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The Lack of Preventive Protection and Judicial Inactivity in the Enforcement of Security Interests: A Perspective on Dignified Justice

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ABSTRACT
The execution of Mortgage Rights (*Hak Tanggungan*) often places Third-Party Guarantors in a vulnerable position due to the lack of adequate legal protection instruments. This study aims to analyze the void of preventive protection norms in Indonesia's auction regulations and critique the judges' considerations in the South Jakarta District Court Decision Number 1059/Pdt.G/2022/PN JKT. SEL through the analytical lens of the Dignified Justice Theory. This research is normative legal research using statutory, conceptual, and case approaches. The results reveal two main conclusions. First, there is a legal vacuum in the Mortgage Rights Law and Minister of Finance Regulation No. 213/PMK.06/2020, which do not accommodate the right to rebut against the determination of the Limit Value, thereby legitimizing unilateral predatory pricing practices by the holder of executorial rights. Second, the Panel of Judges was proven to be trapped in a rigid positivism paradigm (*la bouche de la loi*) and failed to conduct legal discovery (*rechtsvinding*) to uncover the anomaly of auction prices that fell below the liquidation value. The decision failed to humanize humans (*nguwongke uwong*) and violated substantive justice. This study recommends regulatory reconstruction through the institutionalization of a "Rebuttal Period" in the pre-auction phase and the urgency of issuing a Supreme Court Circular Letter (SEMA) to encourage judicial activism in canceling exploitative auctions.

INTRODUCTION

The implementation of the auction of the execution of the Right of Dependency for the debtor's default often triggers a series of lawsuits, especially from Third Party Guarantors. This phenomenon represents a serious problem in the guarantee legal system in Indonesia, where existing regulations tend to deify legal certainty for creditors (banks) at the expense of substantive justice for vulnerable parties. Legal bases such as Article 6 of Law Number 4 of 1996 concerning Dependent Rights (UUHT) and Minister of Finance Regulation Number 213/PMK.06/2020 do provide legitimacy for *parate* execution (Dewi & Budiharseno, 2026; Muslim et al., 2024). However, the absence of adequate legal protection mechanisms makes third parties often victims of manipulative practices, such as predatory pricing by auction applicants and the Public Appraisal Service Office (KJPP) (Denekew, 2020; Giosa, 2025; Prayitno et al., 2024).

Philosophically and regulative, the Bank as an intermediary institution that collects public funds is required to apply the prudential principle consistently. The obligation of an in-depth analysis of the customer's willingness and ability to pay is explicitly mandated in the banking legal regime. Unfortunately, banking risk mitigation instruments such as the 5C, 7P, and 3R are often only strictly applied in the credit disbursement phase. When debtors experience liquidity pressure due to business dynamics or external factors, banks often ignore due diligence and good faith. The function of collateral, which is actually only an instrument to reduce the final risk, is actually executed in a hurry without prioritizing non-litigation recovery or restructuring efforts.

This unilateral execution step not only impoverishes the debtor and goes against national economic goals, but also isolates the position of the guarantor. Although the guarantor has the privilege of having the debtor's assets confiscated first (*beneficium excussionis*), banking practices often require the release of these rights from the beginning of the agreement (Kyomugisha, 2015; Swandle, 2020). This condition puts the Third Party in a very vulnerable position when the auction is held without being preceded by an independent audit (Bernstein, 2015; Kohler & Dimancesco, 2020; Tang & Yu, 2025).

At the academic level, the issue of auction execution has been studied a lot, but it still leaves a fundamental research gap. Jessica A. Putri Hutapea's research (2021) suggests the use of Article 1365 of the Civil Code to sue the determination of auction limits below market prices. Burhan Sidabariba (2019) compiled a macro analysis of the balance of legal protection, while Adi Artama Putra (2014) highlighted the neglect of guarantor rights in the Borgtocht. None of these three literatures has specifically dissected the gap in preventive protection and offered concrete mechanisms to mitigate limit price anomalies at the pre-auction stage. On the other hand, the formation of regulations that are supposed to be oriented towards social justice is often trapped in legal formalism and political compromise, thus giving birth to a rigid paradigm of legalism (Kampourakis, 2021; Setyawan & Safrut, 2025).

Departing from the emptiness of these norms and literature, this article aims to dissect the urgency of preventive legal protection for Third Party Assignees of Dependent Rights against auction limit pricing anomalies, as well as analyze the judge's passivity in handling execution disputes through a case study of the South Jakarta District Court Decision Number 1059/Pdt.G/2022/PN JKT. SEL. Specifically, this study seeks to examine the form of regulation and implementation of legal protection for collateral assets owned by third parties in the auction of the execution of dependent rights according to the applicable laws and regulations, and to analyze how the judge's consideration in the decision reflects the principle of Pancasila justice in protecting the rights of third parties (Ningsih, 2021; Retnowati et al., 2023; Safriani et al., 2025; Utami et al., 2025).

