it is embodied in statutory regulations and systematically arranged within codification (Febrianto, 2024). In this context, national law is designed to meet the needs of society, maintain public order, and ensure legal certainty, including in the field of security law.

Security law constitutes a set of legal rules governing the legal relationship between the security provider and the security recipient in the context of imposing security to obtain credit facilities (Ashibly, 2018). The scope of security law includes general security and special security. Special security is divided into two types, namely real security and personal security. Real security covers movable and immovable objects, including pledge and fiduciary security for movable objects, as well as mortgage rights, fiduciary security over apartment units, and mortgages over ships and aircraft for immovable objects. Meanwhile, personal security includes suretyship, joint and several liability, and bank guarantees (HS, 2019). Mortgage rights are comprehensively regulated under Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, hereinafter referred to as the “Mortgage Rights Law” or “UUHT”, as a form of security over immovable objects. This security is classified as an accessory agreement because mortgage rights constitute an additional agreement that cannot stand independently from the loan agreement or credit agreement as the principal agreement (Kalley et al., 2023).

A loan agreement, as stipulated in Article 1754 of the Indonesian Civil Code, hereinafter referred to as the “Civil Code”, is an agreement in which one party provides another party with a certain quantity of consumable goods, on the condition that the latter party shall return goods of the same quantity, type, and quality (Subekti, 1995). Security under Book II of the Civil Code is categorized as privileged receivables or privileges (Satrio, 2002). This privileged position is held by preferred creditors. Article 1134 of the Civil Code explains that a privilege is a right granted by law to a creditor, thereby placing the creditor in a higher position than other creditors. This provision affirms that preferred creditors as security holders possess priority rights over their receivables and are authorized to execute the secured object if the debtor defaults. The privileged position of preferred creditors thus becomes the basis for the emergence of execution mechanisms over secured objects when debtors fail to fulfill their obligations, including in the execution of mortgage rights.

The execution of mortgage rights may be carried out through several mechanisms, one of which is parate execution as stipulated in Article 6 of the Mortgage Rights Law (Undang-Undang (UU) Nomor 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah, 1996). This provision grants creditors the authority to sell the object of mortgage rights through a public auction without requiring a court fiat. The auction process is recorded in the minutes of auction as an authentic deed with perfect evidentiary force. Subsequently, if problems arise in the vacating of an auctioned object that has been sold, a *grosse* copy of the minutes of auction bearing the heading “For the Sake of Justice Based on the Almighty God” may be requested, which has executorial force as regulated in Article 25 of Minister of Finance Regulation Number 86 of 2024 concerning Minutes of Auction (Peraturan Menteri Keuangan Republik Indonesia Nomor 86 Tahun 2024 Tentang Risalah Lelang, 2024) and Regulation of the Director General of State Assets Number 5/KN/2017 concerning Minutes of Auction (Peraturan Direktur Jenderal Kekayaan Negara Nomor 5/KN/2017 Tentang Risalah Lelang, 2017). The existence of such a *grosse* normatively positions the

auction winner as the lawful owner who is entitled to obtain physical control over the auctioned object without obstruction.

The executorial force of the grosse copy of the minutes of auction normatively provides full legitimacy for the auction winner to obtain physical control over the auctioned object. The issuance of the minutes of auction should serve as the basis for the auctioned party to vacate and surrender the object voluntarily. However, practical reality shows that the vacating of auctioned objects resulting from mortgage execution frequently does not proceed as ideally prescribed by legal norms. The auctioned party, who was previously the debtor under the credit agreement, often continues to retain physical control over the object, even though the proprietary right has been transferred to the auction winner based on the minutes of auction. This situation creates tension between the legal certainty attached to the auction winner and the refusal of the auctioned party, who no longer has legal legitimacy to remain in possession of the object. This problem reveals a gap that is also influenced by various motives. The auctioned party often finds it difficult to leave a residence or asset that serves as the family's source of livelihood, thereby giving rise to resistance even though the auction process is legally valid. Economic factors play a significant role, particularly when the auctioned party has no alternative residence. In addition, the influence of third parties, including community organizations or non-governmental organizations, is also not uncommon in encouraging the auctioned party to remain in possession of the auctioned object (Wawancara Dengan Deni Subarno Selaku Pejabat Lelang Kelas Kelas II Di Kabupaten Bandung, 2026). On the other hand, dissatisfaction with the auction reserve price, which is considered lower than the fair value, may trigger resistance to the implementation of vacating, even though the determination of the reserve price has followed the provisions on liquidation value assessment (Wawancara Dengan Tutut Wulandari Selaku Pejabat Lelang Kelas Kelas I Di Kota Bandung, 2026).

