

## The Preparation of Auction Minutes Deed Related to the Withheld Auction Status in Implementation of Voluntary Non-Execution Auction

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**ABSTRACT:** Types of auctions based on the Regulation of the Minister of Finance of the Indonesian Republic Number 122 Year 2023 concerning Auction Implementation Guidelines, namely Class II Auction Officials are given the authority for Voluntary Non-Execution auctions. The auction minutes contain all events that occur in the auction sales process as proof of authentication of the auction implementation as regulated in Article 35 of the *Vendu Reglement* and Article 1 Number 34 of the PMK 122/2023. The deed of auction minutes based on Article 98 letter d of PMK 122/2023 states that it is mandatory to include withheld auctions in the Auction minutes, however, it is different from PMK 86/2024 where regarding withheld auctions, there is not find the Article that regulates of withheld auctions so that it is not mandatory to include in the deed of auction minutes. Regarding this, the auction official still makes the auction minutes as detailed as possible in accordance with Article 98 letter d of PMK 122/2023, even though PMK 86/2024 is a regulation that specifically regulates auction minutes. Regarding the status of the auction being held in the auction minutes, this has legal consequences for the seller, auction buyer and Auctioneer Official Class II.

**KEYWORDS:** *Auction, Auction Minutes, Class II Auction Officials, Auction Seller, Withheld Auction.*

### I. INTRODUCTION

Notary as a public official, is one of the state organs equipped with legal authority to provide public services to the community, and specifically has the authority to make authentic deeds. Notarial deeds do not require other evidence in their proof, and notarial deeds are perfect evidence under legal acts in the civil sector (N.G. Yudara, 2006).

The expansion of authority can be seen from the provisions of Article 15 Paragraph (2) goods f and g of Law Number 2 Year 2014 Amendment to the Notary Position Law, which states that notaries can make deeds related to land and deeds of auction minutes are one of the powers of notaries regulated by laws and regulations. Some of the expansion of the authority of notaries in this Article, including the authority regulated under the *Vendu Reglement* (Auction Regulation) and *Vendu Instructie* (Auction Instruction), states that notaries can be appointed as Class II Auction Officials.

The authority to make a deed of auction minutes by a notary is allowed if the notary has been appointed and has the authority as a class II auction official. Some of the notary's authority as a Class II Auction Officer is to have the authority to carry out voluntary non-execution auctions at the request of the Auction Hall or the Seller / Owner of the auctioned goods. Auction as a legal institution is carried out openly and there is no priority among auction buyers or auction applicants. That is, they are given the same rights and obligations (Sutan Remy Sjahdeini, 2020).

The sale of goods by auction is carried out by prospective auction buyers by submitting prices that they interpret according to their own prices, so that a bargaining mechanism is formed at one price (Suhendi Hendi, 2002). In the auction system, each prospective buyer competes to increase the price offered until the highest price is obtained from the auction winner, and the auction has been closed (the auction winner has been determined), then no one can bid for the goods anymore. Buying and selling with this auction system is not prohibited, because each prospective buyer who competes to raise the bid for the selling price of the goods is really interested in buying the goods.

According to the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Guidelines for the Implementation of Auctions (PMK 122/2023), one of them is a voluntary non-execution auction. This auction is used to auction personal property, individuals, legal entities, and business entities voluntarily without confiscation and legal execution. The sale of goods by auction is regulated in Article 1 Number 1 in PMK 122/2023 which states that an auction is a sale of goods open

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to the public with written and/or oral price offers that increase or decrease to reach the highest price, which is preceded by an auction announcement.

The advantages of selling goods by auction are that the auction buyer intends to get a cheaper price than the market price in general, and the seller will more quickly get a buyer for the goods to be auctioned. Types of auctions are distinguished based on the type of goods sold and the seller's knowledge about the goods to be auctioned. The nature of the auction in terms of the cause of the goods being auctioned is distinguished between Execution Auctions and Non-execution Auctions.

According to the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Guidelines for the Implementation of Auctions, Article 49 states that an Auction Officer is a person who, based on statutory regulations, is given special authority to carry out the sale of goods by auction. Notaries can have other authorities and serve as Class II Auction Officers related to the implementation of voluntary non-execution auctions, which is stated in Article 1 point 3 of the Decree of the Minister of Finance Number 175 of 2010 concerning Class II Auction Officers amended by the Decree of the Minister of Finance Number 189 of 2017.

