

A Review of the Issues and Challenges of Immovable Property Auction Process in Malaysia

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Abstract

The public auction process for immovable property is a legal procedure employed to invalidate the rights of original owners who have breached a contract. Banks will liquidate distressed assets when a borrower defaults on their mortgage. A significant knowledge gap exists about the auction processes for immovable property in Malaysia. This study seeks to fill this gap by analysing current literature, collecting secondary data, and highlighting the necessity for greater standardisation in public auction procedures. The findings provide substantial advantages for parties in property auctions and seek to improve the auction process through the establishment of standardised procedure.

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). 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 analysing the various issues and challenges stakeholders face.

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).

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

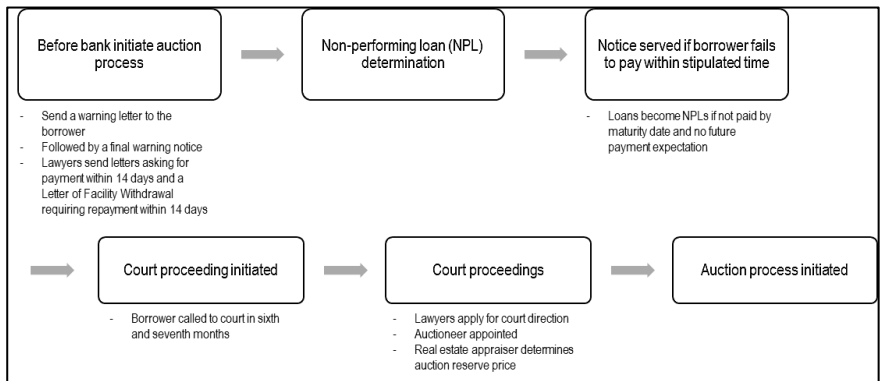


Figure 1: Process to initiate a public auction for immovable property
(Source: Alton et al. (2001), Danny (2019), (Wong et al., 2015) and Xu (2005))

The financier conducts a financial evaluation before the auction procedure starts. The bank decides whether a loan is eligible to be classified as a Non-Performing Loan (NPL) if the borrower fails on it. Since it indicates that the borrower has not made payments for a considerable amount of time, typically more than 90 to 180 days where this classification is an important step. The NPL ruling lays the basis for subsequent steps.

The bank notifies the borrower formally when the loan is deemed non-performing. This notification lists the past-due amounts and gives a deadline for repayment. It serves as a last warning, offering the borrower a chance to pay off the loan and stay out of trouble. The process moves on to the next step if compliance is not met within this time range. The bank starts legal action to recover the money owing if the borrower fails to respond to the notice. In these processes, a legal claim is filed, and the court evaluates the borrower's financial

situation as well as the viability of the bank's claim. The legal procedure gives the borrower the chance to challenge the claim if needed and guarantees that the bank's actions are compliant with the law.

Officially, the auction process begins after the court gives its approval. In order to recover the remaining loan balance, the court orders a judgement permitting the borrower's property to be sold. The property is now up for auction, and prospective purchasers are encouraged to submit bids. Transparency in the auction's operation guarantees adherence to all applicable laws and procedures. Malaysian real estate auctions provide a systematic way to settling financial conflicts between lenders and borrowers. The approach guarantees fairness and compliance with legal requirements by moving through several stages, including NPL determination, notice issuing, court procedures, and auction initiation. Even though the procedure is intended to safeguard the interests of both lenders and borrowers, it might be made even more effective and accessible with continued advancements like increased transparency and digitisation.

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).

Judicial auctions are executed under the supervision of the High Court. In instances where the property is registered with a title document at the Registrar's Office, the High Court is empowered to conduct the auction. The implementation of the e-Lelong system has significantly enhanced the efficiency of judicial auctions by facilitating digital tendering via the e-Lelong Operation Centre. This approach guarantees enhanced transparency and

accessibility for participants in the bidding process. The introduction of online auction platforms, especially the e-Lelong system, has transformed the bidding process by enabling participants to engage remotely. This methodology improves accessibility and mitigates the likelihood of interference or manipulation throughout the tendering process.

For properties that are registered with the Land Office, the auctions fall under the authority of the Land Office. This procedure generally includes conventional auction methods, wherein licensed auctioneers oversee and facilitate the bidding process. This methodology is frequently employed for properties that are free from disputes or judicial intervention. Conventional auction is conducted in a physical setting, with licensed auctioneers supervising the bidding proceedings.

Non-judicial auctions, commonly known as LACA (Loan Agreement Cum Assignment) auctions, are commenced by financial institutions for properties that lack a registered title. In such instances, properties are sold at auction in accordance with the stipulations outlined in the loan agreement, rather than through judicial mandates. These auctions may be executed through traditional, online, or hybrid methods, with the process overseen by licensed auctioneers (Aris, 2009; Khairun Nissa, 2009). Hybrid auctions include components of both conventional and digital methods. This method is experiencing a surge in prominence as it caters to individuals who favour face-to-face interaction while at the same time utilising the advantages of digital platforms.

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 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 modelling (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 utilized data source for content analysis (Krippendorff, 2012). As stated by Vourvachis (2015), content analysis to be “a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use” 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

Desktop 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. Desktop research entails the examination of current studies to gather information related to the research requirements (Šoštarić, 2021). 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 analyse 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.

