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NOTARY AUTHORITY AS A CLASS II AUCTION OFFICIAL IN THE PERSPECTIVE OF THE NOTARY OFFICE ACT

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Abstract

This study aims to determine the authority of a Notary as a Class II Auction Officer in the perspective of the Notary Position Act and to determine the legal consequences for a Notary who makes a minute of an auction who is not a Class II Auction Officer. This study employs normative legal research, utilizing the Legislation approach and Legal Concept Analysis (both analytical and conceptual approaches) as well as the Legislative Approach (statute-based approach). The results of this study are the harmonization of authority arrangements for Making Auction Minutes in terms of the Notary Position Act and auction regulations can be carried out using the *lex specialist derogate legi generalist* principle which is used in the Auction Rules as the basis for the authority to make Auction Minutes, which is contained in the Auction Officer, not the Notary. Although a Notary may be appointed as a Class II Auction Officer according to Article 7 of the Auction Instruction jo. PMK Class II Auction Officer, but the authority is given in the capacity of a Notary as a Class II Auction Officer who has been appointed by the Minister of Finance. Because a notary who has not been appointed as a Class II Auction Officer is not allowed to make a Minutes of Auction. The legal consequences for a Notary who makes auction minutes who is not a Class II Auction Officer will result in the degradation of the status of the auction minutes from an authentic deed to an auction minute which is only a private deed. The degradation of the status of the auction minutes from an authentic deed to a private deed will of course have other legal consequences, namely if the auction minutes are degraded into a private deed, then the auction minutes will no longer have perfect evidentiary power like an authentic deed.

Keywords: Authority; class ii auction officer; notary

1. INTRODUCTION

Auction is an activity to sell goods that are carried out in a way that is open to the public with a bargain done in writing and can also be oral with projections increased to reach the highest price that must be done in the previous auction announcement and the highest bid is the winner of the auction and is entitled to own the item. The definition of an auction or general sale is also set out in Article 1 of *Staatsblad* No. 189 promulgated in 1908 on *Vendu Reglement* or VR (hereinafter referred to as the Auction Regulations) which specify that: "what is meant by "public sale" (*openbare verkopen*) is the auction or sale of goods made to the

public at an inflated or decreased price quote or with an entry price in a cover, or to persons who are invited or previously notified of the auction or sale, or are allowed to participate in, and be given the opportunity to bid the price, agree to the price offered or enter the price in a cover." This means that it can be taken the outline that the auction is a sale of goods carried out in front of a large audience where the price of goods offered to buyers at all times is increasing

Auctions were known in the 450th century BC where it is believed the story of Prophet Joseph was sold to Egyptian nobles using an auction mechanism. According to Herodotus it was written that auctions began around 500 BC in Babylon.

The history of auctions in Indonesia began in 1908, precisely during the reign of the Dutch East Indies. In 1908 the Auction Regulation, the purpose of the law was to overcome the problem of selling official goods in the Dutch East Indies government held by Dutch people who were at the time affected by mutations and the goods of former Dutch companies. The Auction Regulation is also the initial regulation on auctions in Indonesia, known as the Auction Regulation, this regulation is an Ordinance adopted on February 28, 1908, and has been in effect since April 1, 1908. Auctions are in principle a concept in the field of finance and economics in Indonesia, the profits of auction activities are based on the types of goods auctioned are usually varied and in large quantities, so they can choose more freely, the items at the auction are sold at a cheaper price than the market price and the goods will quickly sell when through the auction mechanism. The entire mechanism of the auction that occurs must be made news of its own event as stipulated in Article 35 of the Auction Regulations, determining that: "From each general sale made by the auctioneer or his or her power of attorney, during the sale, for each day of the auction or sale shall be made news of its own event."

