

Legal Force of Treatise of Auction Deed on Electronic Auction Implementation which Made by a Notary as a Class II of Auction Officer in Civil Law

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Abstract –The article analyzes the legal force of treatise of an electronic auction deed compared to conventional auction deed and ideality of regulation the legal force of electronic proof of treatise of auction deed made by the notary in civil law action. The approach used by the authors is the statute approach and the case approach. The technique of collecting legal materials is through literature study. The results of this study concluded that the conventional auctioneering auctions were read by the Auction Officers to the auction participants, but in contrast to the electronic treatise of auction deed. The head of the auction deed through the internet is only broadcast on the auction application that has been provided before the auction begins without any reading. This is regulated in Article 13 paragraph (1) of the Regulation of the Minister of Finance Number 90/PMK.06/2016. The auction deed has the function of determining the validity of legal actions, which are an agreement between the seller and the buyer of the auction in written form. So that, the auction deed must meet the elements of an authentic deed as regulated by Articles 1868 and 1870 of the Civil Code. Referring to Article 1868 of the Civil Code, if applied in the auction deed, the auction deed should meet the following elements: (1) made before or by the Auction Officer (2) made under the authority of the Auction Officer (4) made in the work area Notary.

Keywords — Auction Deed, Legal Force, Electronic Auction.

I. INTRODUCTION

Auction or sale in public is a sale of goods carried out in front of the general public at a price offered to buyers increasing every time.^[1] In general, an auction is a means to bring together sellers and buyers with the aim of determining a fair price for an item.^[2] Based on the provisions of Article 1 of the VenduReglement Ordinance of February 28, 1908: Definition of "public sale" (*open bar ever kopingan*) is an auction and sale of goods, which is held in public with an increasing price offer, with the approval of a decreasing price or price registration or where people who are invited or

previously given know about an auction or sale, or the opportunity given to people who are auctioning or buying to bid, agree on a price or list.

Based on Article 1 paragraph (1) of the Regulation of the Minister of Finance or in Bahasa Indonesia, it called as Peraturan Menteri Keuangan (PMK) Number: 27/PMK.06/2016 concerning Guidelines of Auction Implementation, which stated that: "An auction is the sale of goods that are open to the public with a written and/or verbal price offer that is increasing or decreasing to reach the highest price, which is preceded by the Announcement of the Auction". The auction can be conducted by using the internet connection, as regulated in Minister of Finance Number: 90/PMK.06/2016 concerning Guidelines for Conducting Auctions with Written Bids without the Presence of Bidders through the Internet, Article 1 paragraph (1) which stated, "Auctions with Written Bids without the presence of bidders through the internet, hereinafter referred to as "Electronic Auction Deed" which has a definition as sales of goods that are open to the public with a written price offer without the presence of bidders to achieve the highest price, which is carried out through the form of electronic auction deed.

The implementation of auction through the electronic auction occurs due to the demands of the development of information technology and the pull on legal globalization (model law, uniform law, the rules of international organizations)^[3] increasingly bring changes in various aspects of life. The Internet has quite cheap costs, accessible every day for a full 24 hours without stopping, and the availability of adequate supporting infrastructure such as online payments. Internet access is getting easier, causing many business actors to switch from conventional auction to electronic auction (e-auction), which uses the internet. Recent advances in client-server, web-server and networking technologies have made it possible to hold an electronic auction. The popularity of such an auction has grown tremendously in recent years, providing a new impetus for studying and analyzing auctions.^[4]

Implementation of the auction as referred to the Minister of Finance Number: 90/PMK.06/2016, an official



report of the auction deed is made, which is an authentic deed made by the Auction Officer at the auction office. The authentic deed is the authority of the Auction Officer. At the same time, there is a provision that the authentic deed is part of the authority of the Notary as regulated in Law Number 30 of 2004 concerning Notary Positions as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, (hereinafter abbreviated as Law on Notary Positions). The notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this law or based on other laws.

