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# Notary Authority in Making Auction Minutes as Authentic Deed in the Implementation of Voluntary Auctions

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**Abstract:** An auction is a public sale of goods through bidding, requiring the issuance of an auction minutes (auction minutes). These minutes, prepared by an authorized auction official, are authentic deeds with perfect evidentiary strength. The study focuses on the notary's authority to draft auction minutes and their legal validity as authentic evidence in court when acting as an auction official. This research employs a normative juridical method, analyzing the application of legal norms in positive law. *Vendu Reglement*, PMK No. 213/PMK.06/2020 (updated by PMK No. 122/PMK.06/2023), and PMK No. 189/PMK.06/2017 govern the authority of Class II auction officials. They must meet educational qualifications (minimum bachelor's degree in law or economics), undergo selection, internship, and inauguration. Auction minutes are valid only if prepared by official auction officers, though Article 15(2) of the Notary Law (UUJN) permits notaries to draft them under specific conditions. Article 1868 of the Civil Code mandates that authentic deeds be prepared by authorized officials, granting notaries acting as auction officials the authority to create legally valid auction minutes, provided no evidence disproves their authenticity.

**Keyword:** Auction, Deed, Auction Minutes, Authority, Notary.

## INTRODUCTION

The auction is regulated in the Minister of Finance Regulation (PMK) Number 213/PMK.06/2020, which has been updated with PMK Number 122/PMK.06/2023 concerning Auction Implementation Guidelines. An auction is defined as the sale of goods openly to the public with a written or oral bid until the highest price is reached. In its implementation, the auction aims to ensure transparency, fairness, and efficiency, with key elements such as the identity of the participants, the description of the goods, and the administrative requirements. Auctions are also regulated to protect the public interest, prevent corruption, and provide legal certainty to the parties involved.

Auction officials have an important role in ensuring the implementation of auctions in accordance with legal provisions. Auction officials are divided into two categories: Class I, which conducts all types of auctions, and Class II, which conducts voluntary non-execution

auctions. Class II auction officials must go through the process of selection, internship, appointment, and oath of office, as stipulated in PMK Number 189/PMK.06/2017. This official is authorized to make auction minutes, official documents that become authentic evidence in the Auction process (Arif, 2020).

In the context of voluntary non-execution auctions, auctions are carried out on the basis of the wishes of the owner of the goods without a court order. This type includes auctions of private property, collection rights, forest products, or used goods that are still viable. This process requires auction brochures made by the auction office, including a notary who acts as a Class II auction official. This brochure records the official auction process, including participant registration, bidding, and winner determination (Astriani & Ngadino, 2022).

Notary, based on Law Number 2 of 2014 concerning Notary Positions, has the authority to make auction minutes, but only in the capacity as a Class II auction official. This authority is not automatically given and requires education, training, and appointment by the Directorate General of State Assets. This refers to the principle that valid auction minutes can only be made by officials who meet the qualifications in accordance with laws and regulations (Maharani, 2014).

The auction minutes deed made by a notary as a Class II auction official has the force of law as an authentic deed, which provides legal protection to the parties and can be used as evidence in court. As an authentic deed, auction minutes provide legal certainty in the auction process and avoid potential disputes. However, this deed is only valid if the notary meets the education and certification requirements set by the Ministry of Finance (Derika, 2020).

Regulations such as the *Vendu Reglement* assert that auction minutes can only be created by authorized auction officials. If the minutes are made by another party, including an unauthorized notary, the document is considered null and void. This regulation ensures the validity and accountability of the auction process, which aims to protect the rights and obligations of the parties involved (Erik et al., 2018).

Non-execution auctions, both mandatory and voluntary, have different legal bases. Auctions must be carried out to comply with the provisions of the law, such as the sale of state-owned goods, while voluntary auctions are carried out at the will of the owner of the goods. In both types, the auction minutes serve as strong evidence that the process has been carried out in accordance with the law, particularly in voluntary auctions that are more flexible but remain bound to the procedure (Haris, 2017).

The auction minutes are an important document because they reflect the transparency and legality of the process. The notary who concurrently serves as a Class II auction official has the responsibility to ensure that the minutes meet the formal and substantial requirements. This includes recording bids, determining winners, and settling post-Auction obligations (Al Qindy, 2021).

