

Auction for NPL Asset Recovery: Indonesia and Kazakhstan from Human Rights and Substantive Justice Perspectives

Soegianto¹, Zaenal Arifin² , Dametken Medikhanovna Turekulova³

¹Universitas Islam Sultan Agung, Semarang, Central Java, Indonesia

²Universitas Semarang, Central Java, Indonesia

³Esil University, Astana, Kazakhstan



Corresponding Author: notarissoegianto@gmail.com

Abstract

This study examines the comparative legal framework of auctions for Non-Performing Loan (NPL) asset recovery in Indonesia and Kazakhstan through human rights and substantive justice. This study examines the comparative legal framework of auctions for Non-Performing Loan (NPL) asset recovery in Indonesia and Kazakhstan through human rights and substantive justice perspectives. The main issue is how each country balances banking stability with debtor protection, particularly regarding fair asset valuation, procedural transparency, and the prohibition of arbitrary deprivation of property. Employing a normative legal method with statutory and conceptual approaches, this study analyzes national legislations alongside international human rights standards. The findings reveal that Indonesia emphasizes legal certainty and debtor protection under the Mortgage Law (Law No. 4/1996) and Fiduciary Law (Law No. 42/1999). However, its banking recovery efficiency is constrained by procedural rigidity and extensive litigation. Conversely, Kazakhstan demonstrates higher economic efficiency by engaging Private Bailiffs to accelerate asset liquidation, yet this creates severe human rights risks, including undervaluation, inadequate notice, and limited judicial remedies for debtors. The study concludes that Indonesia must enhance procedural efficiency without compromising constitutional rights, while Kazakhstan needs to strengthen public oversight over private actors to fulfill international human rights obligations. Ultimately, both systems must integrate market functionality with human rights principles to build a balanced, fair, and non-discriminatory asset recovery model within the banking sector.

Keywords: Auction; Non-Performing Loan (NPL); Human Rights; Substantive Justice Rights

A. INTRODUCTION

The role of banks and financial institutions in the economic system cannot be separated from the dynamics of a country's economic growth.(Purewal & Haini, 2022) Through its intermediary function, the bank collects funds from the public in the form of deposits and channels them back in the form of credit to productive sectors (Gumilar et al., 2024). This activity creates capital flows that support investment, expand employment opportunities, and increase national production capacity. Consequently, the health of the banking sector serves as a vital indicator for macroeconomic stability, as any disruption to a bank's capacity to channel credit will directly impact the wheels of the economy (Stewart & Chowdhury, 2021). Every country strives to maintain the integrity of its financial system through strict banking regulations, both in terms of credit prudence and the resolution mechanisms when risks arise (Oino, 2021).

One of the risks in the banking world is the occurrence of bad loans or Non-Performing Loans (NPL). Non-performing loans reflect the inability of debtors to meet their principal and interest payment obligations within the predetermined period (Putri & Widyari, 2024). When the NPL ratio rises above acceptable thresholds, banks face liquidity pressures and a decline in asset quality that can impair their ability to channel new credit (Alaoui Mdaghri, 2022). On a macro level, the accumulation of NPLs can hinder national economic growth, as funds that should be circulating in the real sector become tied up in non-productive assets (Ahmed et al., 2021). The global financial crisis of the late 1990s demonstrated that a surge in NPLs is not merely an internal issue for financial institutions, but can escalate into a systemic threat to national economic stability (Aledeimat & Bein, 2025).

The management and recovery of non-performing loans have become a strategic agenda for every nation. Asset recovery constitutes a crucial step in restoring the economic value of these soured loans (Jaiwani et al., 2025). Through asset recovery, funds tied up due to NPLs can be restored to the banking system and reused to finance productive sectors (Jaiwani & Gopalkrishnan, 2024). This process encompasses various mechanisms, ranging from renegotiations between creditors and debtors, loan restructuring, and court litigation, to the execution of the collateral provided (Al- Mamun, 2025). In practice, the execution of collateral often serves as a last resort when various rescue efforts fail to yield results (Jeremia et al., 2025). At this stage, the role of auctions becomes highly critical as both a legal and economic instrument in the resolution of non-performing loans.

Auctions function as a structured and legal liquidation mechanism to sell collateral assets openly to the public (Ricki Rahmad Aulia Nasution et al., 2025). The objective of an auction is to obtain the best and fairest price in an efficient timeframe, so that the proceeds can be utilized to settle the debtor's obligations to the creditor (Wiguna et al., 2025). Auctions are conducted to facilitate meetings between sellers and buyers in a competitive market, ensuring that the optimal value of the assets is reflected (Qin et al., 2025). From a legal perspective, auctions provide procedural certainty and legitimacy to the execution process (Dewi & Kurniawan, 2025). Auctions stand at the crossroads of law and economics; on one hand, they must guarantee compliance with applicable legal procedures, while on the other, they must ensure that the economic value of the asset is not distorted by unfair or bureaucratic processes. This dual positioning of auctions gives rise to an urgent need to examine auction mechanisms not only through the concept of

substantive justice, but also through the lens of human rights protection instruments, given that auction execution directly intersects with the debtor's right to property.

