

## NOTARY'S RESPONSIBILITY AS AN AUCTION OFFICIAL II IN FACING THE OPPORTUNITIES AND CHALLENGES OF AUCTION IMPLEMENTATION BASED ON THE THEORY OF AUTHORITY

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### ABSTRACT

**Abstract:** This article discusses the Roles and Responsibilities of a Notary as a Class II Auction Officer. This is based on the fact that a notary can act in parallel with his duties as a Class II Auction Officer who is appointed by the Minister of Finance in accordance with the Minister of Finance Regulation Number 189/PMK.06/2017 concerning Class II Official Auctions. . However, it is prohibited to act as maker and/or auctioneer of Class II real estate outside the notary's residence. The power of a notary to make a list of auctions is difficult to do directly by a notary because he has to go through the stages of appointing a minister who is responsible for government affairs in the financial sector. This makes the notary's position vulnerable to litigation due to overlapping regulations. The research method in the article is an empirical legal research type. Normative legal research is legal research relating to the enactment or implementation of normative provisions, followed by research on legal events contained in these normative provisions. Documentation and compliance with auction law regulations and auction commissioners. This includes the principles of publicity and fairness, and the obligation to act honestly, thoroughly, independently, and impartially.

**Keywords:** Notary; Auction Officer II; Auction

### Introduction

Indonesian National Foundation Pancasila and the 1945 Constitution include a just and prosperous society as the ideals of sustainable national development. This relates to auction transactions, which are to provide a sense of fairness. Auction is different from buying and selling, more and more different items are sold at auction, and buyers have more leeway in their choices (Pawestri, 2015). The concept of auction, which belongs to the economic and financial sectors, has been widely embraced by the public. since it was first introduced. This popularity is supported by the passing of the Regulations Friend Uu governing the terms of the auction. Another advantage of the auction mechanism is that the buyer usually pays less than the prevailing market price. (Sumanggala, Pujiyanto, & Hidayat, 2023)

Public information about auctions requires continuous outreach so that the public is more aware of issues related to auctions, their roles and responsibilities, and their benefits. So, socialization expects an auction to be carried out as a tool. Help improve the

Indonesian economy (Afizha & Kholik, 2021). Auctions themselves can be held at Auction Centers, Class II Auction Offices, or Government Receivables and Auction Service Offices (KP2LN) because these locations are determined by government regulations. In accordance with the Regulation of the Minister of Finance of the Republic of Indonesia Number 113/PMK.06/2019. For auction halls, national private business entities, foreign business entities, or joint ventures can establish auction halls in the form of individuals or Indonesian legal entities specifically established to organize auction halls so that auctions are more popular. Guarantees and legal certainty that can increase public confidence in the existence of auction houses are mandatory for both state agencies (state advertising and auction offices) and auction houses (private or legal entities)(Putra, 2021).

Legal certainty that creates public confidence in the auction of movable and immovable property guarantees certainty regarding the parties involved in the auction as well as the rights and obligations of the parties, including the auctioneer who is authorized by the Minister. Funding to conduct auction sales in compliance with all relevant laws and regulations. Regarding auctions, including roles, responsibilities, and benefits, it is hoped that raising awareness and participating in auctions can help the Indonesian economy (Gunawann, Maryono, & Sudirman, 2023).