However, there is a difference in authority between Class II auction officials with notary and non-notary backgrounds. The legal force of auction minutes made by non-notary Class II auction officials still requires an in-depth study regarding their validity as an authentic deed. Further research is needed to evaluate the evidentiary strength of auction minutes in the context of legal disputes in court (Juniresta et al., 2021).

Based on the presentation, the authority of the notary in making auction minutes as an authentic deed is an important aspect in the implementation of voluntary auctions. By understanding the legal basis and related regulations, auction minutes are expected to provide legal certainty, protect the public interest, and encourage a transparent and fair auction process (Karina et al., 2020).

## **METHOD**

According to Peter Mahmud Marzuki, legal research is a process that finds legal rules, legal principles and legal doctrines to answer legal issues faced (Marzuki, 2008). The author in

this study uses a normative juridical approach. This research was carried out using the literature research method or Legal Approach, whose sources are obtained from literature materials and document studies. Explained by Johnny Ibrahim, normative juridical research is research that focuses on examining the application of rules or norms in positive law (Ibrahim, 2006).

In general, in a normative juridical legal approach, there are types of approaches. The approach in this case is interpreted as the researcher's perspective in choosing a discussion space *spretum* that is expected to be able to provide clarity in the description of the substance of a scientific work. The approaches used in this study are the statute approach and the conceptual approach

- a. Legislative approach (Statute Approach), The Legal approach is: the Legal approach (statute approach) It is carried out by reviewing all relevant laws and regulations with the problem being handled. The Legislative Approach is an approach using legislation and regulations (Fajar & Achmad, 2010).
- b. Conceptual approach (conceptual approach), conceptual approach (conceptual approach) According to Peter Mahmud, it starts from the views and doctrines that develop in legal science (Marzuki, 2008). The conceptual approach is carried out when the researcher does not depart from the existing legal rules. This is done because there are no legal rules for the problems faced (Fajar & Achmad, 2010).

### **Research Specifications**

The research specification used in this study is prescriptive analysis, according to Purnadi Purbacaraka and Soerjono Soekanto prescriptive analysis, which is a system of teachings that determines whether it should or should be done (prescriptive) to the symptoms faced (Purbacaraka & Soekanto, 1982).

### **Types and Data Sources**

The type of research in this study is normative juridical which means an approach carried out by examining the approach of theories, concepts, examining the laws and regulations related to this research or the legislative approach. Normative juridical research is legal research that lays down law as a building of a norm system. The norm system in question is about the principles, norms, rules of laws and regulations, agreements and doctrines (teachings). This normative research is a study of legal systematics, which is research whose main purpose is to identify the meanings or bases in law (Sunggono, 2016).

Data sources consist of two types, primary data sources and secondary data sources. Primary data is a source of data obtained directly from the original source (not through intermediary media). Primary data can be in the form of the opinion of the subject (person) individually or in groups, the results of observations of an object (physical), events or activities, and test results. Meanwhile, secondary data is a source of research data obtained by researchers indirectly through intermediary media (obtained and recorded by other parties). Secondary data is generally in the form of evidence, records or historical reports that have been compiled in archives (documentary data) that have been published and those that have not been published (Amiruddin & Asikin, 2004). In this study, the author does not use primary data sources but only uses secondary data sources, because in general in normative research the data used is secondary data (Muhammad, 2004).

This secondary data is divided into primary legal materials and secondary legal materials. Primary legal materials are authoritative legal materials, meaning they have authority, consisting of legislation, official records, or minutes in making laws and judges' decisions. Meanwhile, secondary legal materials are in the form of all publications about the law that are not official documents. Legal publications include textbooks, legal dictionaries, legal journals, and commentaries on court decisions (Marzuki, 2006). Regarding secondary data sources, Soerjono Soekanto and Sri Mamudji stated that secondary data consists of primary

legal materials, secondary legal materials and tertiary legal materials (Soekanto & Mamudji, 2007). The primary, secondary and tertiary legal materials referred to in this study are as follows:

- a. Primary legal materials, namely legal materials or data that have high authority and are binding, because the data is determined by the government, consists of legislation, official records in making legislation and judges' decisions (Waluyo, 2015). The primary legal materials in this study include:
  1. the Constitution of the Republic of Indonesia in 1945;
  2. Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions.
  3. Vendu Reglement which was issued on February 28, 1908 with the number LN 1908 No. 189.
  4. Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 as updated with Regulation of the Minister of Finance Number 122/PMK.06/2023 concerning Guidelines for Auction Implementation
- b. Secondary legal materials, namely legal materials that provide explanations about primary law. Secondary legal materials in the form of: books or literature relevant to the topic discussed, works from legal circles, research results and opinions from legal experts, legal journals and articles, and
- c. Tertiary legal materials, which are legal materials that provide clues and explanations for primary and secondary legal materials, such as dictionaries, encyclopedias, indexes, and so on (Waluyo, 2015).

