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## Responsibilities of Notaryas Class II Auction Officer Regarding the Deed of Auction Minute He Makes

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**Abstract:** Auction is a method of selling goods or services conducted through an open bidding process, which is strictly regulated in Indonesia by laws and regulations, including the Minister of Finance Regulation No. 27/PMK.06/2016. In implementing auctions, the auction minutes act is important as an authentic document that records the auction process and its result. As a public official authorized to create authentic deeds, a notary is responsible for creating the auction minutes act, including as a Class II auction official. Although holding multiple positions is not allowed, the law grants notaries the authority to serve as Class II auction officials responsible for conducting voluntary non-execution auctions and creating the Auction Minutes Act. This article examines the legal responsibilities of notaries as Class II auction officials in creating the Auction Minutes Act, encompassing administrative, civil, and criminal aspects. Errors in creating the Auction Minutes Act may lead to serious legal consequences, including administrative sanctions, civil compensation, and criminal penalties. Additionally, notaries are required to store the minutes of the auction by applicable regulations. This study uses a normative legal research method with a legislative approach, aiming to provide an understanding of the legal responsibilities of notaries as auction officials in implementing auctions in Indonesia.

**Keywords:** Notary, Class II Auction Official, Auction Minutes Act, Legal Responsibility, Auction Implementation.

### 1. INTRODUCTION

Auction is a sales method that allows parties to obtain goods or services through an open bidding process (Tista, 2016). In the legal context in Indonesia, auctions are strictly regulated through various regulations, including Minister of Finance Regulation Number 27/PMK.06/2016 concerning Instructions for Implementing Auctions. In carrying out an auction, the auction minutes deed is the primary document that records the course of the auction process, bidding, and results (Daulay, 2023). Notaries are public officials who carry out their profession and responsibilities by providing legal services. Notaries have the authority to make authentic deeds as explained in Article 1 number (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (hereinafter referred to as UUJN) that "public officials who have the authority to make authentic deeds and has other authorities as intended in this Law or other Laws (Astriani & Ngadino, 2022). For several other authorities, a Notary has been explained in the Vendu Reglement and Vendu Instructic, which states that a Notary can be appointed as a Class II Auction Officer. Notaries are not allowed to hold multiple positions; however, based on the provisions in Article 15 UUJN, "Notaries have the authority to provide legal counseling in connection with the making of Deeds. One of them is the Auction Minutes Deed." A Notary who has been appointed and has other authority as a Class II Auction Official has the authority to make a Deed of Auction Minutes, which functions as authentic evidence and has strong legal force and is authorized to carry out a Voluntary Non-execution Auction at the request of the Auction Hall or the Seller/Owner of the Goods (Santika, Renaya, and Mahaputra, 2023).



Based on the authority that has been given to the Notary in making the Auction Minutes Deed, this can indirectly cause legal uncertainty in the implementation of the Auction Minutes Deed by the Notary. This is because Article 1a of the *Vendu Regulations* states that "public sales (auctions) may not be held except in front of the auctioneer (auction official)." Therefore, in practice, notary responsibilities often face various challenges. Mistakes in preparing the auction minutes deed, intentional or unintentional, can have serious legal consequences. This article examines the responsibilities of a notary as a class II auction official, covering administrative, civil, and criminal aspects, as well as the legal implications arising from violations of these duties.

## 2. LITERATURE REVIEW

### 2.1. Responsibility Theory

Accountability theory is closely related to the moral and ethical responsibilities of a public official, including notaries, in carrying out their duties. According to (Mulgan, 2000), accountability includes the obligation to provide responsibility for actions by interested parties. In the context of Class II Auction Officials, accountability includes the following aspects:

- a) The data in the Auction Minutes Deed is correct.
- b) Compliance with applicable regulations, both formal laws and professional norms.

Article 1365 of the Civil Code states: "Every act that violates the law, which causes loss to another person, requires the person whose fault it was to cause the loss to compensate for the loss." In this context, if a notary makes a Deed of Auction Minutes that does not comply with procedures or is legally flawed, he can be held civilly liable through a lawsuit for compensation. Apart from that, this responsibility also involves an element of negligence, which can have legal implications.