Substantive justice demands that the outcome of a legal process be not only formally valid, but also materially fair to the parties involved (Wahdaniya et al., 2025). Substantive justice in the execution of collateral asset auctions demands a balance between the creditor's right to recover the loaned funds and the debtor's right to receive fair treatment regarding their property (Kurniawati & Saleh, 2023). This perspective of substantive justice is closely intertwined with human rights principles, which emphasize that asset recovery measures must not disregard the debtor's right to due process of law, as well as the right to adequate housing if the auctioned asset constitutes their sole primary residence (Domurath & Comparato, 2025). The success of NPL recovery through auctions is measured not solely by the speed of liquidation or the amount of funds successfully recovered, but also by the extent to which the process guarantees justice and transparency (Dimri, 2025). Justice that stops merely at the procedural level—only fulfilling legal formalities without considering the economic impact and the protection of basic human rights—has the potential to create a new form of injustice, particularly for debtors whose assets are sold below market value (Hamdan et al., 2025).

As a country with a civil law system, Indonesia possesses a relatively formalistic legal structure in regulating the execution of collateral (Lely Sulthoniah et al., 2025). The authority for asset recovery through auctions is held by the Kantor Pelayanan Kekayaan Negara dan Lelang (KPKNL) under the Ministry of Finance (Mariah Afra Amira et al., 2025). The execution procedure for mortgages (*hak tanggungan*) or fiduciary guarantees (*fidusia*) in Indonesia heavily relies on the strength of the executory title (*titel eksekutorial*) attached to the guarantee certificates or court decisions (Anas et al., 2025).

Although this system provides legal certainty for creditors, in practice, obstacles frequently arise, such as lengthy bureaucracy, objections from debtors, and value disparities between the auction price and the market price (Ricki Rahmad Aulia Nasution et al., 2025). The challenge also lies in the application of substantive justice regarding how to ensure that the execution of the auction not only complies with legal regulations, but also reflects a fair economic value, does not disproportionately disadvantage either party, and does not violate the debtor's constitutional right to the protection of private property.

Unlike Indonesia, Kazakhstan also adheres to a civil law system, but with characteristics influenced by its Soviet legal legacy and the transition process toward a market economy (Knox & Orazgaliyev, 2025). One of the defining characteristics of asset recovery in Kazakhstan is the presence of Private Bailiffs (private enforcement officers), who play an active role in the execution of asset recovery alongside state institutions (Seitenov et al., 2024). This system is intended to improve efficiency and accelerate the asset recovery process, particularly in an emerging market (Tajti (Thaythy), 2024). However, practice on the ground shows that challenges remain regarding transparency, legal certainty, and the protection of debtors' rights (Nazarkulova et al., 2025b). Kazakhstan faces a dilemma between accelerating asset recovery to maintain banking stability and ensuring that every enforcement action remains proportionate and compliant with the principles of economic justice, as well as international human rights standards that guarantee protection against arbitrary confiscation.

Indonesia and Kazakhstan face similar challenges in managing non-performing loans (NPLs), despite differences in their social, institutional, and market contexts. Indonesia deals with a more bureaucratic and formalistic legal system, whereas

Kazakhstan seeks to drive efficiency through the liberalization of enforcement agencies. Both nations are confronted with the question of the extent to which their respective auction mechanisms can successfully balance legal certainty, economic efficiency, and substantive justice. This condition demonstrates that the issue of NPL recovery cannot be resolved through a purely law-and-economics approach alone; rather, it requires the integration of a human rights perspective to evaluate the extent to which forced auction instruments continue to respect the dignity and human rights of the affected parties.

The comparison between Indonesia and Kazakhstan becomes crucial for identifying the best practices and weaknesses of different legal systems. Through this approach, one can understand how differences in historical, regulatory, and institutional contexts influence the effectiveness of banking asset recovery through auctions. Indonesia, as the largest economy in Southeast Asia with an established yet bureaucratic legal system, highlights the importance of legal certainty in guaranteeing market credibility. Meanwhile, Kazakhstan, as a transitional country in Central Asia with a post-Soviet legal system, demonstrates how efficiency and market adaptation can accelerate economic recovery, despite facing risks of uneven substantive justice. Therefore, a comparison between these two nations is not only relevant for understanding the legal and economic dimensions of auctions, but also for assessing the extent to which legal systems in developing and transitional countries can achieve a balance between economic efficiency, banking stability, the fulfillment of social justice, and the protection of human rights.

The urgency of this research lies in the need to re-examine the role of auctions as a fair and effective instrument for banking asset recovery. Every nation is demanded to possess not only efficient regulations, but also a legal system that ensures substantive

justice for all parties. An auction is not merely an administrative procedure for asset recovery; rather, it reflects how the law can function as a means of distributing economic value fairly. This research is imperative given the reality that forced execution processes through auctions frequently trigger a clash between the interests of banking financial stability and the fulfillment of debtors' human rights to property protection and a decent standard of living. By understanding the dynamics between Indonesia and Kazakhstan, this research is expected to identify an ideal equilibrium among legal certainty, market efficiency, substantive justice, and human rights protection in sustainable NPL resolution.