The condition for participating in the auction is that a person must become an auctioneer from class I or class II auctioneers, as explained in Article 9(9) of Minister of Finance Regulation (PMK) No. 38/PMK.06/2017 regarding notification to conduct an auction. Class I auction officials can conduct auctions for all types of auctions at the request of the seller, while class II auction officials can only conduct auctions for voluntary purposes other than implementation. Compulsory auctions, mandatory non-execution auctions, and voluntary non-execution auctions can only be carried out by Class I auction officials, employees of the Directorate General of State Assets and Class II auction officials, private employees, or the general public. Appointed by the minister as auction manager. According to Minister of Finance Regulation No. 189/PMK.06/2017 Concerning Class II Auction Officers, notaries are allowed to serve in both positions. In addition, Article 15(2)(g) UUJN is explained as follows: "This regulation means that the appointment of a notary as a Class II Auction Officer is carried out by the Minister who administers government affairs in the financial sector in accordance with the law. Rules, rules." Notaries cannot act as land preparation officials or Class II auction officials outside their jurisdiction under Article 17(1)(g) UUJN. Notaries find it difficult to immediately implement the provisions of Article 15 (2) Letter g UUJN concerning the authority of a notary to make a bulletin about the auction program because the article requires that the notary be appointed first by the minister responsible for finance. So, if a notary is authorized to make minutes of auctions, he also acts as a class II auction official.

As a result, even if laws exist, they are difficult to enforce; if so, the Notary's position becomes vulnerable to legal action. This is because 1 (one) regulation and other regulations overlap. This further clarifies the existence of overlapping regulations. Looking at the history of UUJN revisions, the phenomenon mentioned above can be likened to the ambiguity of interpretation regarding the authority of the PPAT which was attached by the Notary to the draft UUJN at that time, which is currently regulated in Article 15 paragraph (2). letter of UUJN regarding the authority of a Notary to make deeds related to PPAT.

Legal certainty for all parties and reduced possibility of post-auction legal problems, including losses to third parties due to negligence or invalidity of bids, can be achieved through clear knowledge and regulations governing auction officials who play an important role in conducting auctions. auction. The only way we can stop this from happening is if we get used to the typical process for verifying tender documents. The responsibility of the Auction Officer for the validity of the bid letter is very important from the perspective of the Auction Officer, related parties and third parties who have an interest. This is important because it will determine the extent to which the official has the responsibility to verify the legality of tender documents to prevent or minimize disputes after the auction takes place. The accountability of the auctioneer, namely whether the claim for compensation belongs to the auctioneer personally or is limited to the assets of the legal entity, will be greatly influenced by the type of auction house used, whether it was a pre-existing auction house or one of them. which can be opened by individuals or business entities. Based on the description above, the author is interested in discussing in this article related matters "**Role And Responsibilities Of A Notary As An Auction Official In Dealing With Opportunities and Challenges Of Auction Implementation In Indonesia Based On Theory Of Authority**".

### Research Method

In accordance with the problems discussed in this article, the form of research is normative legal research. Legal normative research is legal research relating to the enactment or implementation of normative provisions in all matters covered by applicable laws.

### Result And Discussion

#### Authority Theory

From the point of view of public law, the state is an organization. According to Logemann's opinion, the state, according to its various functions, is an organization in the form of social reality. The function is a detailed scope of work in relation to the whole. These functions are called positions, (Hr, 2008) The state can be thought of as a big bureau. Everything that the government did had to be done in accordance with the laws and regulations that were in force at that time. Indonesia is committed to the rule of law. State administrative law is guided by the concept of legality, which states that the

government must operate according to the law at all times and can only take legal action if it is lawful or based on laws that embody the will of the people.

Soerjono Soekanto defines the difference between authority and power. Power, according to Soerjono Soekanto, is all the ability to influence other parties, while power is a power possessed by individuals or groups that have social legitimacy. The term "authority" (also "authority") is often used in public law. However, the two are not interchangeable. When we speak of having "authority," we mean something called "formal power," which derives from the executive or legislative authority conferred by laws or regulations. Therefore, the authority of an organization or certain authorities over a certain field of government or administration of government is universally recognized. But authority only cares about certain aspects of authority. Having authority means having the legal right to rule and the physical means to enforce compliance. (Doly, 2016)

## Discussion

### **The Role of the Notary as a Class II Auction Office in the Implementation of Auctions in Indonesia**

Complete requirements to become a notary, namely requiring a master's degree, Master of Notary who meets several specified requirements, is appointed and sworn in by the government as described above. Auctioneers of Class I and II are public officials who make legal products in the form of auction notes. According to Article 1868 of the Civil Code, auction records are made by the authorities, and the form is determined by law so that the auction records are the same as the original deed drawn up by a notary.