### 2.2. Regulations and Legal Basis

UU no. 30 of 2004 jo. UU no. 2 of 2014 concerning Notary Positions This law regulates Article 16 paragraph (1), which emphasizes the notary's obligation to act honestly, independently, and professionally. Article 65 explains that the notary is responsible for every deed he makes in office, including the Auction Minutes Deed. Minister of Finance Regulation No. 27/PMK.06/2016: This regulation provides technical guidelines regarding auction procedures and the obligations of Class II Auction Officials, such as:

- a) Auction implementation process.
- b) Preparation of Auction Minutes Deed reflects the transaction's truth.
- c) Responsibility in ensuring all parties involved comply with legal requirements.

Article 1868 states that an authorized official must make an authentic deed by the law. Article 1870 states that an authentic deed has absolute evidentiary power if it cannot be proven otherwise.

### 2.3. The Role and Functions of a Notary as an Auction Officer

The Auction Minutes Deed is an authentic document made by the Class II Auction Officer after the auction. According to (Harahap, 2005), this deed must reflect actual legal facts because it is evidence that has binding legal force. Class II Auction Officials have the authority to:

- a) Ensure that statutory provisions carry out the auction process.
- b) Provide legal certainty for the parties involved.
- c) Guarantee that the Auction Minutes Deed meets the formal and material requirements by applicable law.

## 2.4. Risk Theory in Making Deeds

The legal risks a notary faces in making a Deed of Auction Minutes can be Civil lawsuits due to negligence, administrative sanctions for violating procedural rules, and Potential cancellation of the deed by the court if it is found to be legally defective. According to (Freidson, 2001), professionalism includes the responsibility to comply with a code of ethics, maintain competence, and meet established operational standards. In the context of Class II Auction Officials, professionalism includes Compliance with the notary code of ethics and expertise in understanding auction procedures and their legal implications.

## 3. RESEARCH DESIGN AND METHOD

In this research, the type of research used is normative law, which examines statutory regulations relating to the responsibilities of Notaries as Class II Auction Officials regarding the Auction minutes deeds they make. The preparation of this research also uses a legislative approach using legal materials consisting of primary, secondary, and tertiary legal materials. (Mildasari and Musyafah 2024).

## 4. RESULT AND DISCUSSION

### 4.1. Duties and Authorities of a Notary as a Class II Auction Official

Based on Article 1-point (1), UUJN has explained that the authority of a Notary as a Public Official is to make authentic deeds. Through this understanding, a notary and an authentic deed are two things that cannot be separated. An authentic deed itself is a deed whose form and provisions have been regulated by law, which must be made by or in the presence of public officials with authority for the purpose where the deed is made. A notarial deed is made according to the form and procedures established by UUJN.

According to Minister of Finance Regulation Number 27/PMK.06/2016 concerning Instructions for Implementing Auctions, it is explained below: "Auctions are sales of goods that are open to the public with written and/or verbal price offers that increase or decrease to reach the highest price, preceded by an announcement. Auction". Types of Auctions in Indonesia are divided into 3 (three) types based on the reason the goods are sold and the seller's relationship with the goods to be sold, namely:

#### (1) Execution Auction

An execution auction is an auction to carry out a court decision/determination or equivalent document by applicable laws and regulations.

#### (2) Mandatory Non-Execution Auction

A mandatory non-execution auction is an auction to sell regional state property and state assets, which are separated by applicable regulations. Mandatory non-execution auctions, according to statutory regulations, must go through the Auction Office

#### (3) Voluntary Non-Execution Auction

Voluntary non-execution is an auction to carry out the wishes of individuals, community groups, or private entities, including BUMN/D in the form of limited liability companies, to sell their goods voluntarily at the community's request.