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.

4.0 Findings & Discussion

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

<i>Issues</i>	<i>Discussion</i>	<i>Newspaper Name</i>	<i>Keyword</i>
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

<p>Wong (2022) 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) 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) 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) 2a. The government needs to revise the outdated auction laws that prevent foreclosed properties from being sold at a fair price 2b. Can consider Australia's auction model of making sellers responsible for providing good & clean property titles</p>	<p>Bemama</p>	<p>Internal Inspection</p>
<p>Wong (2021) 1. Public mindset towards auction properties</p> <p>Aisyah (2018) 2. Properties on auction have been associated with unfair terms like inauspicious, cheap bargains or foreclosure. 3. After winning the bid, you have to pay in full within a short period, usually in 90-120days</p>	<p>Wong (2021) 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) 2a. Do thorough research to better prepare before buying an auction property 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>	<p>Societal stigma</p>
<p>Aisyah (2018) 1. In conventional auction, some manipulation might occur between bidders and auctioneers</p>	<p>Aisyah (2018) 1a. The online auction process is clearer. 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</p>	<p>The Star</p>	<p>Possible manipulation</p>

	<p>opportunity to place a bid simultaneously.</p>		
<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>	<p>The Edge Malaysia</p>	<p>Existing loopholes in the court system (e-Lelong)</p>

In this study, 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.

4.1 Strict payment deadlines

Strict payment deadlines, which usually require for full settlement within 90 days, are a significant problem with the Malaysian auction system (Kathy, 2023). This problem is made worse by the fact that successful bidders frequently do not have access to flexible financing. To lessen the strain, banks are encouraged to offer short-term lending solutions that last six to twelve months. In order to make later refinance a feasible option, bidders should also be urged to prepare all necessary cash in advance (Kathy, 2023; New Straits Times).

4.2 Presence of Syndicate

By threatening legitimate bidders or providing "assistance" in exchange for money, syndicates rig auction results. By guaranteeing bidder anonymity and doing away with the requirement for in-person presence, the High Court's deployment of the e-Lelong system seeks to prevent such meddling (Wong, 2021; Kay, 2017). To further protect bidders and preserve auction integrity, it is advised to implement enhanced measures such security monitoring, bidder-only waiting spaces, and more stringent deposit verification procedures (Nur Azlin, 2016).

4.3 Internal Inspection

Regulations governing auctions that prohibit bidders from pre-inspecting homes are another problem. Because purchasers account for possible repair expenses and title concerns, this lack of transparency frequently leads to reduced selling prices (Wong, 2022). Laws should be changed to guarantee that homes are sold with clean and vacant possession, and foreclosed properties should permit pre-auction inspections. One such standard is the auction system in Australia, where sellers ensure the quality of the title (Wong, 2021).

4.4 Presence of Syndicate

The e-Lelong launch signifies a major move towards auction digitisation. The approach has limitations even while it increases openness and lessens syndicate interference. Significant obstacles include worries about internet problems, system dependability, and the lack of middlemen to direct players (Nur Azlin, 2016). These problems might be lessened by a hybrid approach that combines traditional and electronic components, guaranteeing operational robustness and inclusivity (CRO, 2018). In traditional auctions, when bidders and auctioneers conspire, manipulation is still a problem (Aisyah, 2018).

4.4 Possible manipulation

The possibility of manipulation is decreased by digitising the procedure, guaranteeing fair opportunities for each participant. However, the e-Lelong system needs to be further improved due to flaws including low public awareness and technical difficulties. Among the suggestions are including live bidding possibilities, developing a contingency plan for technical malfunctions, and revising pertinent legislation to support both traditional and digital auctions (Nur Azlin, 2016; Kay, 2017).

5.0 Conclusion & Recommendations

The research method includes browsing newspapers as sources of information, analysing 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, except for 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 first-hand 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. In future, it is recommended that researchers in this field would study on the solution to mitigate the issues and challenges that have been found in this research.

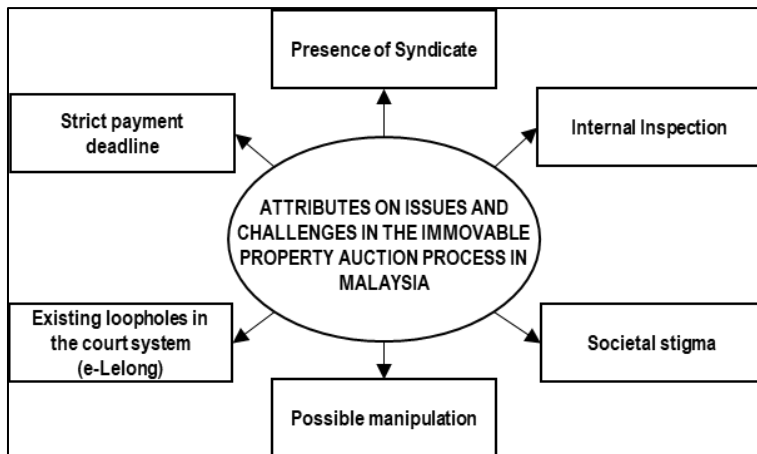


Figure 2: Attributes on issues and challenges in the immovable property auction process in Malaysia

(Source: Researcher (2024))

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Article 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 mitigate the issues and challenges of the real estate auction market in Malaysia.

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