

## The Legal Aspects of Land Auction Process for Former Village Officials Collateral and/or Government-Owned Development Reserve Land

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**Abstract.** *This study aims to identify and analyze the legal aspects of the auction process for land that was formerly guaranteed by village officials and/or development reserves belonging to the Bima district government. To find out and analyze the legal consequences for the auctioneers who carry out the auction not based on the laws and regulations regarding auctions. And to find out and analyze the legal consequences of the auction treatise deed from the implementation of an auction that is not based on the laws and regulations regarding auctions. The specification of this research uses descriptive analysis. The type of data used in this study is primary data which includes the 1945 Constitution; Government Regulation Number 28 of 2020; Regulation of the Minister of Finance Number 213/PMK.06/2020; Bima Regent Regulation Number 30 of 2019; Civil Code and Criminal Code, as well as secondary data containing books and other supporting documents. Collection of research data using interview techniques and study of documents or library materials. The data analysis method used in analyzing the data is an interactive model qualitative analysis as proposed by Miles and Huberman. The results of the research show that the process of carrying out the auction as stipulated in the Minister of Finance Regulation Number 213/PMK.06/2020 and the Bima Regent Regulation Number 30 of 2019 there are differences in certain matters. And in practice the implementation of the auction is not in accordance with the provisions of the applicable laws and regulations.*

**Keywords:** Auction; Land; Village.

### 1. Introduction

Land actually has a very important meaning for human life, land has an important meaning for humans because humans have a close and inseparable relationship with land, besides that land also contains many values, ranging from economic values, socio-cultural values, anthropological values and so on. also

philosophical value. Socio-culturally, people view land not only as the surface of the earth but also as the whole of their lives, the atropological relationship between humans and land because humans are created from soil, grow and develop on land and will return to land, land has economic value because land can be used as an economic resource, either through direct use of land through agriculture, or through other means such as buying and selling, and leasing.

The economic aspect of land shows that land as an economic asset has a high value, because the area of land is fixed while the number of people who need it is increasing. Not only individuals, even legal entities and government agencies, including local governments, also need land, both for carrying out their duties and for other purposes.<sup>1</sup>

Regional Government is the executor of governmental affairs in the regions that exercises their power according to the principle of autonomy and assistant duties with the principle of broadest autonomy within the system and principles of the Unitary State of the Republic of Indonesia in 1945. In carrying out its main tasks and functions, the Regional Government (Provincial Government or Regency Government) / City) can own assets (wealth) in the form of land with certain status rights, or in other words the Provincial Government and Regency / City Government can control land with certain rights status.<sup>2</sup>

Tenure rights over land that can be controlled by local governments are usufructuary rights and management rights. The regional government's authority over land with the status of usufructuary rights is to use the land for the purposes of carrying out their duties. Meanwhile, for land with the status of management rights, the local government has the authority to plan the allotment and use of the land, use the land for the purposes of carrying out its duties and hand over parts of the land with management rights to third parties or cooperate with third parties.

Land tenure rights in the form of usufructuary rights and management rights that can be controlled by regional governments actually originate directly from the state's right to control land as emphasized in Article 2 paragraph 4 of the UUPA which reads "that the right to control from the state can be delegated to the regions. autonomous and customary law communities, are simply necessary and do not conflict with national interests, according to the provisions of government regulations".

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<sup>1</sup>Supriyadi, 2010, *Legal Aspects of Regional Land Assets, Achievement of Publicist Libraries*, Jakarta, p. 1.

<sup>2</sup> Urip Santoso, 2020, *Agrarian Law and Its Development from a Legal Political Perspective*, Kencana, Jakarta, p. 113.

Land formerly guaranteed by Village Officials and/or Land Reserved for Development Owned by the Regional Government is land that is controlled by the regional government with the status of management rights. Land formerly guaranteed by village officials is former land given by the local government to the village government to be managed with the intention of benefiting from the management as salary compensation, which was later withdrawn by the local government after the enactment of Law No. 6 of 2014 concerning villages, In addition, land that was formerly guaranteed by village officials or development reserve land belonging to the local government is a local government asset in the form of tangible goods that have economic value (economic value), commercial value (commercial value) and also social value for regional development and development.