The Minister of Finance Regulation Number 27/PMK.06/2016 concerning Auction Implementation Instructions states that the implementation of an Auction must be described in the Auction Minutes. Auction Minutes are "minutes of the implementation of the Auction" compiled by the Auction Officer, which is an authentic deed with perfect evidentiary power. The Auction Minutes contain all events that occurred in the Auction sales process as proof of authentication of the Auction implementation as regulated in Article 35 of the Vendu Regulations and then confirmed in the provisions of Article 1 point (35) of the Minister of Finance Regulation Number 27/PMK.06/2016 concerning Auction Implementation Instructions, which, among other things, states that the minutes of the Auction implementation are prepared by the Auction Officer which has perfect evidentiary

power (bewijskracht) for the parties. Lalang Officials, as regulated in Article 8 of the Minister of Finance Regulation Number 93/PMK.06/2010 concerning Auction Implementation Guidelines, differentiate Auction officials into two classes, namely:

- (1) Class I Auction Officials have the authority to carry out Auctions of all types at the request of the seller/owner of the goods. Class I Auction Officials consist of specially appointed Government Officials and assigned recipients of State Treasury funds.
- (2) Class II Auction Officials have the authority to carry out voluntary non-execution Auctions at the request of the Auction Center or the seller/owner of the goods. Class II Auction Officials consist of State Officials other than those appointed as class I Auction Officials who hold jobs tied to the position of Auction Official and people who are expressly appointed to be class II Auction Officials as explained in Article 4 number (3) of the Decree of the Minister of Finance Number 305/KMK.01/2002 concerning Auction Officials as amended by Decree of the Minister of Finance Number 451/KMK.01/2002, namely:
  - a) Notary
  - b) Appraiser
  - c) Retired Civil Servants (PNS) of the Directorate General of State Assets (DJKN) are given priority who have been Class I Auction Officials
  - d) Graduates of Auction Officer Education and Training organized by the Financial Education and Training Agency (BPPK).

Based on Article 35 Vendu Reglement Jo. Minister of Finance Regulation Number 175/PMK.06/2010 states that notaries whom the Directorate General of State Assets has appointed to become class II Auction Officials are given special authority by the Minister of Finance to carry out sales of goods by Auction at the request of the Auction Hall as the proxy of the owner of the goods domiciled in Class II Auction Officer's Office. After the Auction process has been completed, the notary, as the class II Auction official, will issue the Auction minutes deed and has the authority to provide counseling or explanation regarding the contents of the Auction minutes deed to the parties in the Auction minutes. The Auction Minutes themselves are Legal Outputs from class II auction officials, according to Article 1868 of the Civil Code Jo. The auction minutes are in the authentic deed in articles 37, 38, and 39 of the Vendu Reglement. Furthermore, according to Article 1870, "an authentic deed is perfect evidence." The Auction Minutes is also a legally made agreement that applies as law for the parties. Therefore, as a class II Auction official, the notary must explain the contents of the Auction minutes deed he made to the parties.

#### 4.2. Notary's Legal Responsibility for the Auction Minutes Deed

The Auction minutes deed is an authentic deed made by a Notary and Auction Official, both public officials with the authority to make this authentic deed. Not all Notaries have the authority to make an Auction minutes deed; the Directorate General of State Assets must appoint a Notary as a Class II Auction Official who can make the Auction minutes deed. Suppose a Notary is not appointed as a Class II Auction Officer and makes the Auction Minutes. In that case, he must be responsible for the consequences of the deed he made because the Auction Officer must make the Auction Minutes Deed, and this indirectly results in the deed he made being legally flawed and cannot be said to be a deed. Authentic.

As is known, the Auction minutes are an agreement that binds the parties to the Auction. The auction minutes clause is a law that specifically applies to the parties in the auction, which acts as an agreement. Notaries as Class II Auction Officials have the same obligation to provide the Auction minutes deed to the parties involved in the Auction minutes deed. As a Class II Auction Official, the notary must explain the Auction minutes deed made to the parties.

The Auction minutes deed is authentic because it is a basis for transferring names/transfers/rights, as stated in the Auction minutes, to the authorized institution—people who give goods/land. The validity of the building through auction will be more guaranteed, in other words, because the auction

official has ensured that the auction object has no problems. That is why the Notary is obliged to explain the contents of the Auction deed to the parties to create a sense of confidence in the parties conducting the Auction.

