

## **Authenticity of Auction Minutes as a Basis for Transfer of Land and or Building Sale-Purchase Rights**

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### ***ABSTRACT***

This research is motivated by the Authenticity of Auction Minutes as the Basis for the Transfer of Land and/or Building Sale and Purchase Rights. to find the legal basis and explain the proof of auction minutes with applicable legal provisions. This research uses a normative legal research type, using a statutory approach and a conceptual approach. The legal materials in this study are primary legal materials and secondary legal materials. The results of this study can be concluded that the Authenticity of Auction Minutes as the Basis for the Transfer of Land and/or Building Sale and Purchase Rights is very important; auction minutes serve as evidence that the relevant auction legal act has been carried out. The legal act is cash in nature, as well as providing the transfer of rights to the object in question to the recipient of the rights. The form of the legal basis for Article 1, number 34 of the Regulation of the Minister of Finance Number 122 of 2023 concerning Auction Implementation Guidelines. And regulated in the provisions of Article 35 Vendu Reglement (Auction Regulations) concerning the Regulation of Public Sales in Indonesia (Ordinance of February 28, S. 1908-189 in effect since April 1, 1908). The provisions in Article 1868 of the Civil Code stipulate that: "An authentic deed is a deed in the form determined by law, made by or before authorized public officials for that purpose where the deed is made". Proof aims to establish the law between the two parties concerning a right so that a truth is obtained that has the value of certainty, justice, and legal certainty.

**Keywords:** authenticity, auction minutes, buying and selling, land and/or buildings

### **Introduction**

Auction Minutes are the same as "auction minutes," which are the basis for authenticating auction sales. In the provisions of Article 35 of the Vendu Reglement, it is stated that "for each public sale carried out by the auctioneer or his attorney,

during the sale, for each auction or sale a separate minute must be made". From this provision, the Auction Officer who carries out each auction is required to make auction minutes, which are then called "auction minutes". The auction minutes record all events that occur in the auction sale. Meanwhile, according to the provisions in Article 1 number 34 of the Regulation of the Minister of Finance Number 122 of 2023 concerning Auction Implementation Guidelines, the "auction minutes" are "minutes of the auction implementation made by the Auction Officer which is an authentic deed and has perfect evidentiary force" The auction minutes contain a description of everything related to the implementation of the auction or public sale carried out by the Auction Officer.

The auction minutes must contain what, why, where, when, how, and who is involved in the auction. What is being auctioned explains the object of the goods being auctioned. Why the auction is being held explains the background to the emergence of the auction. This is very important to explain in the auction execution. Then explain where the auction is held and when the auction is held. How the auction is held explains the bidding process until the auction buyer is appointed. Who is involved in the auction, who is the applicant or auction seller, who are the bidders, and who is the auction buyer.<sup>1</sup>

According to the previous explanation, the auction minutes are an authentic deed. An authentic deed is a deed whose form has been determined by law, made by or before a public official who has the authority to do so in the place where the deed is made. Article 1868 of the Civil Code stipulates that an authentic deed is a deed in a form determined by law, made by or before public officials who have the authority to do so, where the deed is made.<sup>2</sup>

Then in the provisions of Article 165 HIR it is stated that: An authentic deed, namely a letter made by or in the presence of a public employee who has the power to make it, provides sufficient evidence for both parties and their heirs as well as all the people who receive rights from it, namely regarding all matters mentioned in the letter. From this provision, a deed is said to be an authentic deed (having authenticity) if it fulfills the following conditions or conditions:

- a. The form or arrangement of the deed is made in accordance with what is determined

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<sup>1</sup> Rachmadi Usman. 2016, *Hukum Lelang*. Jakarta: Sinar Grafika, h.155

<sup>2</sup> *Ibid* .H.156

by law.

- b. The deed is made by or in the presence of a public official.
- c. The public official who makes the deed must be an official who has the authority to make the deed by his/her work area.

A deed is authentic, not because it is determined by law, but because it is made by or in the presence of a public official. To be able to make an authentic deed, a person must have a position as a public official. The Auction Officer is a public official who is given special authority to carry out the sale of goods at auction, therefore, the Auction Officer is required to make minutes as minutes of the auction, which is an authentic deed. Regarding the form or structure of the auction minutes, it has been determined in the Vendu Regulations as contained in the provisions of Articles 37, 38, and 39.<sup>3</sup> Auction minutes can only be made by or in the presence of an Auction Officer by the work area and authority given to the relevant Auction Officer.

