

Legal certainty of Movable goods auction on auction official class I

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Abstract

It is regulated in Article 61 paragraph (1) of the Regulation of the Minister of Finance Number: 122 of 2023 concerning Auction Implementation Guidelines that every auction to be carried out must be preceded by an auction announcement and can be added with complete information about the Auction Object, terms and conditions, and other information. The "may" sentence in the regulation allows sellers not to include details of movable goods that will be sold at auction. This can cause losses for participants or buyers of movable auction goods in the future.

It is interesting to know more about the role and responsibility of the Banda Aceh City State Property and Auction Service Office if the movable goods being auctioned are indicated to have hidden defects and are known by auction participants when the goods are purchased and paid in full. This is necessary to provide certainty and legal protection to auction participants who win an auction moving item. In addition, it can also increase the interest and desire of the people of Banda Aceh in selling goods by auction at the Banda Aceh City State Property and Auction Service Office if auction participants are protected.

The research method used in this writing is a type of empirical/sociological legal research. It involves conducting research directly in the field, conducting interviews with officials of the Banda Aceh City State Property and Auction Service Office, and conducting normative research to adjust the interview results to laws and regulations to get more perfect research results.

This study obtained the result that the Banda Aceh City State Property and Auction Service Office is not responsible for the losses that occur to the auction participants if, in the future, it turns out that the auction goods are indicated to have hidden defects. Another result was obtained that the implementation of auctions at KPKNL Banda Aceh is often carried out with an average or possibility of goods being auctioned every month as many as 30 auction items, but this cannot provide certainty for the interest of the people of Banda Aceh City to sell goods by auction at KPKNL Banda Aceh City. The results of this study conclude that KPKNL provides a forum for sale by auction, which is carried out in public legally and is more guaranteed if the auction is carried out outside the State Auction Institution. If the auction is carried out online, auction participants are expected to be able to check the desired goods directly before the auction schedule is carried out. This is done to minimize losses that occur in the future to the goods purchased from the auction results.

Keywords: Movable goods auction, KPKNL, hidden defective goods auction

Introduction

Auctions have long been known; historically, auctions come from the Latin "auctio," which means a gradual price increase. Experts, through research on Greek literature, suggest that auctions have been known since 450 BC. Some popular types of auctions at that time included horse auctions and slave auctions. In Indonesia, auctions have officially entered the Indonesian legal system since 1908, namely with the enactment of the Auction Law - Vendu Reglement (Auction Regulation Stb. 1908 Number 189). (Sena, 2023) ^[10]

Auction is an agreement that includes buying and selling, both in Civil Law and Common Law. The oldest auction system is in the auction conducted by the Netherlands, which uses a decreasing price system, and the auctioneer determines the starting price and limits the price when it decreases until a bidder is found with a special price. This system produces a better price for the seller based on decisions that depend on market conditions. (Usman, 2015) ^[12]

Through competition in bidding on auctioned goods, fair auctions openly provide impartial facilities and equal opportunities for all people to buy related goods. Therefore, those who dare to bid at the highest price will be the auction winners. To accommodate the needs of the community, economic development, and legal development, the

government must strive to make breakthroughs in the auction sector. The Government's breakthrough is evident in issuing the latest regulations related to implementing auctions issued in the Regulation of the Minister of Finance (PMK) of the Republic of Indonesia Number 124 of 2023 concerning Class 1 Auction Officials. (Tista, 2013) ^[11]

Based on this, it can be seen that an auction is a straightforward process and is a market mechanism where people can gather to buy and sell various types of goods. Thus, it can also be said that an auction is a sales system carried out in public led by an auction official using oral and increasing or decreasing offers and/or in writing and closed to obtain an optimal price. Before the auction is carried out, it is preceded by an announcement of the auction as an effort to gather prospective buyers/interested parties.

The buying and selling activities previously carried out face-to-face or by meeting directly with the seller can now be done through a third-party intermediary in this discussion, namely the auction official. The intermediary for the sale of auction goods occurs because of debts that the owner of the auction goods is unable to pay, so the goods that are guaranteed as debt are sold to another party to replace the payment of the debt of the owner of the goods. This is a win-win solution for the lender who gets back his loan funds, and the debt recipient is no longer obligated to pay the debt after the collateral is sold to another party.

Auction is a form of buying and selling event that is packaged differently. Buying and selling is an agreement whereby one party binds himself to hand over ownership of an object and the other party to pay the promised price. The definition of buying and selling according to Article 1457 of the Civil Code (KUH Perdata) is an agreement whereby one party binds himself to hand over an object and the other party to pay the promised price. The definition above represents several elements contained in buying and selling: an agreement, the handover of goods, and the other party paying the promised price.