The current Auction Regulation has an implementing regulation and the latest one that has been replaced several times and changed in 2020 in law is the Regulation of the Minister of Finance of the Republic of Indonesia Number: 213/PMK.06/2020 Concerning the Instructions for Auction Implementation (hereinafter PMK Auction Implementation Instructions). In Article 1 number 44 of the regulation, the term Auction Official, this auction official refers the auctioneer to the Auction Regulation which has an official understanding, namely: "The Auction Official is a person who based on the laws and regulations is given special authority to carry out the Auction." So based on Article 35 of the Jo Auction Regulations. Article 87 paragraph (1) PMK instructions for the implementation of the auction that has the authority to make an auction minute is the auction official. So there is an obligation of an auction to report the results of the auction in an auction minute. The Auction Minutes itself has an understanding set out in Article 1 number 32, namely: "The Auction Minutes is the news of the auction event made by the Auction Official which is an authentic deed and has perfect proofing power"

Notaries may be appointed as class II auction officials stipulated in Article 7 of the *Vendue Instructie* or (hereinafter referred to as Auction Instructions) Jo. Article 5 paragraph (2) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 189/PMK.06/2017 concerning Class II Auction Officials (hereinafter referred to as PMK Class II Auction Officials), in principle a Notary can be appointed as a Class II Auction Official. A notary in carrying out his duties as a Class II Auction Official must be separated from his Notary profession because the notary position with the position of auction official must be distinguished. So that not all notaries can exercise authority in the making of Auction Minutes, only a Notary who has legitimately been status or appointed to become a Class II Auction Official by the Minister of Finance can make auction minutes guided by auction regulations and auction instructions and implementation regulations under it such as PMK Auction Execution and PMK Auction Officer Class II, not guided by UUJN.

Based on Article 15 paragraph (2) letter g UUJN formulates that a Notary has the authority to make auction minutes, this causes a conflict of norms regarding authority in making auction minutes. The conflict of norms occurs in Article 35 of the Jo Auction Regulations. Article 87 paragraph (1) PMK Instructions for The Implementation of Auctions with Article 15 paragraph (2) letter g UUJN. Conflict of norms occurs in terms of authority in making auction minutes. Article 35 of the Jo Auction Regulations. Article 87 paragraph (1) PMK auction executor appoints the auction official who is authorized to make the auction minutes, while Article 15 paragraph (2) letter g UUJN determines that the Notary is authorized to make the Auction Minutes. On the other hand, although a notary can be appointed as a Class II Auction Official according to Article 7 of the Auction Instruction Jo. PMK Auction Official Class II has authority in the making of Auction Minutes, but that authority is granted in the capacity of Notary as Auction Official II who has been appointed by the Minister of Finance and not his capacity as a Notary.

The emergence of this norm conflict will have an impact on the occurrence of conditions of not achieving legal certainty, in the field of the auction, especially in the authority to make auction minutes, whether it is the responsibility and authority of the Auction Office or will be

the responsibility and authority of notaries.

Faisal (2014) in his research revealed that Supreme Court in providing legal protection for purchaser in good faith, may exercise its supervision function by awarding a decision to annul the previous judicial decision that has been legally binding in order to amend previous fallacious judicial decision and provide legal certainty for purchaser. Haris (2018) in his study found that the notary who has the authority to provide counseling or explanation of the contents of the auction minutes to the parties contained in the auction paper. Notary as a Class II Auction Officer is also authorized to explain the function of the auction treaty that is as authentic deed which has perfect evidentiary power. In addition, the results study of Purnayasa (2019) showed that the notary who has the authority to provide counseling or explanation of the contents of the auction minutes to the parties contained in the auction paper. The Notary Act can be an authentic deed if it meets the formalities that are already determined based on the rules contained in the provisions of Article 1868 Civil Code and jo UUJN. Based on the provisions of Article 1868 Civil Code must be fulfilled the requirements of authentic deed and authentic deed must be made in accordance with the format specified in accordance with the provisions of Article 38 UUJN and Deed can be degraded into deed under the hand if violating the provisions of Article 1868 Civil Code jo UUJN.