### **Research Method**

A method is a way of working on how to find and carry out an activity to get concrete results, because legal research is a know-how activity in legal science, not just know-how. As a know-how activity, legal research is carried out to solve the legal issues faced. This is where the ability to identify legal problems, conduct legal reasoning faced and then provide solutions to the problem is needed.

This research uses a normative legal research type, which means studying and analyzing positive law. Regarding the type of legal research, Peter Mahmud Marzuki argues that legal research is a process of finding legal rules, legal principles, and legal doctrines to answer the legal issues faced

Legal research is finding the truth of Coherence, namely, there are legal rules according to legal norms, and there are norms in the form of commands or prohibitions by legal principles. For legal research at the level of legal theory, legal issues must contain legal concepts.<sup>4</sup>

### **Results and Discussion**

#### **Auction Legal Regulations**

Auction comes from the Dutch language, namely *vendu*, while in English, it is

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<sup>3</sup> Ibid h.157

<sup>4</sup> Peter Mahmud Marzuki. *Penelitian Hukum*. (Jakarta :Kencana Prenada Media, 2011),h.60

called auction. Other terms are translations of the Dutch openbare verkooping, openbare veiling, or openbare verkopen, which means "auction" or "public sale".

An auction is a sale in front of many people (with the highest bidder) led by an auction official. While auctioning is selling by auction.<sup>5</sup> The term auction as "public sale" is used in auction regulations as stated in the Vendu Reglement dated February 28, 1908, Staatsblad 1908 Number 189, which has been in effect since April 1908. The provisions in Article 1 of the Vendu Reglement auction are "Public sale (openbare verkopen) is an auction or sale of goods conducted to the public with an increasing or decreasing price offer or with the entry of the price in a sealed envelope, or to people who are invited or previously notified of the auction or sale, or are permitted to participate, and are allowed to bid, agree to the price offered or enter the price in a sealed envelope" .....

While in the provisions of Article 1 number 1 of the Regulation of the Minister of Finance Number 122 of 2023 concerning Guidelines for the Implementation of Auctions, which states: Auction is "the sale of goods that are open to the public with a written and/or oral price offer that increases or decreases to achieve the highest price, which is preceded by an Auction Announcement". Based on the description above, it can be said that an auction is a form of sale of goods that is carried out openly to the public with an increasing or decreasing bid price to reach the highest price, which is submitted in writing or verbally, preceded by a notification of an auction or sale of goods.".....

Based on the description above, it can be said that an auction is a form of sale of goods that is carried out openly to the public with an increasing or decreasing bid price to reach the highest price, which is submitted in writing or verbally, preceded by a notification of an auction or sale of goods.....

As is known, auction institutions have existed since the Dutch era with the birth of Vendu Reglement contained in the Ordonantie dated February 28, 1908 Staatsblad 1908 Number 189 which has been amended several times, most recently by Staatsblad 1941 Number 3, which came into effect on April 1, 1908, and is still the legal basis for organizing auctions or sales of collateral in public in Indonesia. ....

Vendu Reglement is a regulation at the level of government regulations, but the highest auction regulation to date. Therefore, it is not wrong if Vendu Reglement is

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<sup>5</sup> Rachmadi Usman. 2016, *Hukum Lelang*. Jakarta: Sinar Grafika, h.19

called the Auction Law.

As the implementation of Vendu Reglement, its implementing regulations were enacted, namely Vendu Instructie Ordonantie dated February 28, 1908 Number 4, Staatsblad 1908 Number 190 as amended several times, most recently by Staatsblad 1930 Number 85, Staatsblad 1931 Number 373 in conjunction with Number 423 and Staatsblad 1940 Number 57, which are referred to as Auction Instructions. The implementation of the auction as contained in:

Regulation of the Minister of Finance Number 122 of 2023 concerning instructions for implementing auctions.

1. Regulation of the Minister of Finance Number 124 concerning Class I Auction Officials.
2. Regulation of the Minister of Finance Number 189/PMK.06/2017 concerning Class II Auction Officials.
3. Regulation of the Minister of Finance Number 113/PMK.06/2019 concerning Auction Houses.
4. Regulation of the Minister of Finance Number 156/PMK.06/2017 concerning Application of Principles Concerning Service Users for Auction Houses.
5. Regulation of the Minister of Finance Number 154/PMK.01/2021 concerning Organization and Work Procedures of Vertical Agencies of the Directorate General of State Assets.