The benefits of this research are both theoretical and practical. Theoretically, this study contributes to the development of civil law and guarantee law literature, particularly regarding the concept of preventive legal protection in the execution of the Right of Dependency and the application of Dignified Justice Theory in judicial decisions. Practically, this research provides benefits for Third Party Guarantors in understanding their rights and legal protection instruments, for judges as a reference in making decisions based on substantive justice, for legislators in formulating regulations that are more protective of vulnerable parties, and for legal practitioners in advocating for the protection of Third-Party Guarantor rights (Ishak &

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Rahman, 2021; Issoufou & Oseni, 2015; Setyabudi & Mashdurohatun, 2022). This paper is expected to formulate the concept of legal reform (*ius constituendum*) based on the principle of Pancasila justice to prevent the practice of asset confiscation under the guise of constitutional auctions (Fernando & Pujiyono, 2023; Romadhon et al., 2025; Suhartono & Panjaitan, 2025).

METHOD

This research was explanatory normative legal research, which is aimed at identifying and analyzing the gap between *das sollen* and *das sein* related to the protection of Third-Party Guarantors in the execution of dependent rights. To dissect these legal issues, this study uses two main approaches, namely the statute approach to examine the regulation of property guarantees and auctions, and the case approach to examine the ratio decidendi in the South Jakarta District Court Decision Number 1059/Pdt.G/2022/PN JKT. SALT. The data used is sourced from library research and electronic document search (Supreme Court directory), which includes primary legal materials (laws and regulations and court decisions), secondary legal materials (academic literature), and tertiary legal materials. All of the data is then analyzed using a deductive method to evaluate positive law (*ius constitutum*) and formulate the idea of legal reform (*ius constituendum*) based on the principle of justice.

RESULT AND DISCUSSION

Gaps in Preventive Protection Norms and Creditor Hegemony in the Execution of Dependent Rights

The implementation of the auction of the execution of the Rights of Dependents in Indonesia is fundamentally based on Article 6 of Law Number 4 of 1996 concerning the Rights of Dependents (UUHT), which provides the legitimacy of *parate executie* or the right to sell in their own power for the Creditor. When examined from the perspective of legal politics, the nature of this regulation tends to be conservative-orthodox. The law functions as an instrument of social engineering to secure banking liquidity and the interests of capital owners, often at the expense of substantive justice for the weak.

The dominance of this creditor is increasingly absolute with the issuance of Minister of Finance Regulation Number 213/PMK.06/2020 concerning Guidelines for the Implementation of Auctions (PMK Auction). Administratively, there is an anomaly in the legal hierarchy in this regulation. Restrictions on Human Rights in the form of deprivation of property rights through forced execution should be strictly regulated at the level of the law involving the consent of the people, as mandated by Article 28J paragraph (2) of the 1945 Constitution. Giving up absolute asset confiscation discretion at the level of Ministerial Regulation has the potential to give birth to "bureaucratic authoritarianism" that triggers a vacuum of norms in the protection of Third-Party Guarantors. Referring to the thinking of Philipus M. Hadjon, legal instruments must provide preventive protection to prevent disputes before a definitive decision is taken. However, the absence of the "*Masa Sanggah*" (right to grab) instrument in the PMK Auction makes asset owners lose administrative access to refuse adverse pricing. This alienation is further exacerbated by the digitization of auctions (E-Auction) as a manifestation of Fintech in the public sector, which systemically closes physical objection channels without providing digital rebuttal mitigation features.

This structural inequality and lack of rebuttal space has its roots since the pre-contractual (upstream) phase. In the case study of the South Jakarta District Court Decision Number 1059/Pdt.G/2022/PN Jkt.Sel, the position of the Third-Party Guarantor (Mrs. Julia Subintoro) has been castrated since the signing of the bond binding. Through the Power of Attorney for the Assignment of Dependent Rights (SKMHT) and the Deed of Grant of Dependent Rights (APHT) Number 59/2016 and 60/2016, the Bank inserted an exoneration clause that gives "absolute power" to the Creditor to sell the collateral object without the prior approval of the First Party (the Guarantor). The Third-Party Guarantor, who does not have the capacity as the main debtor, is trapped in the abuse of circumstances (*misbruik van omstandigheden*) due to the dominance of the banking economy (*economisch overwicht*). The agreement created is not a manifestation of free will, but a systemic coercion (*dwang posicion*) that legitimizes the unilateral transfer of responsibility.