### **Data Collection Methods**

This study uses a normative juridical approach, so the secondary data collection in this study is using the library research method . Regarding secondary data collection, Ronny Hanitijo Soemitro explained that literature studies are carried out to gain a broader understanding of research objects and problems as well as function as a support for primary data, on the other hand, literature studies are also used as a reference in analyzing existing data. According to Jonny Ibrahim, literature study is a way of collecting data using search of library materials. The method of data collection is by conducting an inventory of laws and regulations, literature books and documents which are then recorded based on relevance to the problem being studied.

### **Data Presentation Methods**

The results of this research are presented in the form of narrative texts, explained by Soerjono Soekanto that the results of the research are presented in the form of narrative texts, namely presenting data that has been obtained and then obtained in the description of narrative texts. The presentation of this narrative text is a description that is arranged systematically, logically and rationally, in the sense that the entire data obtained will be connected to each other according to the subject matter being researched, so that it is a complete unit.

### **Data Analysis Methods**

The data analysis in this study uses a qualitative normative method. Soerjono Soekanto and Sri Mamudji stated that normative law research is legal research that examines legal documents through a conceptual approach and comparison of legal norms. This approach is qualitative because it emphasizes more on the quality and interpretation of the law.

## **RESULTS AND DISCUSSION**

### **Notary Authority in Making Auction Minutes Deed**

Auctions, as a form of buying and selling transactions, have unique characteristics, namely they are carried out openly to the public with a bidding system. This definition underlines the principle of openness and competition in the buying and selling process carried out through auctions. Herodotus noted that auctions have existed since 500 BC in Babylon. Initially, auctions were used to sell private goods to public property. Over time, this practice developed into the primary method of transferring assets from public to private ownership, including in the form of large assets such as property, stocks, and antiques. Today, auctions not only have historical value, but also modern relevance as an important instrument in asset management.

The auction aims to create a fair and open mechanism for the transfer of assets. In a legal context, auctions are often used to meet the needs of legal execution, such as debt settlement or the implementation of court decisions. In addition, in the business world, auctions allow the owner of goods to get the best price for their assets. The basic principles underlying auctions are transparency, accountability, efficiency, and fair competition. This process is designed to provide legal certainty for all parties involved, so there is no room for manipulation or abuse of authority.

The legal framework of auctions in Indonesia has a long history that began with the implementation of *Venddu Reglement* (VR) in 1908. This regulation became the initial legal basis for the implementation of auctions in Indonesia. In modern developments, the government has adopted various additional rules, such as PMK Number 213/PMK.06/2020 which was updated with PMK Number 122/PMK/2023. This regulation includes provisions regarding auction procedures, the authority of auction officials, and the obligation to record auction minutes as authentic documents. With increasingly specific and detailed rules, auctions in Indonesia are managed in a more professional and transparent manner.

Auction officials play a central role in the auction process in Indonesia. They are responsible for ensuring that each auction is carried out in accordance with laws and regulations. Their authority includes holding auctions, making official announcements, determining qualified participants, and making auction minutes as official documents that have legal force. Auction officials are divided into two classes, namely class I and class II, with each having a different scope of duties. This regulation aims to ensure that every auction conducted has legal validity.

The conflict between the Notary Position Law (UUJN) and the *Vendu Reglement* arises because both have different arrangements regarding the authority to make auction minutes. The *Vendu Reglement*, as a special rule on auctions, stipulates that only auction officials are authorized to create auction minutes. Meanwhile, the UUJN gives authority to notaries to make authentic deeds, including auction minutes. The principle of *lex specialis derogat legi generali* becomes relevant, where special rules (*Vendu Reglement*) override general rules (UUJN) in the context of auctions. This shows the need for harmonization between the two rules to avoid conflicts of authority.