Article 1, number 1 of the Regulation of the Minister of Finance Number 122 of 2023 concerning Auction Implementation Guidelines explains the definition of an auction. The definition stipulates several elements of an auction, one of which is the Auction Announcement. Furthermore, Article 61 paragraph (5) of the Regulation of the Minister of Finance Number 122 of 2023 concerning Auction Implementation Guidelines states that the auction announcement is used to disseminate the publication of the Auction implementation, the Auction Organizer can provide facilities on the Auction Application/portal/website that it manages to display the Auction Announcement, As in paragraph (6) more complete information can be added regarding the Auction Object, terms and conditions, and other information.

Article 68 of the Regulation of the Minister of Finance Number 122 of 2023 concerning Auction Implementation Guidelines contains:

1. Daily newspapers used as Auction Announcement media can be:
  - a. printed daily newspaper; or

- b. electronic daily newspaper.
- 2. Printed daily newspapers as referred to in paragraph (1), letter a must be:
  - a. published and/or circulated in the city or district where the Goods are located; and
  - b. has a circulation of at least 2,000 (two thousand) copies..
- 3. If there is no daily newspaper as referred to in paragraph (2), the Auction Announcement is announced in a daily newspaper published:
  - a. in the nearest city/district, with a circulation of at least 2,000 (two thousand) copies;
  - b. in the provincial capital, with a circulation of at least 5,000 (five thousand) copies; or
  - c. in the national capital, with a circulation of at least 10,000 (ten thousand) copies, and circulated in the area of the office of the Auction Officer, where the Goods will be auctioned.
- 4. In the event that in a region there is no daily newspaper that meets the criteria as referred to in paragraph (3), the Auction Announcement is made in the daily newspaper with the highest circulation.
- 5. The Auction Announcement as referred to in paragraph (2) to paragraph (4) must be published on the main or regular page in clear and easy-to-read letters.  
jdih.kemenkeu.go.id
- 6. The Auction Announcement, as referred to in paragraph (5), is prohibited from being published on supplementary/additional/special pages.
- 7. The electronic daily newspaper as referred to in paragraph (1), letter b, is a daily newspaper made in electronic format (e-newspaper) that is registered and verified by an institution in charge of journalism.
- 8. If necessary to increase the number of Auction enthusiasts, the Seller may add the Auction Announcement to other media using Indonesian or a foreign language as needed.
- 9. If there is a difference in information between the Auction Announcement that has been made by the provisions of Articles 61 to 66 and the additional Auction Announcement in other media as referred to in paragraph (8), the information used is the information contained in the Auction Announcement that has been made by the provisions of Articles 61 to 66.

Based on the description above, the consideration of using internet-based media to announce auctions is justified because the visibility of the internet is beyond

doubt. It is expected to increase the number of Auction enthusiasts, while in printed daily newspapers, it has decreased significantly. It is reasonable that in the past, it was required to require printed daily newspaper media, because at that time, only printed daily newspapers were the most effective. But times have changed. The author thinks that the use of printed daily newspapers as a medium for auction announcements is no longer effective in addition to being expensive, so it needs to be replaced with electronic daily newspapers or internet-based media (official website).

### **Authenticity of Auction Minutes Which Are Detrimental to Land Rights Owners**

#### **1. The limit value does not match the market price**

In Article 1 number 27 of the Regulation of the Minister of Finance Number 122 of 2023 concerning Guidelines for the Implementation of Auctions where the Limit Value is the minimum value of the Goods to be auctioned and is determined by the Seller, Determination of the Limit Value is the responsibility of the Seller which is determined based on an assessment by the Appraiser or an assessment by the Appraiser. The Appraiser is a party who carries out an assessment independently based on their competence, while the Appraiser is an internal party from the Seller's agency who carries out an assessment based on a method that can be accounted for by the Seller.

If the assessment is carried out by an Appraiser, according to the Indonesian Appraisal Standards (SPI 366), the basis for the assessment used in the assessment for auction purposes is Market Value and Liquidation Value. The Seller can determine the Market Value as the priority (upper limit) and the Liquidation Value as the last alternative (lower limit) to determine the Limit Value. Market Value is defined as an estimate of the amount of money that can be obtained from the exchange of an asset on the assessment date.