Several previous studies have examined the legal and economic aspects of resolving Non-Performing Loans (NPLs) through auction mechanisms. A study by Erwin Putra Pratama et al. in the *Unram Law Review* highlights the implementation of auctions as a means to resolve non-performing loans in Islamic banks, focusing on compliance with legal procedures and Sharia principles. While this study provides an important contribution to understanding Indonesia's positive law dimension, it has not yet explored the aspects of economic efficiency and substantive justice from the perspective of comparative economic law (Erwin Putra Pratama et al., 2024). Tifani Rini et al. in *Al-Ahkam* emphasize the importance of legal certainty for auction buyers in Indonesia, particularly within the context of post-execution legal protection. Although that study strengthens the normative dimension and legal certainty, its scope remains limited to the buyer's perspective and has not yet linked the principle of substantive justice for creditors and debtors as the primary parties in NPL disputes (Rini et al., 2024). Meanwhile, Beibei Zhang and Wei Shen in the *Journal of World Trade* offer a global perspective on NPL management in China, highlighting the weaknesses of international legal structures in supporting NPL market efficiency. Although that study provides a cross-border

comparative framework, it does not address the dimension of substantive justice and its intersection with civil law systems like those in Indonesia and Kazakhstan (Zhang & Shen, 2024). In addition to limitations in the comparative aspect, the majority of the aforementioned literature also overlooks the human rights dimension in the execution of collateral, where the debtor is positioned purely as a defaulting economic entity without examining the protection of their fundamental rights when the liquidation process takes place.

The novelty of this research lies in its comparative analysis of Indonesia and Kazakhstan, two jurisdictions belonging to the civil law tradition but differing significantly in their economic conditions and historical development, in order to assess the extent to which auction mechanisms function as balanced instruments for the recovery of non-performing loans (NPLs) by reconciling economic efficiency, substantive justice, and the protection of human rights. This study addresses a gap in the existing literature, which has generally been either normative in nature or confined to a single jurisdiction, by offering a rights-based comparative law approach that integrates legal analysis with economic considerations, substantive justice, and international human rights standards. Accordingly, the principal scholarly contribution of this research lies in the development of a conceptual model for the implementation of auctions that not only promotes legal certainty and market efficiency but also embodies the principles of substantive justice and compliance with international human rights instruments safeguarding the fundamental rights of all parties involved in the resolution of non-performing loans across different legal systems.

This study aims to compare the legal frameworks and enforcement practices of auctions as an asset recovery instrument for NPLs in Indonesia and Kazakhstan through

the lens of economic law and human rights. The focus of this research is to analyze the differences and similarities between the legal systems of both countries in regulating the auction process, while reviewing aspects of economic efficiency, legal certainty, and the protection of the rights of the involved parties. Furthermore, this study examines the extent to which auction implementation in both countries reflects the principle of Substantive Justice for both creditors and debtors, particularly regarding the determination of the fair value of assets, transparency in the collateral execution process, and the prevention of the arbitrary deprivation of property prohibited under international human rights law. Through a comparative approach combining economic law and human rights constitutionalism, this research is expected to provide a deeper understanding of the balance among legal certainty, market efficiency, substantive justice, and fundamental human rights in NPL resolution. This study offers a conceptual contribution to the development of economic law policies in Indonesia and Kazakhstan, ensuring that auction mechanisms serve not only as efficient means for asset liquidation but also as legal instruments that guarantee genuine justice and respect the human dignity of all parties within the financial system

This study employs normative legal research, focusing on the analysis of positive legal norms, legal principles, and doctrines regulating the implementation of auctions as an asset recovery instrument for Non-Performing Loans (NPLs) within the legal systems of Indonesia and Kazakhstan. The approaches utilized include the statute approach and the conceptual approach. Concurrently, the conceptual approach is utilized to comprehend the principles of economic law and substantive justice, such as legal efficiency, fair valuation, and auction transparency. These principles are synergetically integrated with the core human rights concepts of the right to property and the right to

due process of law, serving as the cornerstone for the comparative analysis between the two legal systems. Primary legal materials comprise statutory legislation, jurisprudence, and official legal instruments relating to auction mechanisms and asset recovery. Secondary legal materials encompass scholarly literature, academic journals, and previous research findings concerning NPLs, auction law, human rights law, and the theory of substantive justice within economic law. Tertiary legal materials consist of legal dictionaries, legal encyclopedias, and other supporting reference sources that clarify the concepts of economic law, human rights, and substantive justice

B. RESULT AND DISCUSSION

1. Legal Framework and Enforcement Practices of Auctions as an Asset Recovery Instrument for NPLs in Indonesia and Kazakhstan

Studies Auctions play a fundamental role as an asset recovery instrument for Non-Performing Loans (NPLs). This process serves as a mechanism for liquidating defaulted collateral assets, thereby enabling the proceeds of the sale to re-enter and circulate within the economic system (Kappes, 2025). Auctions hold not only economic value but also a profound legal dimension, as they stand at the intersection of legal certainty, the protection of human rights, and market efficiency. The effectiveness of an auction system depends heavily on the normative framework, institutional governance, and the balance of protection between debtors and creditors. A comparison between Indonesia and Kazakhstan is crucial to assessing the extent to which each legal system can optimize the function of auctions as a fair, efficient, and human-rights-oriented asset recovery instrument.