Article 15 paragraph (1) of the Notary Position Law stated that "Notary has the authority to make an authentic deed regarding all actions, agreements, and stipulations required by laws and/or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keep the deed, provide Grosse, copies, and quotations of the deed, as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law". Article 15 paragraph (2) determines that in addition to the authority as referred to in paragraph (1), Notary is also authorized to (i) ratify the signature and determine the certainty of the date of the letter under the hand by registering it in a special book; (ii) book letters under the hand by registering in a special book; (iii) make a copy of the original handwritten letter in the form of a copy containing the description as written and described in the letter concerned; (iv) validate the compatibility of the photocopy with the original letter; (v) provide legal counseling in connection with the making of the deed; (vi) make a deed related to land, or (vii) make a deed of minutes of the auction.

Existence the authority given to Notary in the process of auction deed as stated in Article 15 paragraph (2) letter g of the Notary Position Law, provides flexibility over the authority of the notary in carrying out his position as a Public Official in which the Notary can make auction deed. The granting of the authority to make the auction deed certainly has an impact on the reduction of the authority and function of the Auction Officer at the State Property and Auction Service Office, in Bahasa Indonesia, it called as "Kantor Pelayanan Kekayaan Negara dan Lelang" or (KPKNL) as auctioneer based on the Auction Regulations (*Vendu Reglement*) and Auction Instructions (*Vendu Instructie*).

The existence of the Minister of finance number 160/PMK.06/2013 concerning Amendments to the Regulation of the Minister of Finance Number 176/PMK.06/2010 concerning Auction Halls, which stated that national and foreign private parties, including State-Owned Enterprises (regional), are given the same opportunity to obtain conducting business activities in the field of auction through the Auction Board, in the form of a Limited Liability Company.^[5] Referring to Article 3 of the Regulation of the Minister of Finance Number 159/PMK.06/2013, regarding the Amendment to the

Regulation of the Minister of Finance Number 175/PMK.06/2010, concerning the Class II Auction Officer, Notary may be appointed as an Auction Officer who has the authority to make the auction deed.

Regarding the validity of treatise of auction deed, DwiNurul Malamia, in his research entitled: "*Kajian Hukum Kekuatan Akta Risalah Lelang yang Dibuak Oleh Notaris Sebagai Pejabat Lelang Kelas II dalam Perkara Perdata*", stated that the auction deed is an authentic deed with the type of *Relaas Akte* (Official Deed). The auction deed can be said to be an authentic deed in a civil case if it fulfills the provisions of Article 1868 of the Civil Code and Article 165 HIR/285 RBG, namely: (1) Made by a Public Official appointed by the government. Class II of Auction Officer is a General Officer appointed by the Government, namely by the Director-General on behalf of the Minister of Finance, who is given the right to make the auction deed. (2) The form of the deed has been determined in the law. The form of the auction deed has been determined in the *Vendu Reglement* and Regulation of the Minister of Finance No.106/PMK.06/2013 concerning Guidelines of Auction Implementation. (3) Each Auction Officer has a certain working area, namely in accordance with the work area of the State Assets and Auction Service Office. In this case, the Class II of Auction Officers domiciled in accordance with the area of his appointment.^[6]

Based on that descriptions, it can be stated that Notary is a public official who is authorized to make an authentic deed, including the minutes of the auction. In line with the times, auctions are carried out via the internet connection, so this has an impact on the process of making the auction deed. Observing various discourses, this research is focused on examining the legal force of treatise of an electronic auction deed and the comparison with the legal force of a conventional auction deed by Notary as a Class II of Auction Officer if the auction winner defaults. In addition, analyzing the ideals of regulation, the legal force of proof of an electronic auction deed which made by Notary as a Class II of Auction Officer in Civil Law.