Empirical facts show that disputes over the vacating of auctioned objects have occurred in various regions. The State Assets and Auction Service Office, or KPKNL, of Bukittinggi recorded a case in 2019 involving a vacating request submitted by PT Bank Rakyat Indonesia, BRI, Simpang Empat Branch, concerning a secured object located in Pasaman, the realization of which was obstructed because the auctioned party refused to voluntarily surrender the object of mortgage execution auction (Ariyanto, 2022). A similar case occurred in Tasikmalaya Regency, where the auctioned party refused to vacate the object on the ground that the auction price was considered too low (Wawancara Dengan Mulyadi Shiradz Selaku Notaris Dan Perjabat Pembuat Akta Tanah (PPAT) Di Kabupaten Tasikmalaya, 2026). Two similar cases in Bandung City demonstrate different approaches, namely one through coercive measures based on a court order, and another through mediation that resulted in a peaceful agreement in the form of compassionate compensation (Wawancara Dengan Muh Haji Asad Muhammad Selaku Notaris Dan Perjabat Pembuat Akta Tanah (PPAT) Di Kota Bandung, 2026). In addition to these cases, the Sleman District Court in Case Register Number: 19/Pdt.E/2016/PN Sleman (Mustafa, 2020), and the Langsa District Court in Decision Number 3/Pdt.G/2018/PN.Lgs (Tambunan & Winanti, 20224), also recorded similar disputes in which auction winners were unable to obtain control over the objects due to the refusal of the auctioned parties, even though ownership had been transferred.

These various issues affirm that the vacating of auctioned objects resulting from mortgage execution is not merely an administrative matter, but rather a combination of juridical, sociological, and psychological aspects. The gap between legal certainty for auction winners and the social conditions of the auctioned parties creates an urgency to evaluate the dispute resolution mechanism in

a more proportional manner. In this regard, mediation has the potential to provide a solution that is more just, humane, and not solely focused on the coercive dimension of positive law.

This research is important in order to answer the problems concerning the forms of legal action that may be taken by auction winners in resolving disputes over the vacating of auctioned objects resulting from mortgage execution, as well as the application of the principle of justice in the mediation process to ensure proper protection for auction winners. Such analysis is necessary to affirm that dispute resolution should not depend solely on formal legality, but must also reflect substantive justice capable of balancing the rights of auction winners with the social conditions of the auctioned parties.

Based on these problems, this research is directed toward identifying and analyzing the forms of legal action that may be used by auction winners when facing refusal to vacate auctioned objects resulting from mortgage execution. This research also aims to examine the implementation of the principle of justice in the mediation process as a dispute resolution mechanism, particularly in ensuring the fulfillment of the juridical rights of auction winners without disregarding the factual conditions of the auctioned parties. Through this study, the research is expected to provide a more comprehensive understanding of the effectiveness of mediation in realizing legal certainty, rights protection, dispute resolution efficiency, and the balance of interests among the parties in the process of obtaining control over auctioned objects resulting from mortgage execution.

Methods

This study applies an empirical juridical method, namely a legal research approach that not only examines the norms contained in statutory regulations but also analyzes their implementation and effectiveness in the practice of resolving disputes over the vacating of auctioned objects resulting from mortgage execution (Sunggono, 2013). This research is descriptive analytical in nature, as it is directed toward systematically describing the legal facts found in the field while also analyzing them based on the applicable legal framework (Sulastri et al., 2026). The research data consist of primary data obtained through interviews with Class I Auction Officers, Class II Auction Officers, Notaries and Land Deed Officials, as well as representatives of the State Assets and Auction Service Office of Bandung City, and secondary data collected through library research on the Indonesian Civil Code, the Mortgage Rights Law, the Herzien Inlandsch Reglement, regulations concerning auction implementation, provisions on court-annexed mediation, legal textbooks, scholarly articles, and relevant previous studies. All data were collected through interview techniques and document study, and were subsequently analyzed using a qualitative juridical method by classifying, interpreting, and connecting empirical findings with legal norms in order to obtain a comprehensive understanding of the legal actions available to auction winners and the application of the principle of justice in the mediation process for disputes over the vacating of auctioned objects resulting from mortgage execution.