The legal framework for auctions in Indonesia within the context of NPL recovery is regulated under Law Number 4 of 1996 concerning Mortgage Rights (Undang-Undang Hak Tanggungan / UUHT). Article 6 of the UUHT grants the first-rank Mortgage holder the right to sell the collateral object through a public auction in the event that the debtor breaches the contract (commits a default) (Safriani et al., 2025). This provision is recognized as the legal basis for parate execution (*parate executie*), which refers to the creditor's right to enforce execution directly without requiring a prior court judgment or decree (Kusuma Dewi et al., 2025). This norm reflects the spirit of efficiency and the protection of the creditor's interests. In practice, however, the enforcement of parate execution frequently encounters obstacles in the form of opposition lawsuits (*verzet*) filed by the debtor. This indicates a gap between legal norms and the effectiveness of their field implementation.

Article 15 Paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees stipulates that a Fiduciary Guarantee certificate possesses executory power equivalent to a final and binding court judgment (*res judicata*). (Sanusi et al., 2025) This legal framework empowers the creditor to directly execute a public auction of the collateral object upon the debtor's default. This provision strengthens the creditor's legal standing in expediting asset recovery. In practice, however, this mechanism is frequently delayed by the filing of opposition lawsuits, which automatically suspend the auction process. This situation diminishes legal effectiveness and weakens the economic position of banking institutions.

The technical enforcement of auctions in Indonesia is regulated by Minister of Finance Regulation (Peraturan Menteri Keuangan / PMK) Number 27/PMK.06/2016 concerning the Guidelines for the Implementation of Auctions. Articles 42 through 48

of PMK Number 27/PMK.06/2016 govern price limits (reserve prices) and auction enforcement procedures. The authority to organize auctions rests with the State Property and Auction Services Office (Kantor Pelayanan Kekayaan Negara dan Lelang / KPKNL) under the Ministry of Finance of the Republic of Indonesia. The institutional structure of KPKNL reflects the dominant role of the state in the execution of collateral auctions. While the state's presence through KPKNL provides administrative certainty and robust legal legitimacy, this system also engenders bureaucratization that potentially compromises time and economic efficiency. This bureaucratization is evident in the auction application process submitted to KPKNL, which requires stringent documentary completeness and multi-layered verification in accordance with government bureaucratic procedures (Febrianto & Ayunda, 2019). This frequently results in protracted delays, thereby postponing the commencement of the auction. Furthermore, despite the authentic and binding nature of the Auction Minutes (Risalah Lelang), the auction process conducted by KPKNL remains susceptible to civil lawsuits (*verzet*) initiated by the debtor in court (Putra & Kunarti, 2022). In the event that such a lawsuit is sustained, the official execution process carried out by the state through KPKNL will grind to a halt, directly diminishing time efficiency and inflicting economic losses upon the creditor. Consequently, the primary objective of the auction as a mechanism for the expedited recovery of NPL assets has not been fully realized (Kurniawan et al., 2025b).

Article 8 of Law Number 10 of 1998 concerning Banking mandates that banks must apply the prudential principle in the distribution and management of credit (Wulandari et al., 2024). This principle implicitly drives banks to pursue the recovery of non-performing assets, including through public auctions. However, the prudential principle becomes ineffective if the legal system fails to support the acceleration of the

execution process. Protracted legal disputes combined with a lack of administrative acceleration mechanisms cause banks to face severe difficulties in lowering their NPL ratios.(Jeremia et al., 2025) Consequently, the effectiveness of asset recovery in Indonesia still encounters significant structural and juridical obstacles.

The Indonesian legal system tends to prioritize formal legal certainty and procedural protection for the debtor. Debtors are granted the right to lodge objections against the execution of the auction, including against the determination of the reserve price (harga limit) if it is deemed not to reflect the fair market value of the asset (Muslim et al., 2024). This provision reflects the principle of substantive justice; however, in practice, it can prolong the asset recovery process and diminish economic efficiency. A balance between procedural justice and economic effectiveness has not been fully achieved. Indonesian law still prioritizes procedural validity over substantial efficiency (Wibowo et al., 2026).

The practice of executing auctions in Indonesia frequently triggers serious clashes between the economic rights of the creditor and the constitutional rights of the debtor guaranteed under Article 28H Paragraph (4) of the 1945 Constitution regarding the protection of private property rights (Muh. Ali Masnun, Dicky Eko Prasetyo, Mohd Badrol Awang, 2024). The manifestation of human rights violations in auction practices often surfaces in the form of forced evictions (eksekusi pengosongan) from residential properties that serve as the sole collateral and livelihood for the debtor and their family (Darmayasa et al., 2026) When execution is carried out repressively without regard for the right to adequate housing and the right to feel secure, (Nasha Ratmaya et al., 2025). The state, through its law enforcement apparatus, is deemed to have failed in fulfilling its duty to respect the debtor's human dignity. Furthermore, the phenomenon of auctions

conducted at a reserve price significantly below the market value (under-value) reflects a disregard for the debtor's right to fair treatment and protection against the arbitrary deprivation of property (Pratama et al., 2024) as mandated by the Universal Declaration of Human Rights (UDHR).