The most destructive excesses of creditor dominance (Standard Clause) and the absence of preventive protection (Right of Objection) are empirically manifested in the manipulation of the determination of the Auction Limit Value at the pre-execution stage (middle). PMK Auction Article 47 paragraph (2) provides discretionary authority for Creditors to set the selling price limit based on the assessment of the KJPP. Due to the absence of a "quota test" mechanism that can be submitted by third parties, this regulation is used to carry out predatory pricing practices.

In the case of a quo, there is an extreme valuation anomaly that goes against the logic of the Indonesian Valuation Standard (SPI). Based on the facts of the trial, the assets in the form of the building were valued at IDR 43.9 billion (Market Value) in 2019 with the condition of a 3-storey building covering an area of 692.49 m². After a significant renovation to 4 floors with an area of 1,088 m² in 2019-2020, the value of the asset actually declined drastically to IDR 29.9 billion in the 2020 anniversary assessment by the same KJPP (Toto Suharto).

This disparity cannot be seen as merely market fluctuations, but rather a fatal flaw in valuation methods. In the Cost Approach and Highest and Best Use (HBU) analysis, the addition of a building volume of nearly 400 m² is a value enhancer that should increase the Replacement Cost New component. The inconsistency of the KJPP in denying the results of its own assessment indicates a violation of the Indonesian Code of Ethics for Appraisers (KEPI) the principle of objectivity, where the assessment is strongly suspected to be driven by the Bank's interests to accelerate liquidation. This malpractice is further undeniable by the fact that in June 2022 (four months before the auction), another independent KJPP (Susanto Salman & Partners) estimated the actual Market Value of the asset at IDR 45.1 billion.

As a reinforcement of the anomaly postulate, the following is a matrix of asset value disparity before and after renovation that is the basis of the auction:

Table 1. Track Record of Asset Valuation and Limit Value Anomalies (2016 - 2020)

DATE	MARKET VALUE (RP)	LIQUIDATION VALUE (RP)	PUBLIC ASSESSMENT OFFICE/KJPP	OBJECTIVES
18 Jan 2018	39.791.738.000	27.854.218.000	Sugianto Prasodjo & Partners	Bank Panin

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Aug 31, 2018	39.942.000.000	27.959.000.000	Sugianto Prasodjo & Partners	BNI
11 Mar 2019	43.913.400.000	28.541.200.000	Toto Suharto & Associates	Bank Agraris
13 Nov 2020	29.973.800.000	23.979.100.000	Toto Suharto & Associates	BNI

Source: Compiled from case documents and trial evidence in South Jakarta District Court Decision Number 1059/Pdt.G/2022/PN JKT. SEL (2022)

Tragically, in the realm of execution (downstream), the Auction Officer (KPKNL Jakarta III) who is supposed to represent the principle of state impartiality is actually passive. KPKNL ignored the General Principles of Good Governance (AUPB), especially the principle of prudence, by continuing to execute the assets on October 19, 2022 at a price of IDR 21.4 billion—a figure that is even lower than the liquidation value that has been manipulated. The covert attitude behind the formality of this document is contrary to the doctrine of execution law. Civil execution should not be carried out blindly solely to the satisfaction of the Creditor, but should be subject to human values and propriety. As a General Official, the Auction Officer has the attributive authority to reject the auction if there is an indication of formal or material defects in the proposed price.

The entire anatomy of this case confirms that positive legal instruments fail to operate as a shield of justice. As long as the state does not reconstruct the Auction PMK by instituting a "Value Dispute Period", the execution of the Dependent Rights will continue to legalize the constitutional deprivation of the property rights of the Third-Party Guarantors.

Based on the overall anatomy of the above case, the common thread of the flawed execution auction boils down to one fundamental conclusion: the paralysis of Legal Protection Theory as initiated by Philipus M. Hadjon. A series of irregularities ranging from the dominance of standard clauses (pre-contractual), valuation anomalies (pre-auction), to the passivity of KPKNL (auction implementation), will not actually lead to losses to third parties if the state institutes Preventive Legal Protection. The absence of the right to rebuttal (right to grab) for asset owners in the PMK Auction regulation proves that the current positive legal instruments are only oriented towards repressive protection that is late and expensive, and fails to carry out the function of preventive safeguard. As long as the state does not reconstruct the auction rules by providing an impartial rebuttal of value, the guarantee law in Indonesia will continue to operate asymmetrically: deifying the certainty of the right of execution for the Creditor, but nullifying the preventive protection of the fundamental rights of the Third-Party Guarantor.