Results and Discussions

1. Forms of Legal Action Available to Auction Winners in Resolving Disputes over the Vacating of Auctioned Objects Resulting from Mortgage Execution

The execution of mortgage rights through a public auction constitutes the exercise of the authority of the creditor holding mortgage rights to obtain repayment of its receivables when the debtor defaults, as affirmed in Article 6, Article 14 paragraph (2), and Article 20 paragraph (1) of the

Mortgage Rights Law. Juridically, the consequence of default is that the debtor's right to control the secured object is legally extinguished, and the debtor's status changes into that of the auctioned party who is obliged to vacate the execution object. This provision is consistent with the nature of mortgage rights, which contains the principles of *droit de preference*, granting priority rights to the creditor holding mortgage rights over other creditors, and *droit de suite*, allowing mortgage rights to remain attached to the secured object regardless of whose possession the object is in (Budiningsih & Silviana, 2025). Therefore, the creditor holding mortgage rights has priority in repayment, and the mortgage right continuously follows the object in the hands of whomever it may be. Consequently, once the auction is conducted and the minutes of auction are issued, ownership is legally transferred to the auction winner, and the auctioned party no longer has the right to maintain control over the object.

In the implementation of an execution auction, the minutes of auction constitute valid administrative evidence of the transfer of rights as an authentic deed. Accordingly, they are binding in the sense that what is written therein must be trusted by the judge, regarded as true, and does not require additional proof (Harahap, 1994). However, the original minutes of auction do not possess executorial force if the auctioned object resulting from mortgage execution cannot yet be physically controlled due to bad faith on the part of the auctioned party. Through the grosse copy of the minutes of auction, as one derivative of the minutes of auction issued by a Class I Auction Officer, the auction winner obtains a document bearing an executorial title equivalent to a court decision with permanent legal force. The inclusion of the heading "For the Sake of Justice Based on the Almighty God", as regulated in Article 1 point 38 of Minister of Finance Regulation Number 122 of 2023 concerning Guidelines for Auction Implementation, hereinafter referred to as "PMK Number 122 of 2023", Article 1 point 10 of PMK Number 86 of 2024, Article 14 paragraph (2) of the Mortgage Rights Law, and Article 42 of the *Vendu Reglement*, hereinafter referred to as "VR", indicates that the grosse copy of the minutes of auction may be directly executed in the same manner as a grosse mortgage deed or a grosse notarial deed. This document aims to provide concrete legal protection for auction winners when the object remains controlled by an uncooperative auctioned party. Thus, the state, through auction officers and the court, provides an executorial instrument that ensures effectiveness and legal certainty in the transfer of rights over secured objects (Dedy Suwandi, Agus Saiful Abib, 2023).

Although normatively the auctioned party is obliged to surrender the auctioned object voluntarily, in practice refusal to vacate is the most common form of dispute. The dispute arises because the auctioned party refuses to vacate the object and/or commits resistance. In fact, based on the principle of *droit de suite*, once the auction has been conducted and the minutes of auction have been signed, proprietary rights are fully attached to the auction winner. Therefore, the action of the auctioned party in maintaining physical control constitutes a violation of the auction winner's subjective rights and, from the perspective of Article 1365 of the Civil Code, may be classified as an unlawful act, hereinafter referred to as "PMH". A person is considered to have committed an unlawful act when the following elements are fulfilled: the act is unlawful, there is fault, there is damage suffered, and there is a causal relationship between the act and the damage (Machmud, 2008).

The elements of such unlawful conduct indicate that the auctioned party has committed an unlawful act. The continuous possession of the object without legal right and the obstruction of the execution of vacating may be categorized as conduct that deviates from legal obligations and violates the subjective rights of the auction winner (Hidayah & Badriyah, 2022). The element of fault is fulfilled because the auctioned party is aware that he or she no longer has rights over the object, yet

intentionally continues to occupy it. As a result, the auction winner suffers material losses in the form of lost economic benefits and increased execution costs, as well as potential immaterial losses such as stress or psychological burden. The causal relationship is also clear, as such losses directly arise from the conduct of the auctioned party who continues to control the object and obstruct the execution of vacating.