Another similar study also conducted by Dewi & Resen (2021) that showed the results that auction minutes in Indonesia are prepared by Auction Officers, not Notary Publics, as per the Tender Regulations in Staatsblad No. 189 (1908). Although a Notary Public can be a Class II Auction Officer, their authority is specific to auction-related tasks, not their general notarial capacity. These minutes, in accordance with Article 1868 of the Criminal Code, are considered authentic deeds and serve as legal evidence when they fulfill three criteria: they are created by a General Official, are mandated by law, and the General Official has the necessary authorization. Meanwhile, the results study conducted by Qindy (2021) revealed that the authorized to make the auction minutes is the Auction Officer, not a Notary but the Notary can make the auction minutes if the notary concurrently serves as an Auction Officer, namely as Class II Auction Officer. The notary makes

the deed of the auction document in his capacity as an Auction Officer not as a Notary, then the legal consequence if the Notary makes the deed of the auction document is the deed is null and void, the cancellation is done through the court and if any party is harmed by the deed, the Notary can be sued for an act against the law which is a compensation claim. In addition, the results study of Oktavienty (2022) a notary has the right to carry out a legal action in the implementation of an auction as the authority possessed by a notary in general can be known in Article 15 paragraph (1) UUJN which states that a notary can make an authentic deed regarding all actions and or agreements according to the provisions of the applicable laws and regulations. The authority to make an authentic deed in the legal act of implementing an official auction who is only given the authority is a notary.

Based on the background and the previous studies above, the purpose of this study is to determine the authority of a Notary as a Class II Auction Officer in the perspective of the Notary Position Act and to determine the legal consequences for a Notary who makes a minute of auction who is not a Class II Auction Officer.

2. METHOD

This study is categorized as empirical legal research. Empirical Legal Research is the development of legal science that is not enough to just do a study of the norm system only. This study employs the normative legal research method, also known as doctrinal legal research. This approach is often referred to as library research or document study due to its primary focus on written regulations and other legal materials, with a significant reliance on secondary data sources.

3. DISCUSSION

The Authority of a Notary as a Class II Auction Officer in the Perspective of the Notary Position Act

An auction is known as an agreement that includes buying and selling both in Civil Law and in Common Law. Herodotus writes that auctions began to exist around 500 AD in Babylon, now commodities such as tobacco, fish, flowers, securities, and most importantly, auctions were used to transfer assets from public ownership into the hands of private/individual owners, as a worldwide phenomenon over the past two decades. The history of auctions in

Indonesia began in 1908, precisely during the reign of the Dutch East Indies. In 1908 the Dutch East Indies government invited Staatsblad No. 189 which was enacted in 1908 about Vendu Reglement/VR (hereinafter referred to as the Auction Regulation) the purpose of the law was to overcome problems regarding the sale of official goods in the Dutch East Indies government Held by the Dutch who at that time were affected by mutations as well as the goods of former Dutch companies. An auction is an activity to sell goods that are carried out in a way that is open to the public with a bargain done in writing and can also be oral with projections increased to reach the highest price that must be done the previous auction announcement and the highest bid is the winner of the auction and is entitled to own the item.

The official definition of auction can be found in Article 1 of the Auction Regulation which is the principal rule of the auction brought by the Netherlands mentions: "The general sale (auction) is the sale of goods made to the public with an increased price quote or with an increase in the entry of the price in a cover, or to persons who are invited or previously notified of the auction or sale, or be permitted to participate, and be given the opportunity to bid the price, agree to the price offered or include the price in a covered"

In conducting the auction process, the auction rules are the main rules so they must comply with the auction rules. After the completion of an auction process, it must then be done by making an auction minute as stipulated in Article 35 of the Auction Regulations.

Auction Minutes is the news of the auction event made by the Auction Official which is an authentic deed and has perfect proofing power. Article 1868 of the Civil Code states: "An authentic deed is a deed which in the form prescribed by law is made by or before the powerful public servants for it in the place where the deed is made."