Market Value is defined as an estimate of the amount of money that can be obtained from the exchange of an asset between a buyer who is interested in buying and a seller who is interested in selling, in a free transaction, whose marketing is carried out properly, where both parties each act based on their understanding, prudence and without coercion. While Liquidation Value is an amount of money received from the sale of an asset in a relatively short period to be able to meet the

marketing period in the definition of Market Value. In Article 6 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, if the debtor defaults, the first Mortgage Right holder has the right to sell the Mortgage Right object at his power through a public auction and take payment of his receivables from the proceeds of the sale.

From the value of Mortgage Rights, market price, and Liquidation Value, first of all for the Limit Value, the highest price is chosen. If it does not sell, the limit value will be lowered in the second offer. If it still does not sell, it will continue to be lowered until it reaches the Liquidation Value. Auctions carried out with a Limit Value below the market price are permitted and valid according to applicable laws and regulations, as long as they are still within reasonable limits. In general, this happens in Execution Auctions because they are "forced sales", so the offer becomes limited and the price of the object becomes relatively lower than the market price. However, the question is, if the purchase price becomes too low and unreasonable, can the auction be sued for cancellation?.

In Article 48 of the Regulation of the Minister of Finance Number 122 of 2023 concerning Guidelines for the Implementation of Auctions. The implementation of an Auction that has begun can only be canceled by the Auction Official in the event of:

- a. There is a Technical Disturbance that cannot be resolved until the end of working hours during the implementation of the Auction Without the Participant's Presence.
- b. force majeure ; and/or
- c. The Auction Bid Security Money belonging to the Auction Winner, due to certain reasons related to the banking system, is debited back from the Auction Organizer's account and is not transferred back to the Auction Organizer's account on the Auction Day by the Winner.

Article 31 of the Regulation of the Minister of Finance Number 122 of 2023 concerning Auction Implementation Guidelines explains that auctions that have been carried out by the provisions of laws and regulations cannot be canceled, both the process and the documents proving its implementation. A lawsuit for cancellation of an auction due to an assessment of the Limit Value below the market price that is detrimental to the debtor can occur and be carried out based on an Unlawful Act, based on Article 1365 of the Civil Code, which regulates:

“Every act that violates the law that causes loss to another person, requires the



person who caused the loss due to his mistake to replace the loss”.

Determination of the auction limit value below the market price cannot be the basis for canceling an auction, at the auction implementation plan stage and the auction implementation stage because the cancellation of an auction can only be canceled at the request of the seller or based on a court decision or ruling as stipulated in Article 44 of the Regulation of the Minister of Finance Number 122 of 2023 concerning Auction Implementation Guidelines. Debtors who feel disadvantaged by the determination of the auction limit value can take legal action by filing a lawsuit. Every citizen who feels that his/her rights have been violated has the right to file a lawsuit in court. The lawsuit is filed in the District Court for unlawful acts (PMH), because the creditor or the bank, as the seller in the auction, either due to their mistake or negligence, causes the collateral object to be sold below the market price. The following are the parties who may be involved in an auction lawsuit over the Auction limit value.

1. Plaintiff: Debtor.
2. Defendant: Auction Winner, Auction Applicant (Creditor)
3. Co-Defendant: KPKNL.

### **Conclusion**

According to Article 1 number 1 of the Regulation of the Minister of Finance Number 213/PMK.06/2020, an auction is a sale of goods that is open to the public with a written and/or oral price offer that increases or to achieve the highest price, which is preceded by an Auction Announcement. Based on the description above, it can be said that an auction is a form of sale of goods that is carried out openly to the public with an increasing or decreasing bid price to achieve the highest price, which is submitted in writing or orally, previously preceded by notification of an auction or sale of goods. Meanwhile, the auction minutes are "minutes of the auction implementation made by the Auction Official, which is an authentic deed and has perfect evidentiary force" Article 1 number 32 of the Regulation of the Minister of Finance Number 213/PMK.06/2020, the auction minutes are an authentic deed. The auction minutes made by the auction official are valid and have binding legal force as an authentic deed. The auction minutes must contain what, why, where, when, how, and who is involved in the auction. What is being auctioned explains the object of the goods being auctioned.

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