In the Indonesian legal system, auctions are classified as a unique method of sale whose procedures differ from general buying and selling. Therefore, the auction sales method is regulated by a separate law that is special or called a *lex specialist*. The specificity of auction rules comes from their transparency or openness, which allows for the formation of competitive prices when the auction is in progress. The provision requires the auction to be led by an authorized auction official to create an order in the auction process. (Usman, 2015) ^[12]

Sales conducted by the auctioneer do not rule out the possibility of new problems, such as defects in auctioned goods. Defects in auctioned goods can be known openly or hiddenly. Open defects are meant to notify buyers of auctioned goods that the goods have defects in certain parts. Meanwhile, hidden defects are intended to be not visible on the physical goods being auctioned, and/or there is no notification when the auction announcement is held. It can be said that hidden defects can occur because the auctioned goods are not known to have defects, so there is no notification to the auction buyer, or hidden defects because the auction seller does not notify the defects in the auctioned goods even though he knows that the auctioned goods have defects.

The auction process begins with an auction announcement in the hope of getting participants to participate; sales through open auctions to the public are carried out with written prices, and the value offered increases to get the highest price. After the auction process, the results will be immediately distributed to pay auction fees, taxes, and other expenses. Auction is the most effective and efficient process but is not free from risks in its implementation. As regulated in Article 61 paragraph (1) of the Minister of Finance Regulation (PMK) Number: 122 of 2023 concerning Auction Implementation Guidelines, every auction to be carried out must be preceded by an auction announcement and complete information can be added regarding the Auction Object, terms and conditions, and other information.

The sentence "can" in the Article does not provide certainty and legal protection to buyers because it has the potential to not provide valid information on the goods to be auctioned. Based on this background, I am interested in studying the legal certainty of auctions of movable goods at class I auction officials (study at the Banda Aceh State Asset and Auction Service Office).

Materials and methods

Based on this research, the empirical legal research method is legal research in the field or practice. According to Abdul Kadir, empirical legal research is research conducted by examining secondary data first and then continuing with research on primary data in the field. In legal research, Law

is seen as a norm or *das sollen* because legal research is an approach that refers to applicable laws and regulations. A normative legal approach is carried out based on the primary legal material by examining theories, concepts, legal principles, and rules related to this research. The approach used in solving problems is the empirical legal approach. The intended legal approach is that Law is seen as a norm (*das sollen*) because in discussing the issues in this research using both written and unwritten laws or both primary, secondary, and tertiary legal materials. The empirical approach is to view the law as a social or cultural reality (*das sein*) because, in this study, the primary data is obtained directly from the research location, namely the Class I Auction Official of Banda Aceh City. (Priyono, 2003) ^[7]

Results and Discussion

In Articles 30 and 31 of the Regulation of the Minister of Finance Number 154/PMK.01/2021 concerning the Organization and Work Procedures of Vertical Agencies of the Directorate General of State Assets, KPKNL has the task of carrying out services in the field of state assets, assessments, and auctions. To carry out these tasks, KPKNL carries out its functions as follows:

1. Inventory, administration, utilization, and security of state assets;
2. Registration, verification, and analysis of considerations for applications for the transfer and elimination of state assets;
3. Implementation of state receivables management and the authority of the State Receivables Affairs Committee;
4. Implementation of technical guidance, coaching, administration, collection, and optimization in the context of managing state receivables;
5. Implementation of assessment services;
6. Implementation of auction services;
7. Presentation of information in the field of assets, state, assessment, and auction;
8. Implementation of providing considerations and advocacy for the management of state receivables and auctions
9. Verification and bookkeeping of receipts of state receivables payments and auction results; and
10. Implementation of KPKNL administration.

Auction participants, individuals, or qualified bodies can submit bids and be declared winners if they offer the highest price or reach the set Limit Value. Auction Officials are divided into several categories, namely Class I Auction Officials who are Civil Servants of the DJKN, Class II Auction Officials who are notaries, retired Civil Servants of the DJKN who have been Auction Officials, and graduates of Auction Official Education and Training. KPKNL has authority that is divided into two authorities, namely absolute authority and relative authority, including the following:

1. Absolute authority includes public sales based on Article 1a *Vendu Reglement*, and every public sale must be carried out before an auction officer. According to Article 1 numbers 50 and 51 of the Regulation of the Minister of Finance Number 122 of 2023, Class I Auction Officers can carry out all types of auctions, while Class II Auction Officers can only carry

out voluntary non-execution auctions. There are exceptions to this provision, including the sale of pawned goods, fresh TPI fish, small wood, government forest products, land products, military inheritance, and firearms as regulated in Article 49 of the *Vendu Reglement*, as well as several provisions in the HIR, RBG, and the Law regarding executions that do not exceed a certain amount.