Judicial Positivism and the Failure of *Rechtsvinding* in Realizing Dignified Justice

1. The Illusion of Freedom of Contract and the Failure to Unearth Material Truths

The protection of property rights is not just an ordinary civil discourse, but a constitutional mandate that has the highest position as guaranteed in Article 28H paragraph (4) of the 1945 Constitution of the Republic of Indonesia. This basic norm expressly prohibits the arbitrary acquisition of property rights by anyone, including through state auction instruments. However, this constitutional mandate often runs aground on the judicial table due to the grip of legal positivism that is too rigid. This is clearly reflected in the legal considerations (ratio

decidendi) of the South Jakarta District Court Decision Number 1059/Pdt.G/2022/PN JKT. SALT.

In the decision, the Panel of Judges reduced the essence of property rights protection to the fulfillment of administrative formalities, namely the absence of physical coercion (dwang) or error (*dwaling*) during the signing of the Deed of Grant of Dependent Rights (APHT). The judge failed to dismantle the sociological reality and structural inequality that occurred in the pre-contractual phase. Referring to Mariam Darus Badrulzaman's thoughts in Teguh Samudera regarding the standard contract, the approval given by the Third-Party Guarantor (Mrs. Julia Subintoro) is actually a manifestation of the "Illusion of Freedom of Contract". The legal condition of the "agreement" is formally met, but it is materially flawed because the Bank has a Dominant Position to impose an exoneration clause in the form of "Absolute Power". The Panel of Judges failed to detect that this condition was a form of Abuse of Circumstances (*Misbruik van Omstandigheden*), in which the Bank took advantage of the Guarantor's clamped condition to legitimize the unilateral deprivation of rights in the future.

This blindness to the truth of the material continues in the neglect of the Principles of Good Faith (*te goeder trouw*) and Propriety (*redelijkheid en billijkheid*) as mandated by Article 1338 paragraph (3) and Article 1339 of the Civil Code. At the trial, striking facts (*notoir feiten*) were presented regarding the alleged malpractice of appraisal or Appraisal Engineering. Based on the Cost Approach, renovation of the additional area and floor of the building absolutely increases the Replacement Cost New component which leads to an increase in property value. However, the assets, which in 2019 were valued at IDR 43.9 billion, were illogically lowered to IDR 23.9 billion in 2020 post-renovation, and finally allowed to be executed at a price of IDR 21.4 billion.

When the Panel of Judges determined that the auction was valid without elaborating the logical causality why the sale below the liquidation value (even with a difference of Rp23.6 billion from the fair value of the independent KJPP version of the comparator) was considered appropriate, then the decision was classified as insufficient consideration (*onsufficiently gemotiveerd*) and became a juridical defect.

2. Distortion of Banking Functions and the Death of Judicial Empathy (Pancasila Perspective)

The quality of justice of a verdict in Indonesia cannot be separated from the moral test using the *Staatsfundamentalnorm*, namely Pancasila. In the lens of the Theory of Dignity Justice initiated by Teguh Prasetyo, the law was created to humanize human beings (*nguwongke uwong*), not reduce human beings as a substitute for the efficiency of the banking economic machine.

Based on the Second Precept (Fair and Civilized Humanity), a quo verdict reflects the loss of judicial empathy. The judge ignored the fact that Defendant III is a state-owned bank that regulative carries out the mandate of public functions as an Agent of Development. The Bank's action of forcing an auction at a predatory price (far below the liquidation value) shows a massive distortion of function, where the Bank transforms into a "Profit Hunter". Judges who legitimize this practice philosophically have dehumanized, viewing the Third Party as merely a material object (body) that can be squeezed out of equity, without considering the aspect of justice of the sense (soul).

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This injustice is even more real if dissected using the Fifth Precept (Social Justice for All Indonesian People) and a legal sociology approach. Donald Black in his theory The Behavior of Law postulates that the law tends to be biased towards the social status of the parties, sharp downwards and blunt upwards. The judge's decision to legitimize the auction price is unreasonable by taking refuge in the postulate of "complete formal requirements" is a manifestation of disproportionate preference (undue preference) towards giant corporate actors (banks).

Furthermore, Abdul Manan's Economic Analysis of Law revealed that the PMK Auction regulation that was glorified by the judge is actually only a pragmatic instrument to protect fiscal policy efficiency (auction duty revenue) and banking liquidity stability (decrease in NPLs). The judge failed to act as an equalizer, and instead became a stamp of legitimacy for the operation of the capital machine that preyed on the assets of citizens.