According to Article 17 UUJN, notaries may not carry out parallel tasks at the same time. Article 15 (2) (g) UUJN provides an exception that a notary has the authority to make minutes of auctions, so that a notary can be appointed as a class II auction official, as long as he is registered as an auction official. Auction Officer II. According to Article 7 of the Selling guidelines. Notaries are qualified civil servants who can participate in tenders because, despite their different competencies, the ability to produce legally binding documents is common. Because Class II auctioneers rely on external auction services, this function is beyond the reach of the public and private sectors (Usman, 2022)

The practice of a notary's activities as a class II auctioneer may be permitted provided that the duties of a notary and an auctioneer are equal, common, and justified by law. In addition, notaries and auctioneers produce legal products called documents and records. Both auctions are real transactions. The qualifications of a notary appointed as an auctioneer depend on the qualifications required for the auction and the place of residence or jurisdiction where the auction takes place Establishment of a notary's office.

Class II Auction Officers were created in Indonesia to meet the increasing demand for tenders as a result of improved bidding services and the development of the skills of Bidders. The integrity of auctions in Indonesia is maintained by the rules and regulations mentioned above, and Auction Officials in exercising their authority must also comply with the rules of holding auctions as follows: (Priyanti, 2017)

1. *Vendu Reglement* (Auction Rules), Stb. 1908 No. 189 which was changed with official Gazette 1940 No. 56.
2. *Vendu Instructie* (Auction Instructions), Stb. 1908 No. The last modified 190 with Stb. 1930 No. 85.
3. Minister of Finance Regulation No. 213/PMK.06/2020 concerning Instructions for Conducting Auctions
4. Regulation of the Minister of Finance no. 94/PMK. 06/2019 June 20 2019, Concerning Class I Auction Officials
5. Regulation of the Minister of Finance Number 189/PMK. 06/2017 December 8 2017, Concerning Class II Auction Officials.
6. Regulation of the Minister of Finance Number 38/PMK.06/2017 dated 3 March 2017, Concerning Technical Instructions for Functional Positions of Auctioneers.

It listed various regulations (laws) whose application can be enforced (*coercion*) to maintain order, regularity, peace, and tranquility. The law must protect the interests of people respecting legal relations; Therefore, the existence of law cannot be separated from human existence. Religious norms, moral norms, customary norms, and legal norms guide humans in behaving and interacting with one another, and a better social order can be achieved by maintaining a balance between justice (*justice*) and legal certainty (*legal certainty*) in their life. application. The jurisdiction of Class II auction officials, among other things, is not allowed to participate in the implementation of the auction and this is based on Decree of the Minister of Finance No. 189/PMK. 06/2017 December 8, Class II Auction Officials, including: (Alusinsing, 2020)

1. "Conducting a juridical analysis of the document requirements for the auction and documents of the goods to be auctioned."
2. "Reprimand and/or expel participants and/or auction visitors if they violate the rules of conduct of the auction."
3. "Suspending the implementation of the auction temporarily if necessary in order to maintain order in the implementation of the auction."
4. "Refuse to carry out the auction if you are not sure of the formal correctness of the tender requirements document."
5. "Viewing items up for auction."
6. "Requesting police assistance security when needed."
7. "Authorize Auction Buyers and/or Cancel Auction Buyers who are in default."
8. "Canceling Auction Purchaser by default."

Jurisdiction Class II Auction Officials must be properly implemented, in order to create a sense of justice for the parties. Before the auction can begin, the necessary documents and prerequisites must be reviewed. And of course, the Auctioneer must first make an Announcement of the Auction. Whenever real estate is sold at a public auction, the Auctioneer must issue a public statement with details about the auction itself, including location, date, and time. Auction Announcements reflect a sense of fairness and aim to: (Muslimin, 2016)

1. "Publicity Aspect, Known, by the wider community, so for the interested can attend the auction (gathering bidders)"
2. "Legality Aspect, Providing, employment opportunities to third parties who feel aggrieved to submit objections/resists."
3. "Learning Aspect, for debtors who are in default to be aware of carrying out their obligations if objections to the goods that are collateral for their debts will be auctioned."