This article has novelty aspects compared to previous articles. The novelty stands in the object of research; the object in this study focuses on the auction deed by using the internet connection, which includes: the legal force of an electronic auction deed in the event of a contested auction execution and the process of publishing the auctions deed both conventionally and electronically, some of the advantages and disadvantages. This research problem needs to be formulated as follows the legal force of an electronic auction deed by Notary as Class II of Auction Officer if the auction winner is in default and ideality of regulation the legal force of electronic proof of treatise of auction deed made by Notary in Civil Law.

II. RESEARCH METHOD

Legal research compiled by the author is normative or doctrinal legal research. Doctrinal research is used to study

the application of the rules or norms in positive law.^[7] Doctrinal legal research is a process to find legal rules, legal principles, and legal doctrines to overcome legal problems faced by examining literature that focuses on the analysis process.^[8] Normative legal research has a tendency to imitate law as a prescriptive discipline where we see the law from the point of view of norms such as legal principles, legal systematics, vertical and horizontal synchronization, legal comparisons, and legal history. Legal research conducted by the author uses a statutory approach and a conceptual approach. The results of this legal research are to determine the legal force of an electronic auction deed by Notary as Class II of Auction Officer if the auction winner is in default and ideality of regulation the legal force of electronic proof of treatise of auction deed made by Notary in Civil Law.

III. RESEARCH RESULT

A. The legal force of the electronic auction deed and the comparison with the conventional auction deed by Notary as Class II of Auction Officer if the Auction Winner is in default

Basically, every auction must be carried out by and/or in front of the Auction Officer, unless otherwise stipulated by law or government regulation. The obligation or obligation for implementation to be carried out by and/or in the presence of the Auction Officer is further emphasized in Article 2 of the Regulation of the Minister of Finance Number 27/PMK.06/2016, which states that "Every auction must be carried out by and/or in the presence of the Auction Officer, except determined otherwise by Law or Government Regulation."

Auction deed is the official documents from the course of public sales or auctions, which are arranged regularly and accounted for by the Auction Officer and the parties (seller and buyer) so that the implementation of the auction is referred to in it is binding. The explanation refers to the provisions of the *Vendu Reglement* (VR) Article 35, which states: for each general sale made by the auctioneer or his proxies, during the sale, for each day of the auction or sale, a separate report must be made. Based on the Regulation of the Minister of Finance Number 106/PMK.06/2013 concerning Guidelines of Auction Implementation Article 1 Number 32 states that: Auction deed is the implementation of auction deed which made by the Auction Officer which is an authentic deed and has perfect evidentiary power.

Based on Articles 1868 and 1870 of the Civil Code, it is stated that the Auction Deed must find the elements of an authentic deed. The elements in the auction deed in accordance with Article 1868 of the Civil Code are: (1) Making auction deed is carried out before or by the Auction Officer (2). The Auction Officer who makes the auction deed has the authority. (3). Making the Deed that he made (Class II of Auction Officer is authorized to make auction deed and types of Voluntary Auctions). (4). When the deed was made (still active as Auction Officer or not). (5). Where the deed

was made (related to the area of office) (for whom the deed was made (for the benefit of the auction service user).

Based on Article 3 number (2) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016 concerning Guidelines of Auction Implementation, it is stated that "Every auction is made auction deed", in the case of auctions by using the internet connections, the valid document of the electronic auction deed is regulated based on Article 1 point 4 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 (*State Gazette* Number 58, Supplement to the *State Gazette* Number 4843) concerning Electronic Information and Transactions states that "Electronic Documents are any electronic information are made, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms, which can be seen, displayed, and/or heard through a Computer or Electronic System, including but not limited to writing, sound, pictures, maps, designs, photos or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or can be understood by people who are able to make auction deed as listed in article understand it".

Guided by UNCITRAL (United Nations Commissions On International Trade Law) Model Law On Electronic Commerce, auction deed by using the internet connection, is an electronic document that must be accepted as valid and cannot be rejected solely on the basis of the consideration that the data was created and transmitted electronically^[9]. Based on the opinion of Michael Chissick and Akistair Kelman, the electronic auction deed made by the Notary as the auction official is Derived Evidence, namely evidence that combines real evidence with the information provided by humans to a computer with the aim of form a combined data.