3. The Shackles of Positivism, Contra Legem, and the Urgency of Judicial Activism

The failure to realize this substantive justice leads to the misalignment of the court's thinking paradigm which is still held hostage by Legal Positivism in the style of Hans Kelsen (The Pure Theory of Law). The panel of judges treated the PMK Auction (Article 44 of PMK No. 213/2020) which gives the discretion to determine the Limit Value to the Bank as an absolute and undeniable truth. For judges with a legal mentality, justice is considered complete when the administrative procedure (procedural justice) has been fulfilled, even if the end result hurts common sense and erodes substantive justice.

In a situation of justice emergency where positive law becomes an instrument of oppression, the doctrine of Progressive Law from Satjipto Rahardjo requires judges to carry out "liberation" from the rigid text of the rule through legal discovery (*rechtsvinding*). Judges cannot simply be numb "mouthpieces of the law" (*la bouche de la loi*). Referring to the view of M. Yahya Harahap, judges have the autonomous authority to win justice (equity must prevail) through *Contra Legem* action (setting aside the law) when a rule is contrary to the propriety and civilization of humanity.

In the context of a quo ruling, the absence of judicial activism to declare that the auction price is null and void because it violates propriety is a bad precedent. In fact, the modern financial law paradigm has moved towards proactive and responsive consumer protection, as mandated in the reform of the national financial system. This disregard for the zeitgeist, which was later proven by the Rp45.1 billion fair valuation novum from KJPP Susanto Salman, confirms the conclusion that our judicial system still fails to be present as a pressure valve against banking exploitation, as well as urging the need for a radical reconstruction of the regulation of collateral auctions in the future.

The failure of the judiciary in responding to structural inequality and valuation crimes ultimately proves the death of the spirit of the Theory of Dignity Justice in the South Jakarta District Court Decision Number 1059/Pdt.G/2022/PN JKT. SALT. All the knives of analysis, from the sociology of law, to economic analysis, to the disregard of the novum of fair prices, converge on a single fact that the Panel of Judges has been trapped in rigid positivism that betrays the ultimate goal of the law: to humanize human beings (*nguwongke uwong*). When the judge decides the case only armed with the suitability of formal procedures (PMK Auction) without daring to do *rechtsvinding* or *contra legem* to correct the exploitative auction price, then the judge has reduced the human seeker to justice merely as an object of repayment of

capital debts. Dignity Justice demands that the verdict is not only legally valid, but must also radiate the human values of Pancasila that protect the weak from the systemic oppression of banking corporations

CONCLUSION

The conclusion of this study is that the regulation on the execution of Dependent Rights (UUHT and PMK No. 213/PMK.06/2020) has proven to be lacking in norms because it does not accommodate the Preventive Legal Protection instrument. The absence of a "right to refute" for the determination of the Limit Value in the pre-auction phase deprives the Third Party of the Guarantor's administrative access to prevent material losses. This gives birth to legal asymmetry that legitimizes the practice of predatory pricing by unilateral executory rights holders. South Jakarta District Court Decision Number 1059/Pdt.G/2022/PN JKT. SEL has proven to fail to realize Dignified Justice. The judicial institution is trapped in rigid positivism that positions judges merely as "*mouthpieces of the law*" (*la bouche de la loi*). The lack of courage to make legal discoveries (*rechtsvinding*) and judicial activism in responding to the anomaly of the auction value, makes the court fail to humanize human beings (*nguwongke uwong*) and instead turns into a stamp of legitimacy for the seizure of assets under the guise of a constitutional auction. The suggestion for this study is the reconstruction of the Auction Regulation (Legislative and Executive Aspects): It is necessary to amend the Law and revise the PMK Auction Implementation Guidelines to institute the "Rebuttal Period" in the pre-auction phase. Third parties must be given the constitutional right to submit a second opinion. If an extreme price disparity is found, the Auction Officer is obliged to postpone execution (stay of execution) to provide space for the Center for Financial Professional Development (PPPK) to conduct a "Picking Test" audit on the feasibility of the appraisal report methodology. Judicial Paradigm Shift (Judicial Aspect): The Supreme Court of the Republic of Indonesia urges to respond to this structural inequality by issuing the Supreme Court Circular Letter (SEMA). This internal regulation is crucial as a guideline that encourages judges to abandon the paradigm of legalism and prioritize Judicial Activism. Judges are instructed to dare to conduct a material test of the fairness of price and suspend or cancel auctions whose limit value is set in a manipulative manner, in order to save substantive justice that upholds citizens.

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