According to L.J. Van Apeldoorn, subjective rights consist of absolute rights, or *hak onpersoonlijk*, namely rights that contain the power to act, behind which lies the obligation of every person not to violate such rights, and relative rights, or *hak persoonlijk*, namely rights that contain the power to demand that another person act, meaning to do something or refrain from doing something (Apeldoorn, 2004). After the minutes of auction are issued, the auction winner obtains absolute rights over the ownership of the auctioned object. This right applies against anyone, including the auctioned party. Thus, everyone is obliged to respect such right by not controlling or obstructing control over the object. In addition, the auction winner possesses relative rights against the auctioned party, namely the right to demand that the auctioned party vacate and surrender the object.

In order to realize such subjective rights up to the point of physical control by the auction winner, legal action based on justice is required. According to L.J. Van Apeldoorn, justice must not be understood as identical to equality. Justice does not mean that every person receives the same portion, but rather that justice is assessed based on one's rights. If the condition in which the auctioned party continues to control the auctioned object and refuses to surrender it is allowed to persist, the auction winner must pursue a legal remedy in the form of execution of vacating through the court. Although this is legally valid, the execution process requires additional time, effort, and costs. From the perspective of the principle of justice, such additional cost burden is unfair to the auction winner, because the auction winner is a good-faith party who has fulfilled his or her obligations (Fathimah Azzahra & Malikhatun Badriyah, 2023).

Efforts to resolve legal problems or disputes are divided into two pathways available to justice seekers, namely litigation and non-litigation. Litigation refers to the state judicial institution, meaning that the case will be handled and examined by a judge through a series of court proceedings. Meanwhile, non-litigation refers to dispute resolution through negotiation, mediation, conciliation, or arbitration, in which the parties have greater control over the final outcome (Rosita, 2017). Litigation tends to be more expensive and time-consuming, but it provides stronger legal certainty and enforcement of rights. Non-litigation, by contrast, is more cost-efficient, faster, and capable of maintaining confidentiality.

The legal actions that may be taken by the auction winner in a mortgage execution auction are essentially intended to ensure the fulfillment of ownership rights over the auctioned object that has been legally transferred to the auction winner. The grosse copy of the minutes of auction as an authentic deed and an executorial title provides a strong legal basis for the auction winner to obtain physical control over the object, including in facing resistance from the auctioned party. If the object is not surrendered voluntarily and there is bad faith on the part of the auctioned party, the auction winner generally submits an application for a forced execution order to the District Court based on Article 200 paragraph (11) of the *Herzien Inlandsch Reglement*, hereinafter referred to as "HIR", in order to obtain assistance from state apparatus in carrying out the vacating. Nevertheless, an alternative legal action that is more solution-oriented is needed because this mechanism is considered less just for the auction winner, as the process takes a long time and creates additional costs before the auction winner's rights can be fully realized.

In the context of vacating an auctioned object resulting from mortgage execution, vacating may be carried out without forced execution based on the grosse copy of the minutes of auction. Voluntary vacating by the auctioned party to the auction winner may still be pursued through mediation at the District Court. This mediation is conducted after the *aanmaning* process by the Chairperson of the Court, after which mediation may be held at the court. In practice, the auction winner may provide compassionate assistance, namely a voluntary provision by the auction winner, either in the form of money or other objects, to the auctioned party, so that the auction winner can obtain control over the auctioned object resulting from mortgage execution without the need for forced execution.

The main reason why the auctioned party continues to control the auctioned object is usually the lack of alternative housing, considering that the auctioned house is often the only residence available. Therefore, mediation frequently ends with the voluntary provision of compassionate assistance by the auction winner to the auctioned party so that the latter can obtain temporary accommodation. This practice of providing compassionate assistance shows that although the auction winner legally holds full rights over the auctioned object, humanitarian considerations often become the basis for resolving disputes over the vacating of auctioned objects resulting from mortgage execution.

Legal action through mediation constitutes a solution-oriented measure because it involves a mediator. The function of the mediator is essentially to act as a neutral party who assists the disputing parties in reaching a peaceful agreement without having to undergo lengthy litigation proceedings. The mediator does not determine who is right or wrong, but facilitates communication and negotiation. In this context, the mediator may also provide legal advocacy to the parties so that they can make decisions that reflect a win-win solution, particularly in fulfilling the subjective rights of the auction winner to control the auctioned object resulting from mortgage execution (Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan, 2016)

Mediation does not diminish the legal position of the auction winner. On the contrary, it offers a faster path toward certainty while providing a humane transitional space for the occupant. Furthermore, from the perspective of legal principles, mediation is consistent with the principle of simple, speedy, and low-cost justice as regulated in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power (Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman, 2009). Compared with full litigation, which requires a lawsuit, evidentiary proceedings, and legal remedies, mediation is more efficient and does not impose disproportionate additional costs on the auction winner. In addition, mediation is also consistent with the principle of a win-win solution (Dahlani & Tuasikal, 2025). Forced execution often creates psychological burdens, additional costs, and even the potential for horizontal conflict within the community. Therefore, through a mediation agreement, execution may be carried out voluntarily, thereby reducing negative social and economic impacts. This reflects that dispute resolution does not always have to be pursued through coercive means, but may also be resolved through constructive dialogue.