### **Responsibilities of a Notary as a Class II Auction Officer in the Implementation of Auctions in Indonesia**

Office auction class II and the notary is office general. The second department the can hold regularly together, However, still distinguished where Which becomes the authority office auction Group II and where Which becomes the notary. Because of different jurisdictions, for tasks and not quite enough answers, Notary Class II and Office Auction are different. About tasks and not quite enough answer Notary, in running his power bow down and obedient on UJN and Code Ethic Notary. Whereas Office Auction Class II must obey Rules Auction (Sold regulations), Rules Auction (Sold Instruction), and Rules Finance 189/PMK.06/2017 in run authority. about Office Auction Class II and Rules Minister Finance Number 213/PMK.07/2020 about Instruction Implementation Auction. (Pramapta, 2023)

However, the notary Which Also has an office auction Group II owns not quite have enough answers and authority for direct implementation of the auction voluntary Which is No held and record result in book daily auction. Not all notaries act as Office Auction Class II, Which, enters intellect. Notary and show auction Class II own position Which clear different, respectively with not quite enough answer and authority Alone. However, the regular implicit role is second position This same as extension hand country, Which, can run function above base proof documents authentic Which characteristic absolute probative value. (Qurani, 2023)

In the Decree of the Minister of Finance of the Republic of Indonesia No. 189/PMK.06/2017 concerning Duties, Duties, Authorities, Rights, and Obligations of Auction Officers which have been described above, all of this is related to the title of the study, namely on the Responsibilities of Auction Officers in Organizing Auctions in Indonesia. (I Bambang, 2006)



Auction official II is responsible for the accuracy of the auction list, he must pay attention to the provisions regarding the procedures for preparing the auction list, pay attention to each part of the auction, the contents of the auction list, bid settlement and related activities. Violation of the rules for recording auctions is a violation of Law No. 2 of 2014, because auction recording is not regulated. As a result of an auction, a letter which only serves as evidence as a private letter or a letter which according to law becomes invalid, can provide reasons for the aggrieved party to demand reimbursement of costs, compensation, and interest from the auctioneer. (Siahaan, 2019)

The party at fault for third-party losses during the bidding process should then be identified step by step. There is no overarching principle determining who should pay damages or bear the blame when something goes wrong; instead, each situation should be evaluated on its own merits.

Liability for third-party losses incurred as a result of auctions should be determined on the principle of liability based on fault, and this should be done in stages, with each stage of the auction life cycle (pre-auction, auction execution, and post-auction) considered separately. Not apart from this is the obligation of the auctioneer to ensure the legality of the tender documents in all matters of formal accuracy. The owner of the goods/applicant or the party giving the statement is responsible for all claims related to comments regarding the legality of the relevant offer letter or material truth. However, if duties are not fulfilled after the auction, and a third party sues for damages as a result, the auctioneer may be held criminally and civilly liable.

### Conclusion

From the description above the author concludes the following: The role of a notary as a Class II auctioneer is reflected in the laws and regulations governing Class II: Special II auctions and auctioneers, which include the principle of publicity (announcement of auctions) to protect stakeholders, the principle of equality based on Article 11 of Minister of Finance Decree No. 119/PMK.07/2005 concerning Class II Official Auctions and states that the auctioneer has an obligation to carry out his duties independently, honestly, thoroughly, and impartially as well as protect the people closest to you. Reviewed from theory show auction, notary as office auction II responsible answer above legit list letter auction, must notice provision almost method making list auction Which must be paid. for each part auction. The auction, base protocol auction, signing protocol tender, and others.

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