Based on Article 15 paragraph (2) letter g UUJN formulates that a Notary has the authority to make auction minutes, this causes a conflict of norms regarding authority in making auction minutes.

Article 1 number 1 UUJN, a notary is defined as a general official who is authorized to make authentic deeds and other authorities as referred to in the UUJN. This definition given by UUJN refers to the duties and authorities carried out by

notaries. This means that the notary has a duty as a general official and has the authority to make authentic deeds and other authorities regulated by UUJN.

Notary authority, according to Article 15 UUJN is the creation of authentic deeds regarding changes, agreements and provisions required by the laws and/ or desired by the interested to be stated in the authentic deed, guaranteeing the certainty of the date of deed making, depositing the deed, providing grosse, copies, and quotations of deeds, all of which are as long as the making of the deeds is not also assigned or excluded to other officials or other persons stipulated by law. Through the understanding of the notary, it is seen that the task of a notary is to be a general official, while the authority is to make authentic deeds. An authentic deed is a deed whose form is determined by law, made by or before the powerful public servants for it in the place where the deed is made. Notary deeds as authentic deeds are made according to the form and ordinance specified by UUJN. Deeds in the realm of civil law in Indonesia, are known to be 2 (two) types of deeds, namely authentic deeds and deeds under the hands. Authentic deeds as one of the legal products of a person with a Notary profession, while the deed under the hand is very different from the authentic deed.

Notary in UUJN article 15 paragraph (2) letter g states notary authorized in making deeds of auction minutes. The law is notary can make auction minutes because the authority has been specified in UUJN. The article provides breadth that notaries can make deeds of auction minutes because UUJN gives a mandate to notaries to be able to make deeds of auction minutes. Notaries as general officials have the authority to make authentic deeds, in carrying out their duties attached to obligations that must be obeyed, because the obligation is something that must be implemented. However, on the other hand, Article 35 of the Auction Regulation and Article 87 paragraph (1) of the PMK The Auction Implementation Directive appoints other officials in terms of making auction minutes. Article 35 of the Auction Regulations specifies that: "From each general sale made by the auctioneer or his or her power, during the sale, for each day of the auction or sale shall be made news of the event itself." Then Article 87 paragraph (1) PMK instructions for the implementation of the auction, specifying: "Every auction is made auction minutes by

the auction official". This means that Article 35 of the Auction Regulation and Article 87 paragraph (1) of the PMK Instructions for The Implementation of Auctions require normatively that the authority to make the Auction Minutes is the Auction Official. An auction official is obliged to make news of the auction event, the term news of this auction event is called adult is now an auction treatise, it becomes a basis of travel authenticity and the process and results of the auction, the news of the auction event contains all the activities and events that occur at the auction. Then between Article 15 paragraph (2) UUJN and Article 35 of *Jo Auction Regulation*. Article 87 paragraph (1) PMK Instructions for Auction Implementation there is a conflict of norms between the two or often referred to as a *conflict of norms*. Article 15 paragraph (2) UUJN determines who is competent in forming or making auction minutes is a Notary, while Article 35 of the Auction Regulation and Article 87 paragraph (1) of the PMK Instruction of The Auction Executor determines who is authorized to make the auction minutes is the Auction Official, as well as the Class I Auction Official and the Class II Auction Official. Conflict of this norm will result in the non-achievement of legal certainty in the field of making auction minutes, because if not made by the competent officials, then the strength of proof of auction minutes will not be perfect.