The Auction Minutes, which are authentic deeds, must be made and read by a Notary as a Class II Auction Officer, so indirectly, the Auction Minutes deed is the perfect evidence before the court. If a notary who is not an auction official makes the auction minutes, the authentic deed will be legally defective, invalid, null, and void, or it can also turn into a private deed. The Notary who made it is the one who must be responsible for any errors that arise. This Notary's liability arises because of mistakes in carrying out its duties, resulting in losses to the parties. This means that a notary who makes the Auction minutes deed must be responsible for his mistakes in the form of responsibility in the form of:

#### (1) Administrative Responsibilities

In an administrative context, notaries must comply with applicable regulations, such as those set by the Ministry of Finance and the Auction Supervisory Agency. Administrative violations, such as not following correct procedures or failing to prepare documents thoroughly, can result in sanctions in the form of:

- a) Written warning.
- b) Administrative fines.
- c) Revocation of the permit as class II auction official.

#### (2) Civil Liability

If the auction minutes deed contains errors or inaccuracies, the aggrieved party can file a civil lawsuit based on Article 1365 of the Civil Code regarding unlawful acts. In this case, the notary can be held responsible for compensating for financial losses suffered by related parties.

#### (3) Criminal Liability

Intentional errors, such as falsifying documents or manipulating the auction process, can be subject to criminal sanctions under Article 263 of the Criminal Code concerning falsification of documents. In severe cases, notaries can also be charged with other articles, such as articles related to fraud or corruption, if it is proven that there was collusion with certain parties.

### 4.3. Responsibilities of the Notary as a Class II Auction Official regarding the Storage of Auction Minutes

Based on Article 37 paragraph (1) letter h Regulation of the Minister of Finance Number 189/PML.06/2017 concerning Class II Auction Officials, it is stated that one of the obligations of Class II Auction Officials is to make and keep minutes of Auction minutes. The minutes of the Auction minutes deed are the original Auction minutes, including attachments, which are state documents or archives that must be kept by the provisions in Article 1 number 36 of the Minister of Finance Regulation Number 27/PMK.06/2016 concerning Auction Implementation Instructions. The purpose of storing minutes of the Auction minutes deed is to legally preserve it, which can be used as perfect evidence for the parties and their heirs regarding all matters stated in the deed. The Auction Minutes is an authentic deed with the most perfect evidentiary value. An authentic deed as the perfect piece of evidence is regulated in Article 1868 of the Civil Code, which states that "an authentic deed is a deed which in the form determined by law is made by or in the presence of a public official who has authority for that purpose in the place where the deed is done." Based on this article, the Auction minutes deed is an authentic deed with the most perfect evidentiary value because it fulfills the following requirements:

- (1) The Auction official prepares the Auction Minutes
- (2) Auction officials who have the authority to make auction minutes deeds (class II auction officials have the authority to make auction minutes and types of voluntary auctions)
- (3) When the Auction minutes deed was made (still serving as Auction official)
- (4) Where the Auction minutes deed is made (related to the office area)

The strength of evidence in the Auction minutes deed according to Article 1870, Article 1871, and Article 1875 of the Civil Code is perfect and binding evidence for the parties concerned, heirs, and recipients of rights unless what is stated in the deed is just a narrative or has no direct relationship to the deed. The Auction minutes deed drawn up by the class II Auction Officer is authentic with the nature and power of formal and material evidence. Therefore, the Auction minutes deed has perfect evidentiary power before the court unless it can be proven that the deed is fake.

Article 1, Number 36 of Minister of Finance Regulation Number 27/PMK.06/2016 concerning Auction Implementation Instructions explains that the auction minutes are the original auction minutes and the attachments, which are state documents or archives. Therefore, the minutes of the Auction minutes are state archives, which, according to the law, must be managed by applicable provisions. A Notary who is a Class II Auction Officer is obliged to keep minutes of the Auction minutes deed by what has been explained in the UUJN regarding keeping minutes of deeds. The position given to notaries as Class II Auction Officials differs from that of Class I. Auction Officials are only given positions for 5 (years) or are limited to 65 (60). Five years. So, Class II Auction Officials who have been dismissed must submit all minutes of the Auction minutes along with office administration documents to the local Kelapa Regional Office. The minutes of the Auction Minutes and all office administrative documents submitted will then be kept and administered by the Head of the Regional Office, where the relevant Class II Auction Officer is located. The legal consequences arising from the minutes of the Auction Minutes will remain the responsibility of the Notary as the Auction Official—class II.