By the local government, the land that was formerly guaranteed by village officials and/or development reserve land owned by the local government is leased out through an auction process. As regulated through the Bima Regency Regulation No. 30 of 2019.

This annual auction lease is carried out by the Regional Government to carry out the mandate of Government Regulation No. 27 of 2014 as amended by Government Regulation No. 28 of 2020 concerning the management of state and regional property in order to optimize regional property without changing the ownership status.

Technically, in the auction process for the annual lease of the ex-guaranteed village land and/or development reserve land owned by the Bima district government, there are still many problems. Apart from violating the provisions of the auction law and regulations regarding auctions, it also causes losses for the parties. both for local government as well as for bidders. the non-disclosure of the auction committee in carrying out the auction process which violates the Transparency Principle, for example, is a very serious and recurring problem, this can be seen from the history of the 2021 auction which did not determine the bidder with the highest bidder as the auction winner. Case in point, the land of the ex-collateral of the Kaur Kesra of Kananta Village located in Moggo Village, the highest bidder was on behalf of Muhtar with a bargaining value of Rp. 8,000. 000 while on the notice board Muhsin won with a bargaining value of Rp. 4,550,000, which clearly violates the provisions of article 77 PMK Number: 213/PMK.06/2020 Concerning Instructions for Conducting Auctions.

In carrying out an auction that uses a limit value, the auction official certifies the auction participant who submitted the highest bid that has reached or exceeded the limit value as a buyer.<sup>3</sup>In carrying out a special scheduled auction, validation

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<sup>3</sup>Regulation of the Minister of Finance of the Republic of Indonesia Number: 213/PMK.06/2020.

of bidders submitting the highest bid as a buyer is carried out according to the provisions referred to in paragraphs 1 and 2.<sup>4</sup>In the event that there is more than one auction participant submitting the highest bid with the same value during the auction in writing without the presence of the auction participant as referred to in Article 63 paragraph (8) the auction official shall authorize the buyer by means of a draw among the bidders submitting the bid. same highest bid.<sup>5</sup>

In fact, in the clauses in the laws and regulations in the field of auctions, it is found that the principles of auction include the principles of transparency, competition, fairness, efficiency and accountability.

In addition, delays in the schedule for ex-collateral land auctions that were not on time also allegedly triggered conflicts, because in Bolo sub-district all ex-collateral land had been worked on by certain elements. While the auction process has not been carried out. Delays in the auction schedule lead to misuse of land so that the land cannot be utilized optimally by the usufructuary. This also violates the public function of the auction, which in addition to securing assets owned or controlled by the state or local government, is also to increase the efficiency of state or regional property.

In its implementation, the implementation of auctions for ex-guaranteed land for village officials and/or development reserve land belonging to the Bima district government is carried out by an auction committee formed by the regent based on a regent's decision, while basically every auction must be carried out by and/or before the auction official, unless otherwise determined by law or government regulation. In the provisions of Article 1a paragraph (1) and paragraph (2) of the Vendu Regulation it is emphasized that "public sale cannot be carried out other than in the presence of the auctioneer. With government regulations, public sales can be carried out without the intervention of the auctioneer. Then the necessity or obligation for implementation to be carried out by and/or in front of the Auction Officials is emphasized again in Article 2 of Minister of Finance Regulation Number: 213/PMK.06/2020,

Auctions that are not in accordance with the Vendu Regulation and Minister of Finance Regulation Number 213/PMK.06/2020 are considered invalid or can be canceled, because each auction must be carried out by and in the presence of an auction official. Threat of canceling an auction that is not in accordance with the provisions in the Vendu Regulation and Regulation of the Minister of Finance "an auction that has been carried out in accordance with the applicable provisions cannot be cancelled". This means that by referring to these provisions, the

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<sup>4</sup>*Ibid.*

<sup>5</sup>*Ibid*

auction that has been carried out is not in accordance with the applicable provisions, can be canceled or considered invalid.<sup>6</sup>

Based on the background that has been described by the researchers above, the researcher is interested in discussing a study entitled Legal Aspects of the Land Auction Process for ex-Guaranteed Village Officials and/or Development Reserve Land belonging to the Bima Regency Government.