The minutes of the auction are the authentic deed and become evidence that is considered true and does not require the addition of other documents as evidence. The minutes of the auction contain all events that occur in the procession of sales by auction as authentic evidence of the implementation of the auction as stipulated in Article 1 point 34 of the Minister of Finance Regulation Number 122 of 2023 concerning Guidelines for the Implementation of Auctions, which among other things reads that the minutes of the implementation of the auction made by the Auction Officer have perfect evidentiary power.

A deed that can be declared as an authentic deed is a deed that fulfils the requirements in Article 1868 of the Civil Code, which reads that an authentic deed is a deed in the form prescribed by law made by or before a public official authorised to do so in the place where the deed is made. This relates to the deed of minutes of auction which is an authentic deed that has perfect evidentiary value. In some cases, there are conditions where the auction conducted by the auction officer is called the Retained Auction status.

Retained Auction is a situation that often occurs in auctions, but the Auction Officer in making a deed of minutes of auction in the implementation of voluntary non-execution auctions, some regulations are conflict with each other. The deed of minutes of auction based on Article 98 letter d of PMK 122/2023 states that it is mandatory to make Minutes of Auction for retained auctions, this is different from the Minister of Finance Regulation Number 86 of 2024 (hereinafter referred to as PMK 86/2024) where related to retained auctions, there is no article governing retained auctions so that it is not mandatory to contain in the deed of minutes of auction by the provisions of PMK 86/2024.

## **II. RESEARCH METHOD**

This research is a type of normative legal research because this research departs from the conflict of norms in Article 98 letter d of PMK 122/2023 with Article 2 paragraph (2) of PMK 86/2024 on the substance of the auction minutes deed under study. The conflict in this research relates to the absence of regulation on the minutes of auction for voluntary non-execution auctions related to the status of the auction being withheld whether it is contained in the Minutes of Auction or not, thus causing uncertainty and dualism of thought towards the making of the deed of minutes of voluntary non-execution auction carried out by the Auction Officer.

The research approach employed in this research is the statute approach. This involves examining all statutory regulations relevant to the issues discussed by the author and studying the existence, consistency, and alignment between one law and another. The results serve as the basis for constructing arguments to resolve the legal problems identified in the research (Syamsudin, 2007).

## **III. RESULTS AND DISCUSSION**

### **A. Harmonisation of Arrangements for Making Deed of Minutes of Auction related to Retained Auction Status**

Auction is the sale of goods open to the public with written or oral price offers that are increasing or decreasing to reach the highest price, preceded by an auction announcement (Satrya, H, 2017). According to Article 26 of the Regulation of the Minister of Finance Number 122 of 2023, the auction must be conducted in front of an auction official as long as the law does not specify otherwise. This means that if it is not specifically determined in the Law, every auction must be carried out in front of an auction official.

Reporting on the implementation of the auction process, the final product of an auction official is required to make auction minutes (Marziah, A., Rahayu, S. W., & Jauhari, 2019). The obligation regarding the minutes of the auction on the procedures for implementing the auction is regulated in Article 95 of the Minister of Finance Regulation Number 122 of 2023 that an auction official is required to make minutes of the auction, the term minutes of the auction is what is called today as minutes of the auction,

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*this is a basis for authenticating the journey and the process and results of the auction, the minutes of the auction contain all activities and events that occur at the auction.*

*Minutes of Auction in the implementation of voluntary non-execution auction also involves the act of buying and selling because the goods being auctioned can be sold and the transfer of rights through the sale and purchase procedures that apply according to the law. If the goods are not sold, the deed of Minutes Auction will be turned into Minutes of Auction, following the provisions of Article 35 Vendu Reglement. The strength of an authentic deed as a means of proof, the evidentiary power of the Deed of Minutes of Auction is perfect evidentiary power, which can be proven from the strength of physical, formal, and material evidence following Article 1868 of the Civil Code.*

*Based on Article 4 of PMK 86 of 2024 concerning Minutes of Auction, it states that the Minutes of Auction consists of and is divided into three parts, namely the head of the deed, the body of the deed and the foot of the deed, which is called the anatomy of the Deed of Minutes of Auction. The anatomy of the Deed of Minutes of Auction consists of three parts, namely:*

- 1. The Head section of Minutes of Auction as referred to in Article 4, paragraph (3),*
- 2. The Body part of Minutes of Auction as referred to in Article 4, paragraph (4), and*
- 3. The foot part of the Minutes of Auction as referred to in Article 4, paragraph (5).*