## 5. CONCLUSION

Notaries as Class II Auction Officials are important in carrying out auctions in Indonesia, especially in making and storing Auction Minutes Deeds. This deed functions as an authentic document with perfect evidentiary power and is the basis for transferring rights to the items being auctioned. As an authorized public official, a Notary must comply with procedures regulated by statutory regulations, both from an administrative, civil, and criminal perspective. The Notary's responsibilities in preparing auction minutes include explaining the contents of the deed to the parties involved and guaranteeing the validity and completeness of the documents created. Non-compliance with existing provisions can result in legal consequences, such as administrative sanctions, compensation for civil losses, or even criminal sanctions if there is an intentional error. Apart from that, the Notary must also keep the minutes of the auction minutes as state archives and maintain their security by applicable regulations. As a class II auction official, a Notary has limited authority, and this position has a time limit, which must be complied with by submitting all administrative documents after the term of office ends. Therefore, Notaries must always be careful and professional in carrying out their duties so as not to cause legal problems for themselves or other parties involved in the auction process.

## REFERENCES

- Astriani, Ersal Malida, and Ngadino Ngadino. 2022. "Prosedur Pelaksanaan Dan Pengumuman Lelang Oleh Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL)." *Notarius* 15(2):649–59. Civil Code (KUH Perdata).
- Daulay, Ade Liniarty. 2023. "Peran KPKNL Medan Dalam Pelaksanaan Lelang Eksekusi Hak Tanggungan." 1–111.
- Muhammad Haris, The Authority of a Notary as a Class II Auction Officer in Providing Legal Counseling on the Deed of Auction Minutes He Makes, *Syariah Journal: Journal of Legal Science and Thought*, Vol 17, Number 1, June 2017 edition.
- Fatria Hukmatiar, Inconsistencies in the Regulation of the Authority to Make Auction Minutes by Notaries, *Notaire Journal*, Vol 4, Number 3, October 2021 edition
- Freidson, E. (2001). *Professionalism: The Third Logic*. University of Chicago Press.



- Harahap, Y. (2005). *Civil Procedure Law: Concerning Lawsuits, Trials, Confiscation, Evidence, and Court Decisions*. Jakarta: Sinar Graphics.
- Martina Ruth Manora, Authority of Class II Auction Officials regarding Minutes of Auctions that have a deadline, *Jurnal Cakrawala Hukum*, Vol 13, Number 1, April 2022 edition
- Law Number 2 of 2014 concerning Notary Positions.
- Minister of Finance Regulation Number 27/PMK.06/2016 concerning Instructions for Implementing Auctions.
- Mildasari, Vira, and Aisyah Ayu Musyafah. 2024. "Authorities of Notaries as Class II Auction Officials Viewed from Legislation, Point of View." 17:1267–82.
- Mulgan, R. (2000). Accountability: An Ever-Expanding Concept. *Public Administration*, 78(3), 555–573.
- Republic of Indonesia. (1942). Civil Code (KUH Perdata).
- Republic of Indonesia. (2004). Law no. 30 of 2004 jo. UU no. 2 of 2014 concerning Notary Positions.
- Republic of Indonesia. (2016). Minister of Finance Regulation No. 27/PMK.06/2016 concerning the Implementation of Auctions.
- Santika, Ida Bagus Agung Putra, Nengah Renaya, and Kresna Yoga Mahaputra. 2023. "Notary Authority As a Class Ii Auction Official in the Perspective of the Notary Office Act." *NOTARIIL Jurnal Kenotariatan* 8(2):98–104.
- Tista, A. (2016). "Perkembangan Sistem Lelang Di Indonesia." *Media.Neliti. Com/Media/Publications/225084-5(10):46–70*.