2. Relative authority refers to the area of office; based on Article 7 *Vendu Reglement* and Regulation of the Minister of Finance Number 124 of 2023, Class I Auction Officers can only conduct auctions in their work area in accordance with the work area of the KPKNL to which they are assigned. Conducting auctions outside this area can cause the auction minutes to be legally invalid.

Class I Auction Officials or KPKNL of Banda Aceh City obtain attributive authority based on the Law, as regulated in Article 1 number 1 of the Minister of Finance Regulation Number 174 of 2010. However, according to Article 11 paragraph (3), Class I Auction Officials can only carry out auctions after receiving a letter of assignment from the Head of KPKNL, which acts as an additional administrative requirement for carrying out auctions after taking the oath of office.

All parties have an essential role in the auction process and can monitor its implementation from start to finish to ensure that the auction procedure is carried out according to the rules. The seller, who can be an individual, legal entity, or agency, is the party who submits an auction application to the KPKNL and is authorized to sell goods in accordance with laws, regulations, or agreements. The Auction Officer, appointed by Law and serves at the KPKNL or Class II Auction Officer Office, is responsible for implementing the auction. The Auction Officer must follow the applicable rules and provide clear information regarding the condition of the auction object to the seller, who must also be active in marketing. A good strategy between the Auction Officer and the seller is essential to create a competitive atmosphere among auction participants.

The main objective of any auction is to achieve an optimal price while ensuring accountable transactions. Marketing efforts by the seller are significant in achieving a high price. If the seller only relies on auction announcements, often the price formed is not optimal, especially in execution auctions, or even no one is interested. Therefore, the seller must be active in marketing and honestly disclose the condition of the auction object to prospective buyers so that competition can be created among auction participants, as from the results of the interview with KPKNL, the goods sold by the seller through the KPKNL website by submitting an auction application and completing the administrative requirements determined by KPKNL on the auction sales website. Suppose the auctioned goods have been sold, and after the goods are used, the auctioned goods are indicated to have hidden defects. In that case, KPKNL is not responsible because KPKNL does not inspect the goods sold through voluntary auctions through the KPKNL website. Still, KPKNL focuses more on fulfilling the administrative requirements the seller must complete to sell their goods at the KPKNL auction.

This is in line with the Regulation of the Minister of Finance regarding the terms and conditions of the auction

implementation. It states that the Bidder or Buyer is considered to have truly known what has been bid/purchased by him. Suppose there are any deficiencies or damages, whether visible or invisible. In that case, the Bidder or Buyer has no right to reject or withdraw after the purchase has been approved and waives all rights to claim damages for anything whatsoever.

KPKNL, Auction House and Auction Officials are released from responsibility for losses suffered by Auction Participants resulting directly or indirectly from

1. Errors and/or negligence of Auction Participants or other parties in submitting Auction bids;
2. Actions of other parties who claim to be KPKNL or Auction House and are detrimental to Auction Participants;
3. The condition of goods;
3. Unofficial payments to parties other than to the KPKNL or Auction House account which in any way claim to be in the name of KPKNL or Auction House or negligence in writing the account and/or other information and/or negligence of the bank.

Auction is one of the buying and selling systems implemented at the State Asset Service Office (KPKNL). KPKNL is the only executor of auction service activities owned by the State. Each auction executor must be present by three parties, namely the seller, the owner or owner of the goods, the buyer, and the auction official. The auction official is an officer from the local KPKNL as a party who, based on statutory regulations, is given special authority to sell goods by auction. (Yudhiharso, 2015) ^[14]

KPKNL plays a vital role in managing state assets through auctions, where auctions are the principal intermediaries that help people who want to sell or buy assets such as land, buildings, vehicles, and so on, or even make it easier for banks to sell confiscated customer assets. KPKNL is to manage and inventory all state assets and hold auctions sourced from state assets and private party assets that are voluntarily auctioned. It also collects state receivables and conducts auctions of goods that have become collateral for the receivables. (Wuwungan, 2018) ^[13]

However, the sale of goods through KPKNL auctions is not widely known by the public except for those who study Law or work at the relevant auction office. One of the residents who was interviewed said that he did not know about the existence of an auction institution regulated by the state and only knew about auctions at banks whose implementers were banks, not KPKNL.

Socialization related to implementing the KPKNL auction is the main task of attracting public interest in selling goods through auctions. In addition, this can minimize or reduce illegal auction practices that are still rampant in society. Along with technology development, many auction offices in Indonesia are now starting to use digital platforms to hold auctions. This simplifies the auction process and increases the accessibility and reach of auctions for the public.