*In the body of the deed, the substance of the premise based on PMK 86/2024 is different from PMK 122/2023. PMK 122/2023 is more detailed and contains all auction results of the Auction Officer in the Deed of Minutes of Auction. The status of auction results according to PMK 122/2023 consists of three parts, namely as follows:*

- a. The Successful Auction sold;*
- b. The Retained Auction; and*
- c. No Interest Member.*

*Retained auction status according to Article 1, number 16 of PMK 122/2023 is an auction status where it is referred to as an auction where there is no buyer's appointment because the highest bid has not yet reached the price desired by the seller. If there is a status of auction on hold, according to the provisions of Article 1 number 17 of PMK 122/2023, a re-auction must be held, this will adjust whether the price submitted by the seller will be reduced according to the last request of the auction bidder, or the seller adjusts the lowest price from the opening auction price submitted by the auction bidder. The auction can also be cancelled because the seller or bidder discontinues their interest in the auctioned item due to other factors. The status of the auction on hold is a status that hangs for the buyer and the auction bidder, so that the decision takes time until a re-auction is held.*

*The classification of auction results according to the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Guidelines for the Implementation of Auctions states that the auction results are divided into three categories. Based on PMK 122/2023, it is explained in Article 98 letter d, which reads "the number of items retained, written with numbers and letters spelled out." This is something that is always carried out and written, and becomes a standard in the deed of minutes of the auction. The deed of minutes of auction contains the status of the auction on hold, which is one of the status types of the auction results. This kind of auction often occurs because basically the auction bidder knows the market price or the average price of the auctioned item in advance, so he bids a lower price.*

*Norm conflicts that occur between PMK 122/2023 and PMK 86/2024 have juridical consequences that the formulation of Article 98 letter d of PMK 122/2023 states that it is obligatory to make Minutes of Auction for detained auctions in contrast to Minister of Finance Regulation No. 86 of 2024 which is not required to make minutes of auction related to the status of detained goods, this can lead to two views on the authority of Class II Auction Officers with the preparation of minutes of auction, thus raising many questions related to minutes of auction by Class II Auction Officers in the implementation of voluntary non-execution auctions. The norm conflict causes overlapping regulations and creates juridical uncertainty. The resolution of the conflict of norms that occurs with the status of a retained auction, can be used the principle of derogation in resolving this case.*

*Conflict of norms in the positive legal system is an issue that is always interesting to discuss, especially in countries that make legislation (legislation/law and regulation) the main source of formal law. Norm conflicts often occur in the positive legal system because the substance of law is complex and dynamic. It is complex because the substance of law covers a wide scope of regulation concerning all aspects of state life. It is dynamic because the substance of law is required to always be able to adjust to the development of the legal needs of the community. Norm conflicts can occur between lower regulations and higher regulations (vertical), between equal regulations (horizontal), or even between norms in one regulatory instrument itself (internal). One way that is commonly practised in overcoming this problem is by applying what the author refers to in this paper as the principle of norm conflict, namely the principles of *lex superior derogat legi inferiori*, *lex posterior derogat legi priori*, and *lex specialis derogat legi generali*.*

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Before discussing the norm conflict principle, it is necessary first to understand the meaning of the word “*derogat*” (derogation), which is used as a predicate in each rule or proposition in the norm conflict principle, namely *lex superior derogat legi priori*, *lex specialis derogat legi generali*, and *lex posterior derogat legi priori*. This principle uses the Latin language, as used by many other popular principles and legal terms. This is because historically, in the history of legal development in the world, Latin was used as a lingua franca to overcome the problem of language differences at that time.

The principle of *lex specialis derogat legi generali* means that special laws (norms/legal rules) negate the validity of general laws. Specificity takes precedence over generality, and there is no dispute that everything relating to the particular is of utmost importance. The rationale for this preference for special laws is that special laws are certainly more relevant and compatible, and tailored to the needs of specific laws and subjects that cannot be reached by general laws.

The application of the *lex specialis* principle is not an easy matter, considering that there is no definite measure to determine absolutely that a rule of law is special to other general rules of law. The general-specific relationship between a regulation and other regulations is relative. Sometimes a regulation is *lex specialis*, but concerning other regulations, it can also be *lex generalis*. However, determining the *lex specialis* in a case of norm conflict is not impossible. Legal science is not an exact science that always has a right or wrong answer to every question. Truth in legal science is not absolute, but the search for rational and acceptable answers can be pursued by using a systematic legal logic approach.