The conflict of norms between UUJN and the Auction Regulation also has the juridical consequence that the formulation of Article 15 paragraph (2) letter g of UUJN is causing legal uncertainty, because it will give rise to two views on the meaning in the authority of the Notary with regard to the deed of the auction minutes, namely:

a. *First*, every Notary is immediately authorized to make the deed of the auction minutes means the position of Notary with the position of auction official united, once it becomes an automatic Notary, he carries out the work of the auction official. Thus, if a person has been appointed as a Notary he does not need to be appointed as an auction official.

b. *Second*, not all Notaries have the authority to make auction minutes deeds even though notaries and auction officials have the same qualifications as general officials, only notaries who have been confirmed and designated as class II auction officials are authorized to make

deeds of auction minutes.

In solving the problem of the conflict of norms between Article 15 paragraph (2) of UUJN and Article 35 of the Jo Auction Regulation. Article 87 paragraph (1) of the PMK of the Auction Implementation Directive, can be used for the principle of legal preference, namely the *Lex Specialis Derogat Legi Generalis* Principle. Because UUJN and the Auction Regulation and PMK Auction Implementation Instructions are in the same hierarchy, namely the Law, although PMK is a regulation under it PMK is a rule that refers to the Auction Regulation which is an inseparable unity in this matter. Although the same is a law, the scope of the content material between the two laws is not the same, that is, one is a special arrangement of the more general. Based on the meaning of the *lex specialis derogat legi generalis* principle that determines that the rules more specifically override the more general rules, then the applicable and used in legal issues related to the conflict of norms between Article 15 paragraph (2) UUJN and Article 35 of the Jo Auction Regulation. Article 87 paragraph (1) PMK Auction Implementation Directive is Article 35 Jo Auction Regulation. Article 87 paragraph (1) PMK Auction Implementation Directive, not UUJN in terms of authority in the making of auction minutes. Because of its specificity about auctions, the authority to be the maker of auction minutes based on the authority to make auction minutes obtained from the Auction Regulation according to the Theory of Authority that discusses the source of authority, namely the authority of attribution, delegation, and mandate, the authority of attribution refers to the original authority on the basis of the constitution in the Law, the authority of the delegation, must be affirmed a transfer of authority to the organs of government that are not n. In the mandate, there is no delegation whatsoever in the sense of granting authority, however, which is mandated to act on behalf of the mandate giver. In accordance with the Theory of Attribution authority, responsibility and authority to make auction minutes is the Auction Office, not the capacity of a notary.

Notary authority to make deeds of auction minutes in its implementation cannot directly make the deed of auction minutes because making the deed of auction minutes by Notaries does not automatically Notaries can make deeds of auction minutes, notaries must be

appointed by the Directorate General of State Wealth and must follow the education and training organized by the Ministry of Finance then there is an obligation for internships. Notaries and Class II Auction Officials are both general officials who are given authority by the government to exercise some of the authority owned by the state. They have their respective duties and authorities in carrying out their positions in accordance with applicable laws and regulations. The meaning of the auction minutes is not found in the UUJN. So, what is used is the understanding of the auction minutes contained in the PMK Auction Implementation Directive, where it is mentioned that the auction minutes are news of auction events made by auction officials which are authentic deeds and have perfect proving power for the parties. What is meant by the auction official mentioned in the PMK Auction Implementation Directive is a person who is specifically authorized by the Minister of Finance to carry out the sale of goods on an auction basis. According to the Regulation, the Minister who is authorized to make the auction minutes is the person appointed by the Minister of Finance.

From the above explanation, the real authority notary to make the deed of auction minutes as referred to in Article 15 UUJN cannot be applied simply. This means that a Notary cannot necessarily hold the position of auction official. This is because the appointment of auction officials is carried out by the Minister of Finance, while the appointment of Notaries is carried out by the Minister of Law and Human Rights. UUJN has given an expansion of authority to notaries in carrying out their positions as general officials. One of them regarding the authority contained in Article 15 paragraph (2) letter g, that the Notary is authorized to make the deed of auction minutes but the regulation cannot be applied directly without the appointment of the ministry of finance, because in this case a general auction assigned to make the auction minutes is the auction official contained in the *Vendu reglement regulation*, The notary who is authorized to make the deed of auction minutes is a Notary who has fulfilled the requirements and qualifications as an auction official and has been appointed and appointed by the Minister of Finance to carry out his position as a class II auction official.