According to Hikmahanto Juwana, documents on electronic commercial transactions (e-commerce) are legally valid and binding when the buyer clicks the sent button, and in this case, the buyer is deemed to have agreed and agreed to the terms and conditions stated in the offer.^[10] Thus, the electronic auction deed made by the notary is legal evidence.

In the case of an electronic auction deed, if the auction deed has been published, it means that the parties have agreed on the auction transaction. Thus, the electronic auction deed transaction has bound and gave birth to the rights and obligations of the parties to the agreement. With the agreement, the winner of the electronic auction is responsible for not fulfilling what was promised so that the winner of the electronic auction deed can be declared in default. If the auctioneer defaults either intentionally or due to negligence, then the auction winner has violated the provisions of Article 16 of Consumer Protection Law and Article 1338 Paragraph (2) of the Civil Code by not submitting the goods in accordance with what was agreed upon and unilaterally canceling the electronic auction transaction. This provision is in accordance with the principle of *pactasuntservanda* that the agreement has the

binding force and applies as law for the parties as stipulated in Article 35 of the Regulation of the Director-General of State Assets or in Bahasa Indonesia is called as “Direktorat Jenderal Kekayaan Negara” Number PER-03/KN/2010 which states that the payment of the seller's auction fee and the buyer's auction fee is taken first from the security deposit to be deposited into the state treasury. In the event that the buyer does not settle the obligation to pay the auction for the auction conducted by the Class II of Auction Officer, the auction fee that has been deposited into the state treasury may be reclaimed by the Class II of Auction Officer to be handed over to those entitled according to the engagement. Legal consequences are borne by the auction winner who is in default. That the payment of the seller's auction fee and the buyer's auction fee is taken first from the security deposit to be deposited into the State treasury, in the event that the buyer does not settle the obligation to pay the auction for the auction conducted by the Class II Auction Officer, the auction fee that has been deposited into the State treasury may be reclaimed by the Class II of Auction Officer to be handed over to those entitled according to the engagement.

Based on Article 73 of the Regulation of the Minister of Finance Number 93/KMK.06/2010 as amended by the Regulation of the Minister of Finance Number 106/PMK.06/2013, that in the case of a buyer who cannot fulfill his obligations after being ratified as an auction buyer, he is not allowed to participate in the auction at the entire territory of Indonesia within 6 (six) months. Furthermore, the Head of the State Property and Auction Service Office or Class II of Auction Officer shall notify in writing the cancellation statement made by the Auction Officer concerned to the buyer, with a copy to the seller, the Head of the Director-General of State Assets of Regional Office, and the cq the Director of Auction.

Based on that description, it can be explained that in the case of making a conventional auction deed, the Notary as the Auction Officer is obliged to read the deed in front of the parties mentioned above if it is related to the making of an authentic deed as a form of perfect proof, thus in making conventional auction deed, making a deed requires the presence of as well as the physical and actual position of the interested parties/appearers. In line with the concept of the cyber notary, the making of the electronic auction deed is not required to be read before the parties because the reading of the authentic deed is not done directly in front of the appearers, but through electronic media, which is a liaison between the notary and the parties.

B. Ideality of Regulation The Legal Force Of Electronic Proof Of Treatise Of Auction Deed

Auction deed is an authentic deed and has perfect evidentiary power and contains all events that occur in the auction sale procession as evidence of authentication of the auction implementation as stipulated in Article 35 of *Vendu Reglement* and then confirmed in the provisions of Article 1 number 35 of the Regulation of the Minister of Finance

Number 27/PMK 06/2016 concerning Guidelines of Auction Implementation which among other things reads that the auction deed implementation made by the Auction Officer have perfect proof (*bewijskracht*) (*volledig*; complete) for the parties.