Notaries have an important role in the legal context in Indonesia, especially in the preparation of authentic documents. Article 15 of the UUJN gives the authority to the notary to make auction minutes, but this authority is limited to voluntary auctions. In a formal auction arranged by the *Vendu Reglement*, only the auction official is authorized to create the auction minutes. This limitation is important to ensure that the auction process is carried out in accordance with applicable legal rules, so as not to cause legal disputes in the future.

Auction minutes made by unauthorized parties, including notaries in certain contexts, may be considered legally defective. This can cause the deed to be null and void and has no evidentiary force. In addition, parties involved in the auction, such as buyers and sellers, may face legal risks, including lawsuits or claims for damages. Therefore, it is important for all parties to ensure that the auction minutes are made by the authorized officials in accordance with the applicable regulations.

Auctions in Indonesia are divided into three main types: execution auctions, compulsory non-execution auctions, and voluntary auctions. Execution auctions are carried out to implement court decisions or settle debts. Non-execution auctions must be carried out based on the provisions of the law, such as auctions of state-owned goods. Voluntary auctions, on the other hand, are carried out on the initiative of the owner of the goods without any legal coercion. This division helps ensure that each type of auction is carried out with appropriate procedures.

Execution auctions are one of the most complex types of auctions because they involve the implementation of court decisions. The procedure includes the determination of the goods to be auctioned, official announcements to the public, the implementation of the auction by authorized officials, to the recording of auction results in the auction minutes. This process is designed to provide justice for interested parties, such as creditors and debtors.

Non-executing and voluntary auctions provide flexibility for parties who want to sell their assets through an auction mechanism. Non-execution auctions are mandatory for state-owned or confiscated goods, while voluntary auctions include the sale of personal items, such as works of art or collectibles. These two types of auctions ensure that assets that are no longer in use can be used optimally.

The object of the auction includes various types of goods, both tangible and intangible. Tangible goods include property, vehicles, and equipment, while intangible goods include intellectual property rights, receivables, and securities. The diversity of these objects reflects the flexibility of the auction mechanism in accommodating various needs of the community.

The announcement of the auction is a crucial first step to ensure public participation. This process is carried out through print media, online, or official government platforms. Transparent announcements ensure that all parties have an equal opportunity to participate in the auction.

Auction minutes made by auction officials have the status of authentic deeds. This document provides legal certainty for all parties involved in the auction and can be used as a strong evidence tool in legal disputes.

Technological developments have brought significant changes in the conduct of auctions. The government has adopted an online auction system to expand access and improve efficiency. It also helps reduce administrative costs and speed up the auction process.

Technology plays a crucial role in the modernization of auctions. With the online auction, participants can participate in the auction from anywhere without having to be physically present. This not only increases participation, but also ensures transparency in the auction process.

### **The legal force of the Auction Minutes Deed made by the Notary as an Auction Officer and becomes evidence in the trial**

Evidence is everything used to prove a legal event in a trial. Its main function is to convince the judge of the truth of the legal event in question. Only evidence recognized by law is considered valid and has evidentiary value in court. According to M. Yahya Harahap, evidence recognized in Indonesia includes written evidence, witnesses, confessions, oaths, and instructions. Evidence beyond what is prescribed by law cannot be used in court, so it has no legal force.

The evidentiary stage in the trial is the most crucial part because it is the basis for the judge to make a decision. In this process, the postulates and evidence of the parties are tested to determine the law that will be applied in the case. R. Subekti emphasized that in civil cases, written evidence has a leading position. In everyday transactions such as buying and selling or debts, written documents are often prepared to deal with potential disputes in the future.

Achmad Ali divides the power of evidence into five: perfect, weak, partial, decisive, and resistance proof. Perfect evidence provides full legal certainty, while resistance evidence aims to weaken the opponent's proof. An auction is an open selling method with the process of

bidding prices to reach the highest or lowest value. The principles of auction include transparency, fairness, and legal certainty. The auction minutes become an authentic document that certifies the auction transaction.

The auction minutes are considered authentic evidence because they meet the requirements of Article 1868 of the Civil Code. This brochure provides legal certainty because it records all important events in the auction process, including the identity of the party and the item being auctioned. Auction minutes have the power of outward, formal, and material proof. External strength proves the authenticity of the document, formal force guarantees the validity of the auction process, and material strength ensures the contents of the minutes are considered correct by the judge.