Class II Auction Officer for exercising his authority to make a deed of auction minutes, it is more detailed and complete in practice, following the provisions of PMK 122/2023, which is related to the principle of *lex specialis derogat legi generali*. The relationship between general and specific regulations is complementary. General regulations that are relevant to the object of special regulation continue to apply as long as they are not otherwise regulated in special regulations, which is general in the general regulations.

The provisions often used by Class II Auction Officers in exercising their authority related to auction minutes are to make all auction results, namely, containing auctions that are successfully sold, and the auction status of goods that are being held. This is relevant to the principle of specialists, because PMK 122/2023 is considered to more specifically regulate auction minutes of voluntary non-execution auctions by Class II Auction Officers, which are more complete.

### **B. Legal Consequences for Auction Sellers, Auction Buyers and Auction Officers related to the withheld auction status in the Deed of Auction Minutes**

The implementation of the auction consists of an auction subject and an auction object (goods), the object of the auction based on PMK 122/2023 can be in the form of rights and objects that can be sold by auction. The definition of goods is one of the backgrounds of the right to enjoy being used as an auction object. Based on the regulation, it is also explained about the definition of the right to enjoy goods, which is a right that authorises the enjoyment or use of goods belonging to other parties within a certain period of time by paying a certain amount of money without changing the status of ownership.

The implementation of this auction aims to carry out the duties and functions of the Directorate General of State Assets as an asset manager and revenue centre (DJKN). *DJKN's function as an asset manager means that DJKN is obliged to always maximise the function of assets which is one of the resources in increasing state revenue and the quality of public services. This function can be measured based on the value and type of assets that can be utilised to obtain other state revenues from the management of these assets. On the other hand, the revenue centre is intended to optimise revenue through the management of state assets. DJKN as one of the revenue centres has the authority as a regulator to formulate stronger policies so that asset management can be implemented properly so that it contributes to State revenue.*

*The regulation of auction seller is regulated in Article 1 number 23 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 86 of 2024, the auction seller before submitting his goods to be sold and become an object of auction in the auction, first administratively register the goods with the DJKN or auction hall. The provision of goods documents is accompanied by the determination of the lowest auction price that will be opened for the auction object unit. Before the selection of goods into an auction object, which is carried out by the auction official following the auction administration, if the item has become an auction object, it will automatically be included in the auction.*

*Article 32 of PMK 122/2023 regulates the auction application, stating that the auction application is submitted in writing by the seller to the auction organiser according to the type of auction accompanied by the required documents. The auction submission documents submitted by the auction seller according to Article 33, must first be scrutinised from the auction subject and the auction object by the auction official, both the completeness and suitability of the auction object and the legality of the object and subject of the proposed auction.*

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Legal protection for auction sellers is one of the most important things to anticipate the legal consequences that arise. The form of legal protection for auction sellers is preventive and repressive. Preventive forms of legal protection include registration statements consisting of all information that must be disclosed to the public. Each party that intends to raise funds through a public offering is required to first submit a registration statement to the auction hall, and continuously disclose information disclosure which must continue to submit information continuously after the registration statement is declared effective. Repressive forms of legal protection in open auctions are carried out through the provision of re-auctions to achieve the price desired by the auction seller, if the auction of the auction object has not found the minimum price proposed by the auction seller.

Withheld auction status in open auction practice is caused by the highest bid price not reaching the opening price in the auction. The provisions on the withheld auction status are regulated in the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Guidelines for the Implementation of Auctions, the consequences of this provision have legal and economic consequences, this is because the auction seller can experience losses in the form of no economic income on the results of the auction. After all, the auctioned item has a status on hold and takes a longer time, between 5 to 7 working days to schedule a re-auction, the end it will have an impact on disrupting economic circulation between the auction seller and the auction bidder because of the re-auction that requires additional time.

The legal settlement of the re-auction takes more time has an impact on the economic problems that may be experienced by the auction seller. Rescheduling the auction takes time and can have an impact on how long it takes to generate a certain amount of money from the sale of the auction object through the auction. The auction bidder is not necessarily present to become an auction bidder in the re-auction to find the auction object, because interested people will consider the time and costs incurred to wait for the re-auction and the certainty about the rescheduling of the auction object.