The Legal Consequences for a Notary who Makes a Minute of Auction who is not a Class II Auction Officer

The purpose contained in article 15 of UUJN is, that a notary is given the freedom to hold the position of auction official. To be able to become a Notary auction official must follow the rules made by the Minister of Finance. The notary who wants to become an auction official must be appointed by the Directorate General of State Wealth and meet all the conditions that have been determined. So the authority of notaries in terms of making auction minutes must be eliminated from UUJN because making auction minutes is not the authority of notaries in order to present a legal certainty. Although it is true that notaries can be appointed as class II auction officials as stipulated in Article 7 *Vendue Instructie* or in Indonesian called *Jo. PMK Auction Official Class II* in principle a Notary can be appointed as a Class II Auction Official. A notary in carrying out his duties as a Class II Auction Official must be separated from his Notary profession because the notary position with the position of auction official must be distinguished. So that not all notaries can immediately exercise authority in the making of Auction Minutes, only a Notary who has legitimately been status or appointed to become a Class II Auction Official by the Minister of Finance can make auction minutes guided by Auction Regulations and Auction Instructions and implementation regulations under them such as PMK Auction Implementation Instructions and PMK Class II Auction Officials, and not guided by UUJN.

In order to get a truth about the strength of the proof of the auction minutes and their legal consequences, it can be analyzed using the elements in Article 1868 of the Civil Code analyzed below:

1. "The deed must be made by the General Office.

2. according to the Auction Regulations a news auction event or what may be called an auction minute made by the Auction Official as regulated by Article 35 of the *Jo Auction Regulation*. PMK Instructions for The Implementation of Auctions. The act is determined by law.

The deed or auction minutes are made and ordered by the Law in this case the Auction Regulations namely Article 37, Article 38 and Article 39.

3. The General Officer who makes must be authorized to make the deed.

The Auction Official is the general official authorized under the Auction Regulations, Auction Instructions and PMK Auction Implementation Instructions."

Based on these elements have been fulfilled by the auction minutes it can be said that the treatise on the results of the auction is an authentic deed that has the power as perfect evidence determined by Article 1870 of the Civil Code. So according to Article 1969 of the Civil Code, an authentic deed will drop its degree to be under the hand if an authentic deed is made based on that which is not on its authority even though it is a public office. This means that the legal consequences for notaries who make auction minutes that are not as Class II Auction Officials will result in the degradation of the auction minutes from an authentic deed to an auction treatise that is only in the form of deeds under the hand. The degradation of the status of the auction minutes from authentic deeds to deeds under the hands will of course have another legal effect, namely the auction minutes if they are relegated to deeds under the hand, then the auction minutes no longer have the perfect evidentiary power like an authentic deed.

4. CONCLUSION

Harmonization of the authority of the Making of Auction Minutes in view of the Notary Department Law and auction regulations can be done using the principle of *lex specialist derogate legi generalist* used is the Auction Regulation as the basis of the authority to make auction minutes that are in the Auction Official not on the Notary. Although the Notary can be appointed as a Class II Auction Official according to Article 7 of the Auction Instruction *jo.* PMK Auction Official Class II, but the authority is granted in the capacity of a Notary as a Class II Auction Official who has been appointed by the Minister of Finance. Notaries who have not been appointed as Class II Auction Officials are not allowed to make Auction Minutes. Legal consequences for Notaries who make auction minutes that are not Class II Auction Officials will result in the degradation of the status of the auction minutes from an authentic deed to an auction treatise that is only an underhand deed. The degradation of the status of the auction minutes from authentic deeds to deeds under the hands will of course have

another legal effect, namely the auction minutes if they are relegated to deeds under the hand, then the auction minutes no longer have the perfect evidentiary power like an authentic deed.

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