The effectiveness of auction execution in Indonesia tends to be low due to a high propensity for litigation. Debtors frequently employ the right to sue as a tactical instrument to stall the enforcement of execution, a practice legally characterized as vexatious litigation (Tseng, 2025). This results in asset depreciation due to the prolonged liquidation period and leads to increased legal costs for the bank as the creditor. On the other hand, the limited capacity of KPKNL to handle a large volume of auctions further extends the resolution duration. This condition reflects that the Indonesian legal system still faces a significant gap between legal formalism and economic functionality.

The legal system of Kazakhstan demonstrates a more pragmatic orientation toward economic efficiency and the effectiveness of asset recovery. This is evident in Article 321 of the Civil Code of the Republic of Kazakhstan, which grants creditors the right to obtain satisfaction from the proceeds of the sale of the collateral assets ahead of other creditors (Mutubayeva & Ilyassova, 2024). This provision reinforces the priority of the creditor's rights and establishes a robust legal basis for the execution of the auction. Kazakhstan emphasizes the speed of execution as an instrument to maintain the stability of the financial system and stimulate banking liquidity. This approach demonstrates a more dynamic economic orientation compared to the Indonesian legal system.

The efficiency of auction execution in Kazakhstan is further strengthened by the Civil Procedure Code of the Republic of Kazakhstan, which regulates the mechanisms

for the seizure, execution, and sale of collateral assets.(Mukaldyeva et al., 2021) The execution process is carried out by Private Bailiffs, who derive their authority from court decisions or notarial deeds. This system allows for flexibility and accelerates the execution of auctions, as private bailiffs have a direct economic incentive tied to the success of the enforcement. Consequently, the institutional framework of Kazakhstan is more adaptive to market demands and time constraints in the recovery of NPL assets. This model demonstrates an effective combination of legal functions and economic principles.

Meanwhile, the human rights situation in the practice of NPL recovery in Kazakhstan is marked by the commercialization of law enforcement functions due to the dominant role of Private Bailiffs. In pursuit of economic incentives and market efficiency, this private bailiff system frequently conducts aggressive asset seizures and auction executions that violate the debtor's right to due process of law (Д. М. Каиров, 2022). This situation is further exacerbated by the lack of public transparency and weak state oversight over these Private Bailiffs (Khamzina et al., 2025), thereby frequently resulting in the sale of assets below fair market value without providing proper notice to the debtor (Nazarkulova et al., 2025a). These arbitrary actions directly infringe upon the right to the protection of property guaranteed under Article 1 of Protocol 1 to the European Convention on Human Rights (ECHR), as well as the International Covenant on Civil and Political Rights (ICCPR) ratified by Kazakhstan, while simultaneously demonstrating that the pursuit of post-Soviet banking efficiency in Kazakhstan is highly vulnerable to sacrificing human legal dignity for the sake of capital liquidity (Akimov, 2015).

The authority, accountability, and operational mechanisms of Private Bailiffs are governed by the Law on Enforcement Proceedings and the Status of Bailiffs (Sergiienko et al., 2022). This regulation establishes a balance between private flexibility and public control through state oversight. In addition to accelerating the asset liquidation process, this mechanism also enhances the asset recovery rate for financial institutions. However, risks remain regarding transparency and potential conflicts of interest if oversight over these private bailiffs is not effectively implemented. From a human rights perspective, weak state control over the privatization of law enforcement risks engendering impunity for acts of physical coercion that violate the debtor's right to security of person during asset seizures (Teeple, 2024). Therefore, the Kazakhstani system must continually strengthen its control mechanisms to ensure that the principle of substantive justice remains upheld.

The auction mechanism in Kazakhstan is executed in a decentralized manner by private bailiffs operating under the administrative oversight of the state (Lehmann & Morishita, 2025). This system accelerates the resolution timeframe and reduces the bureaucratic burden, particularly in the execution of high-risk assets. Despite its efficiency, the system has the potential to raise substantive justice issues if asset valuation is not conducted transparently or if the debtor lacks adequate access to the sale process. This restriction on access to information inherently undermines the principle of equality before the law adopted from international civil covenants (Baroi & Zafarullah, 2024). The high economic efficiency in Kazakhstan still needs to be balanced with legal mechanisms that guarantee accountability and protection for the weaker party. This remains a primary challenge in maintaining the equilibrium between the rule of law and market efficiency.

The Kazakhstani system provides high clarity by establishing bases for execution derived from court decisions or notarial deeds possessing final and binding legal force (*inkracht van gewijsde*). Once these documents are issued, private bailiffs can directly execute seizures and auctions without undergoing additional bureaucratic processes. This provides certainty of time and outcome for creditors, in contrast to Indonesia, which remains reliant on the administrative validation of the KPKNL (State Auction and Asset Management Service). Despite sharing similarities within the Civil Law tradition, the Kazakhstani system stands out significantly in terms of economic effectiveness and rationality. However, the ease of execution based on these non-judicial notarial deeds raises concerns regarding the loss of opportunity for debtors to defend their property rights through proper legal recourse before their property is auctioned. Legal certainty in this context is not merely normative, but also highly technical.