KPKNL in Banda Aceh uses an online system to sell auctioned goods, both movable and immovable objects. This is a new breakthrough for KPKNL, allowing it to continue following digital transformation and current technological developments. In addition, this can also help the community auction goods and purchase auctioned goods from anywhere without having to go directly to the auction location offline. This convenience creates advantages and disadvantages in the implementation of auctions at KPKNL. The benefits of

implementing auctions online are that auctions can be accessed anywhere according to the schedule determined during the auction, do not waste time and energy to be able to conduct auctions directly at the auction location, can find out electronically through images related to the goods to be auctioned, and the possibility of getting more prospective buyers so that the chance of getting a variety of price offers is also greater.

Meanwhile, the drawback if the auction is carried out online is the reduced opportunity to check the auction object directly, which will later have the potential for inconsistencies between the goods purchased through the auction and the goods received, technical problems with the application and/or internet network problems, and the potential for delays in the pre-auction and post-auction processes. In its development, the digitalization of auctions on lelang.go.id is indicated to still have problems related to the submission of physical files of auction application documents and documents related to the implementation of the auction, participation, Auction Minutes, auction announcements in daily newspapers and administration and reporting of auction implementation which is still carried out manually. Related to these problems, in the implementation of auction digitalization, there needs to be:

1. Improvement of auction regulations related to the implementation of auction digitalization both at the level of laws (RL/auction deed, signing of Auction Minutes, auction announcements, as well as improvement of technical regulations below (auction reporting and administration);
2. Development of a reliable and accountable database for the needs of making Auction Minutes and/or auction reporting and administration;
3. Improvement of the quality and professionalism of Human Resources by providing competent Human Resources;
4. Supervision so that the auction services provided are by applicable SOPs;
5. Improvement of ICT to eliminate/minimize potential problems arising in applications, such as errors or network problems;
6. System integration (integration of internet/web-based applications) with applications of other related units/institutions exists.

With the improvement of the digitalization of lelang.go.id, it is hoped that auctions in Indonesia will become a form of transaction that is increasingly safe, superior, and reliable so that enthusiasts will increase. As in Article 81 paragraph (1) of the Regulation of the Minister of Finance Number 122 of 2023 concerning Auction Implementation Guidelines, it is stated that KPKNL or Auction Houses that organize Auctions with bids through the Auction Application or e-marketplace Auction are required to implement excellent and accountable governance and risk management against potential damage or losses incurred.

But this is different from other explanations contained in the Regulation of the Minister of Finance Number 122 of 2023 concerning Auction Implementation Guidelines related to the KPKNL or Auction House, which is not responsible for things that happen to auction participants, such as auctioned goods that are indicated to have hidden defects after the purchase of auctioned goods. This can occur in a study whose contents explain that there are problems with

auctioned goods indicated to have hidden defects that are known after the goods are purchased.

Examples of hidden defects in the problems studied in the thesis are the results of friction of engine numbers that are different from the numbers listed in the Motor Vehicle Owner's Book; the engine number was found to have irregular adhesive marks when the car was about to be repaired at a mechanic's workshop, and finally, the auction winner was detained by the police because the car won by auction had a case. After all, it was lost from its first owner after being leased. These problems will likely occur in Banda Aceh if the auction is not carried out strictly, which causes public distrust of government institutions.

Conclusion

Based on this research, the results show that the Banda Aceh City State Asset and Auction Service Office is not responsible for losses incurred by auction participants if later it turns out that the auctioned goods are indicated to have hidden defects. This has also been stated in the Regulation of the Minister of Finance Number 122 of 2023 concerning Auction Implementation Guidelines. The author concludes this because the implementation or sale of movable property auctions is carried out voluntarily, and the Banda Aceh KPKNL is only limited to examining the files that have been completed by the seller according to the requirements provided by the Banda Aceh KPKNL without reviewing the goods to be auctioned.

The implementation of auctions at KPKNL Banda Aceh is still often carried out with an average or possibility of 30 auctioned items each month, but this cannot provide certainty regarding the interest of the Banda Aceh City community in selling goods by auction. The certainty of the auctioned goods is explained in detail, including whether the auction is carried out voluntarily for movable goods.

Suggestion

The KPKNL cannot protect the provision of legal protection for auction participants if the movable goods being auctioned are indicated to have hidden defects after the auction has been completed and the purchase has been made. It is better for the KPKNL as the only State Auction Institution to provide legal protection to auction participants; the KPKNL provides a sales forum through auctions that are carried out in public legally and more securely if the auction is carried out outside the State Auction Institution. If the auction is carried out online, auction participants are expected to be able to check the desired goods directly before the auction schedule is carried out.

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