Efforts to provide legal protection for the auction subject and the object of the auction are made by providing legal certainty about the re-auction between 5 to 7 working days related to the open auction with the withheld auction status, and can provide legal certainty about how the mechanism of the withheld auction status will be re-auctioned. It is evidence of the auction in protecting the rights of the auction seller in providing benefits for the owner of the auction object with the auction buyer.

The type of legal protection for auction buyers in the implementation of the auction is regulated by PMK 122/2023, namely the re-auction of the auction object by the previous auction bidder who made an offer, with the withheld auction status. The re-auction can make the previous auction bidder a special auction bidder in the next auction, so that he can carry out the previously agreed offer with the auction seller. The legal consequences of the status of the withheld auction against the auction buyer can cause losses, both material and immaterial. Although the auction seller's security deposit will still be returned 100% by the Auction Officer if the auction is cancelled, in terms of the efficiency of purchasing the auction, it is calculated long and confusing for the auction buyer if he has to return to the re-auction.

The legal consequences arising from the re-auction for the auction buyer are a guarantee for the re-bidder in providing another opportunity. The Government as a policy maker must be present and as the organizer of government affairs must be based on applicable law (*wetmatigheid van bestuur*). The Auction Officer must take and carry out all auction procedures and procedures as a form of legal protection for the Auction Buyer that the auction has been carried out following the applicable laws and regulations on auctions. The Auction Officer guarantees and ensures that the documents are fulfilled to protect the interests of the parties. Thus, the Auction Officer does not only witnesses the auction process, but also plays an active role in checking the validity of the auction files, organizing sales fairly, efficiently, openly, and accountably and also making authentic deeds in the form of auction minutes.

Legal protection efforts from the government or other state agencies, with the aim of achieving justice in all things. Legal protection requires the creation of general regulations or generally applicable legal rules in order to create a safe and peaceful atmosphere in the life of society, so the rules in question must be enforced and implemented firmly. The existence of various preventive and repressive efforts carried out by both society and government, such as providing protection/supervision, or adequate law, fair examination and trial processes and so on are one manifestation of human rights protection which results in the creation of legal protection for the dignity and honor of every human being as a legal subject in the life of society and state.

Government actions in various legal protection efforts, such as the creation of laws and regulations, policy regulations, plans, and government legal decisions, have certain legal consequences, namely the existence of a decision that can be positive or negative depending on the consequences it causes. The losses suffered by the Auction Buyer are not being able to utilize the auction object due to the postponement and cancellation of the auction and the funds that have been spent to purchase and other costs related to the auction which are not small in amount. so that because of this, it results in the absence of legal certainty and legal protection for the Auction Buyer as a Buyer in good faith.



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The legal consequences that arise also become a loss for the Auction Officer, because in essence if there has been no transaction or rescheduling of the auction. The auction officer has no auction fee income for the previous auction, and must wait for the next rescheduling, so it takes time and a schedule that is emptied for the rescheduling to carry out his authority as a Class II Auction Office.

### IV. CONCLUSIONS

Based on the discussion of the main issues outlined above, the researcher can draw the following conclusions:

- 1) Auction Regulations are the answer to the Harmonization of the regulation of the authority to Make Auction Minutes based on the principle of *lex specialist derogate legi generalist*. The legal consequence that the formulation of Article 98 letter d of the Regulation of the Minister of Finance Number 122 of 2023 states that it is mandatory to make Auction Minutes for withheld auctions, in contrast to the Regulation of the Minister of Finance Number 86 of 2024 which does not require making auction minutes related to the status of withheld goods, this can give rise to two views on the authority of the Class II Auction Officer concerning making auction minutes. Auction Officer II because of his habit of making auction minutes for auction results consisting of the Status of the auction being successfully auctioned, the Status of the auction being withheld and the Auction without any interested parties (TAP). The Auction Minutes of the Class II Auction Officer under Article 98 Letter d of PMK 122/2023, which contains the status of the auction being withheld. In an auction, the Auction Minutes which also function as perfect evidence, require completeness and detail regarding the auction process that has been carried out and stated in the auction minutes.
- 2) The legal consequences that arise for the seller, the Auction buyer and the Class II Auction Officer related to the status of the auction being held in the Auction Minutes Deed are indeed not stated in detail, but auction objects that have economic value require legal certainty regarding the certainty of the implementation of the re-auction related to the status of the auction being held. This is a legal protection against the legal consequences that may occur for the auction seller and buyer in determining the auction object that is in the re-auction process. The legal consequences that also arise for the Class II Auction Officer are the absence of economic income for the Auction Officer and the wasted time for the re-auction.

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