Indonesia excels in the aspect of legal protection for debtors and the enforcement of the principle of substantive justice through procedural means, whereas Kazakhstan stands out in terms of economic efficiency and the effectiveness of asset recovery. This divergence in orientation reflects a classic dilemma between procedural legal certainty and substantive economic effectiveness. Indonesia emphasizes the due process of law to prevent the abuse of power, which aligns with the state's obligation to protect its citizens from property rights violations, whilst Kazakhstan emphasizes economic outcomes as the measure of a legal system's success. Ultimately, Indonesia and Kazakhstan reflect differing legal policy priorities tailored to their respective national social, political, and economic characteristics.

Indonesia could adopt Kazakhstan's auction mechanism in terms of strengthening *parate executie* (immediate execution) and accelerating auction procedures. A revision

of the civil procedure law is required, particularly regarding the limitation of opposition lawsuits (*verzet*), so that they do not automatically stay the auction process unless there are indications of procedural violations or suspected gross human rights violations, such as the potential loss of the debtor's right to adequate housing or primary residence without proper relocation. This reform could be implemented through Supreme Court regulations or limited amendments to the implementing regulations. Consequently, a more proportional balance between the protection of debtors' rights and legal certainty for creditors can be achieved. This approach has the potential to enhance the efficiency of the national banking system without sacrificing the principle of substantive justice.

Indonesia could consider a decentralized model in auction execution by accommodating private auction institutions under the oversight of the KPKNL (State Auction and Asset Management Service). This mechanism, similar to the one implemented in Kazakhstan, could accelerate the liquidation of small and medium-sized NPL assets while simultaneously increasing market participation. The implementation of an e-auction system equipped with more independent and real-time asset valuations could reinforce the principles of transparency and substantive justice. A combined reform of legal procedures and economic efficiency will steer the Indonesian auction system toward an ideal equilibrium between legal certainty, substantive justice, economic effectiveness, and respect for the human rights dignity of economic actors. Ultimately, the modernization of auction law must be oriented toward justice that is not merely formal, but also functional in supporting national financial stability.

2. The Implementation of Substantive Justice and Human Rights Protection in the NPL Auction Mechanism in Indonesia and Kazakhstan

The principle of substantive justice emphasizes that justice is not sufficiently achieved through mere formal compliance with procedures, but must ensure a fair and proportional outcome for all parties involved (Nurlaily et al., 2025). Substantive justice serves as a corrective mechanism against legal formalism, which inherently possesses the potential to disregard the moral and economic dimensions of a legal action (Narwadi et al., 2025). Substantive justice is inextricably intertwined with the principle of human rights protection. John Locke's concept of human rights asserts the existence of natural rights inherent in human beings from birth, including the right to property, which cannot be arbitrarily deprived by any authority (Gong & Zhong, 2025). The theory of "rights as trumps" advanced by Ronald Dworkin underscores that fundamental individual rights must take precedence and cannot be sacrificed merely for the pursuit of economic utility or market efficiency (Martins, 2026).

Substantive justice and human rights protection within the asset auction process resulting from Non-Performing Loans (NPLs) are measured by the extent to which the mechanism guarantees a fair value for the debtor and economic protection for the creditor. Consequently, fair asset valuation and transparency in auction execution serve as primary indicators of substantive justice, as well as benchmarks for state compliance with the fundamental rights of debtors within the practice of economic law. Achieving an equilibrium among substantive justice, human rights protection, and economic efficiency poses a challenge for countries with civil law systems, such as Indonesia and Kazakhstan.

Substantive justice and a rights-based approach to NPL asset recovery function to balance the positions between the weaker party (the debtor) and the party possessing economic power (the creditor). Under Jack Donnelly's theory of the universal relativity

of human rights, although economic law instruments are subject to national market dynamics, the standards for protecting the fundamental rights of vulnerable individuals remain universal and must be fulfilled by the state. Debtors must be guaranteed protection against excessive losses resulting from asset undervaluation, while creditors are entitled to obtain optimal recovery on their receivables. Substantive justice and human rights instruments thus play a dual role in preventing structural injustice and ensuring the effectiveness of the financial system (Masnun, Muh Ali, Prasetyo, Dicky Eko, Konara, 2026). This principle demands that the auction process be not only legally valid, but also economically fair, ethical, and respectful of human dignity (Muh. Ali Masnun, 2026).