According to PMK Number 213/PMK.06/2020, the auction minutes consist of three parts: head, body, and legs. This document must be made in Indonesian, numbered sequentially, and signed by the auction official. As evidence, auction minutes function to provide legal certainty. This document is used in a variety of contexts, such as land renaming, the elimination of state assets, and the implementation of court decisions. Auction minutes are considered authentic if they meet the elements prescribed by law, i.e. they are made by authorized public officials, in a regulated form, and in an appropriate jurisdiction.

The fulfillment of these authentic elements ensures that the auction minutes can be used as valid evidence in court. This document also protects the rights of buyers, sellers, and other related parties. The auction official is responsible for compiling the auction minutes with a clear format and complete content. They are obliged to explain the contents of the minutes to those who do not understand them, to ensure that there are no disagreements. Articles 1868 and 1870 of the Civil Code affirm that authentic deeds provide full evidentiary power, unless it can be proven otherwise. This makes the auction minutes a legally recognized document.

Auction minutes made by unauthorized or procedural parties may be considered legally defective. The document loses its status as an authentic deed and cannot be used as evidence. In addition to the auction minutes, auction officials are also required to make minuta minutes as state archives documents. This minuta notes additional details that may emerge after the closing of the main treatise. Auction minutes are used in various contexts, such as the process of changing the name of land, deleting inventory, proving the execution of auctions, and as a basis for recording ownership rights.

The format of the minutes must meet the standards that have been determined. This includes clearly listing the date, quantity, and name of the item to prevent misinterpretation. Auction officials must ensure that the auction minutes do not have any shortcomings, both in terms of content and format. They must also read the full minutes to the parties present to ensure understanding. As an authentic deed, auction minutes have an advantage in proving the law. This document provides legal certainty to all parties involved and becomes the basis for resolving legal disputes in the future.

## **CONCLUSION**

The authority of the notary in making the auction minutes deed in his position as an auction official is in accordance with the applicable provisions based on the *Vendu Reglement*, PMK Number 213/PMK.06/2020 as updated by PMK Number 122/PMK.06/2023, and PMK Number 189/PMK.06/2017. The regulation expressly gives authority to auction officials, the auction officials themselves are public officials who are given special authority to carry out auctions. The auction officials themselves are divided into 2, namely class I auction officials and class II auction officials, to make auction minutes, and limit the making of the deed only by officials who are officially appointed by the state. To become a class II auction official and to have the authority to make an auction minutes deed in PMK Number 189/PMK.06/2017 concerning Class II auction officials in Article 2 Number (3) the appointment of class II auction officials is carried out in stages; selection, work practice (internship), appointment, taking the

oath and inauguration of positions. Article 4 Number (2) explains the requirements, requirements as referred to have a minimum education of bachelor (S1) or diploma IV (D4), preferably in the field of law or management/accounting economics and declared passed. Auction minutes deeds made by parties other than auction officials, including notaries, are considered invalid because they are contrary to the *Vendu Reglement*. In the legal system in Indonesia, the principle of *lex specialis derogat legi generali* is still valid. However, Article 15 Paragraph (2) point (g) of the Notary Office Law (UUJN) allows notaries to make auction minutes deeds, as long as it is carried out in accordance with the applicable legal provisions. The granting of this authority is a form of attribution, which makes the notary as a state official authorized to make authentic deeds, including auction minutes deeds. In practice, there is a difference in authority between auction officials and notaries that needs to be understood properly so that there is no violation of the law. Auction officials have special authority based on auction-related regulations, while notaries are given additional authority by the UUJN to make auction minutes deeds in certain contexts.

The legal force of the auction minutes deed made by the notary as authentic evidence at the trial in his position as an auction official Every auction implementation must be made an auction minutes by the auction official. Article 1 Number (34) Auction minutes are minutes of auction implementation made by auction officials which are authentic deeds and have perfect evidentiary power. Article 1868 of the Civil Code An authentic deed is a deed whose form is determined by law, made by or before a public official authorized for it, in the place where the deed is made. An authentic deed is a deed made by an authorized official, in this case a notary as an auction official, in accordance with the procedures established by law. Authentic deeds have a very strong evidentiary power according to the law, that is, they are considered correct and have full evidentiary power for what is written in them, as long as it is not proven otherwise. Therefore, the auction minutes deed made by the notary in his capacity as an auction official can be accepted as valid evidence in court.

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