The auction deed can be categorized as an authentic deed because the auction deed contains elements of an authentic deed based on Article 1868 of the Civil Code, namely because its form is determined by law (Articles 37, 38, 39 *Vendu Reglement*), drawn up by or before an authorized public official. (Article 1 an in conjunction with Article 35 *Vendu Regulation*), made in the working area of the relevant General Official, which is determined by the Minister of Finance based on Article 3 *Vendu Regulation*. The auction deed in accordance with Article 1870 of the Civil Code also has material proof power and is valid and perfect proof for the parties (seller and buyer) unless it can be proven otherwise.

It is the same with the Notary Deed, which is also called the Authentic Deed as according to the provisions of Article 1868 of the Civil Code, where the Notary as a public official is authorized to make an authentic deed in accordance with the provisions of Article 1 of Law no. 30 of 2004 as amended by Law Number 2 of 2014 concerning Notary Positions. Notary deed is perfect evidence for those who bind the agreement and their heirs and people who get rights from it. The truth of the contents of the authentic deed must be accepted unless it can be proven otherwise, and of course, it has greater power and legal certainty than a private deed.

Based on the description above, it can be stated that the making of the Minutes of Auction is carried out before or by the Auction Officer as regulated in Article 35 *Vendu Regulation* and then confirmed in the provisions of Article 1 number 35 of the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Instructions for Auction Implementation. Referring to Article 1868 of the Civil Code when applied in the Minutes of Auction, ideally, the auction deed, which is an authentic deed, should meet the following elements:

Making auction deed is carried out in front of or by the Auction Officer

The Auction Officer who makes the auction deed has the authority.

The deed was made (related to the area of office).

Regarding the provisions of an authentic deed as a means of proof, it is contained in the law of proof (*bewijsrecht*) which is regulated in Book IV of the Civil Code, that written evidence, especially an authentic deed and what the requirements are, look at Articles 1869 and 1870 of the Civil Code and the article states: a deed which due to incompetence or incompetence of the employee referred to above or because of a defect in its form cannot be treated as an authentic deed but has the power as an underhand deed if the deed is signed by the parties. Thus, the auction deed should ideally be made by an authorized official and made in

a form that is in accordance with the attachment to the Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 concerning Guidelines of Auction Implementation point E.

IV. CONCLUSIONS

There is a difference between auctions via the internet and conventional auctions. The implementation of conventional auctions requires auction participants to be physically present, while auctions through internet media are carried out using electronic devices. The conventional auction is read out by the Auction Officer to auction participants, but in auctions through internet media, they are only displayed on the auction application that has been provided before the auction begins without any reading. This is regulated in Article 13 paragraph (1) of the Regulation of the Minister of Finance Number 90/PMK.06/2016, which states that the Implementation of Auctions through the internet begins with the presentation of the Head of the auction deed by the Auction Officer. The legal force in the event of a default in the auction deed made by the notary as the auction officer has the same legal force as the minutes of auction made face-to-face. The difference in the procedure for taking the auction minutes of the auction winner must still come to the Director-General of State Assets which is holding the auction.

The auction deed has a function regarding the validity of legal actions, which are an agreement between the seller and the auction buyer in written form. So that the minutes of the auction must meet the elements of an authentic deed as regulated by Articles 1868 and 1870 of the Civil Code. Referring to Article 1868 of the Civil Code when applied in the auction deed, ideally, the auction deed should meet the following elements: (1) The auction deed shall be drawn up before or by the Auction Official as regulated in Article 35 VR and then confirmed in the provisions of Article 1 number

35 Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Guidelines of Auction Implementation Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Article 18 paragraph (2).

It is recommended that the retrieval of the minutes of the electronic auction by the auction winner can be made a system so that the auction winner does not need to come to the Director-General of State Assetsoffice; this is to reduce the face to face of the auction winner with the Director-General of State Assetsofficer. Related to the idea of making electronic auction deed made by the notary as a Class II of Auction Officer, it should not only be done by an auction officer but can be done before a notary as a public official who has the authority to make an authentic deed.

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