Normatively, mediation has strong legitimacy because it is recognized in statutory regulations as an integral part of the judicial process. Furthermore, as regulated in Article 1 point 10 of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, a successful mediation agreement may be strengthened as a deed of settlement containing the text of the settlement agreement and the judge's decision affirming the peace agreement. This ensures legal certainty for the auction winner without requiring a lengthy lawsuit process.

Based on the foregoing discussion, the most solution-oriented form of legal action available to auction winners is mediation. Through mediation, the juridical rights of the auction winner, based on

the minutes of auction and the grosse copy of the minutes of auction, may be transformed into factual control over the object through a peaceful agreement. Concrete examples include agreements regarding the deadline for vacating, the mechanism for handing over the keys, and the arrangement of the belongings of the auctioned party. Through this approach, the auction winner does not need to wait for a longer fiat execution process. Mediation constitutes a concrete form of dispute resolution that prioritizes the principles of peace, justice, and efficiency. The existence of mediation is not intended to weaken the legal position of the auction winner, but rather to strengthen the protection of his or her rights through a more humane approach.

2. Application of the Principle of Justice in the Mediation Process for Disputes Regarding the Vacating of Objects Sold Through Execution Auctions of Mortgage Rights

The application of the principle of justice in resolving disputes concerning the vacating of objects sold through execution auctions of mortgage rights is highly important, given the gap between the formal rights of auction winners who have obtained the minutes of auction and the grosse of the minutes of auction as an executorial title, and the factual circumstances in which the auctioned object remains under the control of the auctioned party. Justice in this context concerns not only formal legality but also the extent to which a dispute resolution mechanism can effectively restore the rights of auction winners without imposing disproportionate burdens upon them. Therefore, mediation, as a non-litigation instrument, provides a more flexible avenue for achieving both procedural and substantive justice (Wijaya et al., 2026).

Substantively, the principle of justice requires that each person be given what is rightfully theirs, as reflected in the concept of *suum cuique tribuere* according to Normierung in his book *Typisierung Ist Die Seele Des Recht, Individualisierung Det Gerechtigkeit*, as cited by L.J. Van Apeldoorn in his book *Pengantar Ilmu Hukum (Inleiding Tot De Studie Van Het Nederlandse Recht)*. Justice prohibits the equal treatment of unequal circumstances and requires that each case be assessed individually (Apeldoorn, 2004). In the context of the execution of mortgage rights, an auction winner who has fulfilled all payment obligations and received the minutes of auction as well as the grosse of the minutes of auction has the full right to possess the auctioned object. This right is enforceable against all persons; therefore, the auctioned party is obligated to vacate the object and surrender possession to the auction winner.

Justice does not mean that every person receives an equal share. Rather, it means that every person receives what is rightfully theirs in accordance with the obligations attached to them. In the context of execution auctions of mortgage rights, there are two principal parties with relevant interests, namely the auction winner and the auctioned party (Setyawan, 2022): 1) The auction winner has fulfilled their obligation by paying the auction price and obtaining legally binding minutes of auction. Their right is to receive the auctioned object in its entirety, including physical possession. 2) The auctioned party has lost their rights over the object because the mortgage right has been executed to settle outstanding debt. Their legal obligation is to vacate the object and surrender it to the auction winner.

When the auctioned party resists in bad faith, such conduct constitutes a form of *vredebreuk* or breach of peace. Under this theory, a person who acts contrary to the purpose of law, namely the maintenance of peace and the balance of interests, is no longer entitled to legal protection. Accordingly, an auctioned party who refuses to vacate the auctioned object even after the grosse of the

minutes of auction has been issued is legally placed in a *vredeloos* position, meaning that they are outside the scope of legal protection. From this perspective, a party acting in bad faith should not receive legal protection because such conduct obstructs the restoration of the rights of another party acting in good faith.