In Indonesia, the principle of substantive justice within the context of auctions is implemented through fair value. This mechanism is rooted in the Regulation of the Minister of Finance (PMK) No. 27/PMK.06/2016 on Auction Implementing Guidelines, which mandates the determination of a Reserve Price (Nilai Limit) based on the valuation results provided by an Appraiser. Pursuant to Article 1 Number 28 of PMK No. 27/PMK.06/2016 on Auction Implementing Guidelines, the Reserve Price is the minimum price of the property to be auctioned and is established by the seller. (Maskanah et al., 2025) Article 44 paragraph (1) of PMK No. 27/PMK.06/2016 on Auction Implementing Guidelines states that the seller determines the reserve price based on an appraisal conducted by an appraiser or an assessment by an assessor. Normatively, this mechanism guarantees objectivity and transparency because public appraisers are bound by a professional code of ethics. Indonesia has met the prerequisites of substantive justice regarding the aspect of determining fair value, as enshrined in Article 28G Paragraph (1) and Article 28H Paragraph (4) of the

Constitution, which grant guarantees of protection for private property rights as well as the right to social security and just treatment. At the international level, this rule aligns with Article 17 of the Universal Declaration of Human Rights (UDHR), which prohibits the arbitrary deprivation of property.

Substantive justice and the guarantee of procedural rights in Indonesian auction practices still face structural problems. Valuation results provided by appraisers frequently become the object of disputes through opposition lawsuits (*verzet*) filed by debtors who argue that the reserve price does not accurately represent the real market value of the assets (Faizal et al., 2025). Such lawsuits cause delays in the auction process and reduce the efficiency of asset recovery for creditors. This phenomenon demonstrates a gap between formal justice, the enforcement of material human rights, and substantive justice. The Indonesian legal system tends to place greater emphasis on compliance with procedures rather than ensuring a materially fair outcome for both parties. Consequently, the essence of the due process of law principle mandated by Article 14 of the International Covenant on Civil and Political Rights (ICCPR)—as ratified by Indonesia through Law No. 11 of 2005—is frequently reduced to mere administrative formalities, without touching upon the true essence of justice regarding the debtor’s property rights.

The determination of fair value as an element of substantive justice and the fulfillment of the debtor’s economic rights demands an equilibrium between the objectivity of the appraisal and the protection of the asset’s economic value. The utilization of Appraiser services in Indonesia constitutes a positive step toward guaranteeing objectivity. In practice, however, fair value frequently depends on volatile market conditions, the limited availability of comparative data, and prolonged appraisal

durations (Faizal et al., 2025). These obstacles can cause the reserve price to lose its relevance to actual market conditions at the time the auction is conducted. Therefore, a real-time valuation or periodic revaluation mechanism is required to ensure that substantive justice and the protection of the debtor's material property rights are truly reflected in the asset's sale price.

The determination of asset values in Kazakhstan's auction process places greater emphasis on the efficiency aspect of fair value. Asset values are established through an expedited process conducted by Private Bailiffs or appraisers operating under their coordination (Sikhimbayev et al., 2023). Despite its efficiency, this mechanism frequently faces criticism due to the minimal involvement of independent appraisers (Nazarkulova et al., 2025b). This results in potential undervaluation, namely the setting of prices below the fair market value to expedite liquidation (Muslim et al., 2024). While this practice may benefit creditors in the short term, it disadvantages debtors and diminishes the legitimacy of substantive justice within the Kazakhstani legal system. This phenomenon of undervaluation undermines Article 26 of the Constitution of the Republic of Kazakhstan, which guarantees the protection of private property rights against unlawful seizure. Furthermore, such aggressive appraisal practices under the control of Private Bailiffs disregard the right to a fair and public trial, as stipulated in Article 14 of the ICCPR (ratified by Kazakhstan via Law No. 91-III), given that debtors frequently lose control over the valuation of their assets without adequate mechanisms for challenge.

In a system that places excessive emphasis on the speed of execution, the moral and social values of justice, as well as the protection of human rights, are often reduced to mere economic instruments. Debtors, being in a weaker position, frequently lack

sufficient time or access to challenge valuation results deemed unfair. Therefore, although Kazakhstan has succeeded in maintaining a high asset recovery rate and ensuring banking stability, the aspects of protection regarding the economic value and fundamental human rights of debtors still require legal strengthening. This demonstrates that efficiency is not synonymous with substantive justice.

In terms of the transparency of the execution process, Indonesia excels through an approach of institutional transparency. Auctions are conducted by a state agency, namely the State Assets and Auction Service Office (Kantor Pelayanan Kekayaan Negara dan Lelang or KPKNL) under the Ministry of Finance, and are administered through an online-based e-Auction system (Ikhrum & Priyambodo, 2025) . This system enables the public to openly access information regarding the auction items, reserve prices, execution schedules, and final outcomes. Formal mechanisms for complaints and clarifications are also provided. This condition strengthens substantive justice and fulfills the right to information by enhancing accountability, preventing collusion, and increasing the probability of achieving an optimal price through healthy market competition (Disantara et al., 2025).

However, the transparency system in Indonesia is not free from constraints. The centralization of auction execution at the KPKNL results in administrative capacity limitations and potential schedule delays. Furthermore, gaps persist regarding public digital literacy and access to the e-Auction system in non-urban areas. Consequently, not all parties can participate effectively, which prevents the potential achievement of a fair market price from being fully maximized. This condition demonstrates that within the context of transparency, substantive justice and the guarantee of non-discrimination in access to economic law require equality of access, rather than mere formal openness.

Inclusivity of information is an integral part of substantive justice as well as a pillar for fulfilling human rights in business activities and the banking sector (Kurniawan et al., 2025a).

In contrast, the transparency mechanism in Kazakhstan is more oriented toward private transparency, as execution is managed by Private Bailiffs. Although Kazakhstani law mandates public notification and the recording of the auction process, the supervision of these private bailiffs is relatively more dispersed and complex compared to an institutional system like the KPKNL (Khamitov et al., 2023). This creates a risk of variation in transparency standards from one region to another. The absence of a single public platform to monitor all auction activities also diminishes public access to comprehensive auction information. Although efficient, this system potentially weakens substantive justice, particularly in terms of accountability and data openness. From a human rights perspective, the lack of integrated transparency also limits the debtor's right to an effective remedy when violations occur during the appraisal process or during the unilateral sale of collateral assets (Siswanto & Tedjokusumo, 2024).

Indonesia tends to position substantive justice as a byproduct of legal protection and robust proceduralism, whereas Kazakhstan places it within the context of economic efficiency and temporal certainty. Indonesia emphasizes appraisal objectivity and state control to safeguard fairness for the debtor, albeit at the expense of speed and recovery efficiency for the creditor. This Indonesian approach aligns more closely with the state's duty to protect citizens' property rights from external economic market exploitation. Conversely, Kazakhstan prioritizes swift and certain economic outcomes for the creditor, carrying the risk of diminished protection for the debtor. Both approaches reflect the inherent trade-offs among substantive justice, commitments to human rights

enforcement, and legal efficiency within the modern banking system. Consequently, an ideal model should integrate these three principles in a balanced manner through the formulation of pro-market yet human-rights-compliant bank recovery regulations.

The implementation of auctions as an NPL asset recovery method in Indonesia and Kazakhstan reflects two distinct dimensions of substantive justice. Indonesia excels in the dimension of protection-based substantive justice, where independent appraisers and institutional transparency serve as the primary guarantees of fairness. However, this justice mechanism still encounters obstacles of procedural inefficiency. In contrast, Kazakhstan applies an efficiency-based substantive justice, where temporal certainty and economic effectiveness serve as the primary indicators, though at the risk of valuation disparities and a lack of transparency. Indonesia needs to mitigate litigation hurdles and expedite execution to realize justice for creditors, while Kazakhstan needs to strengthen the supervision of Private Bailiffs and enhance public disclosure to guarantee justice for debtors. True substantive justice and the non-discriminatory protection of property rights will only be realized if the law is capable of balancing economic efficiency with moral and social protections, alongside a commitment to international human rights instruments for all parties involved.

C. CONCLUSION

The legal frameworks and practical implementations of auctions as asset recovery instruments for Non-Performing Loans (NPLs) in Indonesia and Kazakhstan demonstrate distinct orientations and challenges in realizing economic efficiency, legal certainty, and the protection of human rights. Indonesia excels in the aspects of legal certainty and debtor protection through parate execution mechanisms strictly regulated under the Law on Mortgage (UUHT), the Fiduciary Guaranty Law, and PMK No.

27/PMK.06/2016; however, its effectiveness remains constrained by high litigation hurdles and rigid proceduralism. While this condition safeguards procedural rights, it frequently delays the certain recovery of the creditor's economic rights. Conversely, Kazakhstan prioritizes economic efficiency by utilizing Private Bailiffs, which successfully expedites the execution process but introduces risks of valuation disparities, lax oversight in asset appraisal, and deficient auction transparency, thereby rendering it vulnerable to undermining the right to due process of law and the debtor's right to protection of property against arbitrary deprivation. Within the framework of substantive justice and human rights perspectives, Indonesia places greater emphasis on the debtor's private property rights, whereas Kazakhstan stands out in protecting the creditor's interests through temporal certainty of execution at the expense of the material justice and dignity of the debtor. Consequently, both nations still require comprehensive reforms to achieve an ideal balance among substantive justice, compliance with human rights instruments, and economic effectiveness within the governance of banking asset recovery.

This study recommends several strategic measures to reinforce substantive justice, human rights protection, and efficiency within the NPL auction system. First, Indonesia needs to strengthen the effectiveness of parate execution by restricting groundless obstruction lawsuits (*verzet*) and expanding the utilization of private auction houses under the supervision of the KPKNL to enhance efficiency, while maintaining appropriate avenues for due self-defense if the constitutional right to primary housing of small-scale debtors is threatened. Second, Kazakhstan needs to tighten its oversight of Private Bailiffs through public audit mechanisms, the establishment of an independent rights-based regulatory body, and the enhancement of digital accountability to prevent undervaluation practices and guarantee auction transparency. Third, both countries are advised to adopt real-time asset valuation standards and integrated e-auction systems that enable the general public to access all stages of the auction process as a means to fulfill the right to public information. The implementation of these recommendations is expected to foster an auction law model that is fairer, more transparent, and highly efficient, while simultaneously strengthening respect for fundamental human rights, public trust in the legal system, and the stability of the banking sector in each respective nation

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