Meanwhile, litigation in the form of an application for vacating execution under Article 200 paragraph (11) of the HIR often imposes additional burdens on auction winners (Subekti & Tjitrosudibio, 2022). Apart from requiring a considerable amount of time, the process also entails additional costs that are inconsistent with the principle of justice. The auction winner's rights have been perfected since the issuance of the minutes of auction. Therefore, requiring the auction winner to undergo another lengthy process involving time, effort, and costs constitutes substantive injustice. For this reason, mediation may be regarded as more consistent with the principle of justice because it can minimize such obstacles and prevent auction winners from suffering additional and unnecessary losses.

Mediation offers procedural justice through the principles of mediator impartiality, equality of the parties, freedom of expression, and the voluntary achievement of agreements, as regulated under Supreme Court Regulation No. 1 of 2016. In mediation proceedings, the mediator plays a role in ensuring that negotiations are not dominated by one party, thereby preserving the legal position of the auction winner. The mediation process also allows for clear recognition of the auction winner's rights based on the *grosse* of the minutes of auction, while still providing room for deliberation for the auctioned party to adjust to the legal consequences of losing their rights. Thus, mediation produces a more comprehensive form of justice because it not only restores the rights of auction winners but also considers humanitarian aspects affecting the auctioned party, such as economic conditions where the auctioned party has no residence other than the house that constitutes the auctioned object.

Mediation in resolving issues concerning the vacating of objects sold through execution auctions of mortgage rights constitutes a concrete form of dispute resolution that prioritizes peace, justice, and efficiency. The purpose of mediation is not to weaken the legal position of auction winners. Instead, it strengthens the protection of their rights through a more humane approach. The State also has an interest in promoting mediation because, in addition to preserving legal certainty, it supports social order and provides balanced legal protection to all parties.

From the perspective of the principle of justice, the legal actions available to auction winners should not be burdened by lengthy procedures and additional costs that diminish the legal certainty already granted by the minutes of auction. Therefore, the mechanism for vacating execution should be simplified, for example, by strengthening preventive protection through ensuring that auctioned objects are vacated before the auction takes place and accelerating repressive execution through the imposition of time limits on courts in conducting executions. Legal action through mediation, when examined from the perspective of the principle of justice according to L.J. Van Apeldoorn, can be elaborated through the following points (Apeldoorn, 2004):

a. Justice as the Essence of Mediation

According to L.J. Van Apeldoorn, justice means granting each person their rights in proportion to their position. In the context of mediation concerning the vacating of auctioned objects, justice is reflected in the continued recognition of the lawful ownership rights of auction winners while also providing room for auctioned parties to fulfill their obligations reasonably without losing their dignity. With regard to execution auctions of mortgage rights, auction winners who have fulfilled their obligations are fully entitled to the objects they have won, while auctioned parties are obligated to surrender those objects. However, justice cannot be separated from humanitarian values. Mediation

serves as an instrument that guarantees the fulfillment of auction winners' rights to obtain possession of the object while taking humanitarian considerations into account. Where the reasons presented by the auctioned party are acceptable from a humanitarian perspective, the party may be given an opportunity to fulfill their obligations while maintaining their dignity, for example through arrangements regarding the time for vacating the property or the provision of transitional solutions.

b. Preventing Structural Injustice

Mediation prevents structural injustice that may arise when execution is carried out forcibly without any room for compromise. Auction winners are indeed entitled to possess the object, but auctioned parties also have humanitarian interests, such as the need for adequate time to seek new housing. Through mediation, these two interests may be reconciled within the framework of *suum cuique tribuere*. Forced execution often creates tension and structural injustice because it focuses solely on formal legal aspects without considering the factual circumstances of the parties. In such situations, auction winners may be legally entitled to the object, yet auctioned parties may face humanitarian limitations, for example where the auctioned house constitutes their only residence.

c. Ensuring Legal Certainty for Auction Winners' Rights

Justice according to L.J. Van Apeldoorn is also related to certainty, namely the principle that a person's rights should not be delayed longer than necessary. Mediation functions to affirm recognition of the auction winner's rights while identifying a peaceful means through which those rights can be realized, rather than delayed or obstructed by unfounded resistance from the auctioned party. Auction winners who have obtained the minutes of auction and the grosse of the minutes of auction should be able to enjoy their rights promptly. However, in practice, delays often occur due to resistance by auctioned parties. Mediation can serve as an effective means of reducing such obstacles by facilitating a final peace agreement. Consequently, auction winners do not need to wait for a lengthy execution process, while still obtaining legal certainty in a prompt and fair manner.

d. Reducing Costs, Time, and the Potential for Conflict

Justice concerns not only the distribution of rights but also the avoidance of unnecessary burdens. Mediation reduces costs, time, and the risk of social conflict that frequently arise in forced executions. Accordingly, auction winners may obtain their rights without bearing excessive burdens. Forced execution generally requires additional costs, a lengthy process, and carries the risk of social conflict that may harm both parties. Mediation reduces these burdens because it produces agreements that are faster, simpler, and less costly. For auction winners, this means that their rights can be fulfilled without having to bear double burdens. For auctioned parties, mediation provides an opportunity to obtain a more humane resolution without excessive pressure from execution officers.

e. Realizing Substantive Justice

According to L.J. Van Apeldoorn, the law must seek a balance between certainty and justice. Mediation provides a form of substantive justice because it prioritizes peaceful solutions that are more beneficial to both parties than merely relying on formal justice in the form of forced execution. In this context, mediation is closer to the realization of substantive justice because it prioritizes peaceful solutions that accommodate the actual interests of both parties. Unlike forced execution, which emphasizes only formal justice, mediation allows for the creation of practical and flexible solutions, such as granting a reasonable deadline, providing voluntary *ex gratia* assistance, or entering into a temporary lease agreement.

Several legal recommendations may be proposed in responding to issues concerning the vacating of objects sold through execution auctions of mortgage rights. The outcome of mediation

may refer to two fair solutions for auction winners. First, the auctioned party may voluntarily surrender the object sold through the execution auction of the mortgage right to the auction winner without the need for forced execution. In practice, there is a custom in which auction winners voluntarily provide humanitarian assistance, either in the form of cash or replacement property or housing, to the auctioned party. From a legal standpoint, such assistance does not violate any applicable regulation because it constitutes a voluntary humanitarian gesture by the auction winner toward the auctioned party, provided without coercion from any party.

A second alternative solution that may arise from mediation is for the auction winner and the auctioned party to enter into a lease agreement. Such an arrangement may create a win-win solution in which the auctioned party remains in the auctioned property without retaining ownership or control over it, while the auction winner receives rental payments from the auctioned party. Furthermore, both alternatives are consistent with the function of law according to Van Apeldoorn, namely maintaining peace by balancing conflicting interests. Humanitarian assistance emphasizes compassion and peaceful resolution, while lease agreements emphasize the contractual balance of interests. Both alternatives prevent the occurrence of *vredesbreuk* or breach of peace while ensuring that auction winners acting in good faith continue to receive full legal protection over their property rights.

Conclusion

The legal measures available to an auction winner in resolving disputes concerning the vacating of objects sold through the execution auction of mortgage rights are fundamentally aimed at obtaining physical possession of an object that has lawfully become the winner's right based on the minutes of auction and the grosse of the minutes of auction as an executorial title. Although the auction winner may file an application for forced execution before the District Court pursuant to Article 200 paragraph (11) of the HIR, this mechanism often entails lengthy procedures, significant costs, and considerable time. Consequently, it may not fully reflect the principle of justice for auction winners who have acted in good faith. Therefore, the most appropriate legal measure is to pursue mediation before the District Court, which enables the vacating process to be carried out voluntarily through a peace agreement.

The application of the principle of justice in the mediation of disputes concerning the vacating of objects subject to the execution of mortgage rights is intended to bridge the formal rights of auction winners with the factual condition in which the object remains under the control of the auctioned party. Mediation provides a more equitable, efficient, and humane mechanism than forced execution because it enables auction winners to obtain certainty over possession of the object without excessive financial and temporal burdens. From the perspective of justice, mediation places auction winners in their proper position as lawful owners while still allowing auctioned parties to fulfill their obligations with dignity, for example through an agreed deadline for vacating the property or the handover of keys. Accordingly, mediation produces substantive justice by restoring the rights of auction winners while preserving public order and preventing social conflict.

Acknowledgments

The author would like to express sincere gratitude to all parties who provided support, guidance, and input in the preparation of this study. Their contributions were valuable in examining legal measures for auction winners in disputes over the vacating of mortgage execution auction objects, particularly in understanding the role of mediation as a fair, efficient, and humane mechanism for achieving legal certainty and substantive justice.

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