## **2. Research Methods**

The research approach method used in this study is a sociological juridical approach. The sociological juridical approach is carried out with field research aimed at the application of law. The sociological juridical approach is an approach that is carried out by looking at the reality that exists in practice in the field.<sup>7</sup>The specification of this research will use analytical descriptive, namely research that besides providing an overview, writing and reporting an object or an event will also draw general conclusions from the issues discussed. Source of data comes from primary data and secondary data. Data collection methods include interviews studying documents or library materials. The data analysis method used in analyzing the data is an interactive model qualitative analysis as proposed by Miles and Huberman.

## **3. Results and Discussion**

### **3.1. Implementation of the Land Auction Process for ex-Village Official Guarantees and/or Development Reserve Land belonging to the Bima Regency Government**

Based on one of the points of consideration in the Bima Regent Regulation Number 30 of 2019 concerning the Annual Rent of Land that was ex-Guaranteed by Village Officials and/or Development Reserve Land belonging to the Bima Regency Government, this is intended to optimize regional revenues by Utilizing State/Regional Property.

This is carried out based on PP No. 28 of 2020 concerning Management of State or Regional Property. Forms of Utilization of State/Regional Property can be in the form of Leasing, Borrowing, Cooperation in the Utilization and Construction of Handover or Construction of Handover and Cooperation in the Provision of Infrastructure. also General Explanation II Number 2 UUPA which states that the implementation of governance in the agrarian sector can be a source of finance

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<sup>6</sup>Ibid., p. 35.

<sup>7</sup>Agung Nugroho And Sukarmi, 2020, Notaruy Authority In Installing Mortgage As Effort To Serrie Bad Credit (Second Way Out), Sultan Agung Notary Law Review, Vol. 2, No. 2, p. 93.

for the region, as further regulated in article 157 of Law Number 32 of 2004 states as follows:

- a. Sources of regional original income, hereinafter referred to as PAD, namely:
  - 1) local tax results.
  - 2) regional retribution.
  - 3) results of separated regional wealth management.
  - 4) other legal PAD.
  - 5) other legal original regional income.
- b. balance fund.
- c. other legal regional income.
  1. Auction Manager

To carry out the Annual Lease Auction Process for the Land of Former Village Official Guarantee and/or Development Reserve Land Owned by the Bima Regency Government, a committee is formed which is carried out by decree of the regent consisting of a district level committee and/or a committee at the sub-district level can be formed, in which case the formation of a level committee sub-districts are carried out with consideration of social conditions, policies in the utilization, arrangement and handling of regional assets

- 1) The committee at the district level consists of the following elements:
  - a. BPPKAD
  - b. Government Administration Section
  - c. the regional Secretariat
  - d. Legal Division of the Regional Secretariat and
  - e. Other Related Elements.

Other related elements can come from Regional Apparatuses of Bima Regency and/or Non-Regional Apparatuses by taking into account the aspects of needs, competence and coordination in the context of smooth implementation of the

annual lease of the ex-guaranteed village land and/or development reserve land belonging to the Bima regency government.

2) The composition of the committee consists of:

- a. Person responsible.
- b. Director.
- c. Chairman.
- d. Vice Chairman .
- e. Secretary.
- f. Members and
- g. Administrative staff.

3) Duties and powers of the committee:

- a. Arrange the rules for implementing the annual lease.
- b. Prepare a blank application for annual rent.
- c. Determine and announce the time of implementation of the annual lease.
- d. Receive registration of prospective tenants.
- e. Verify the completeness and correctness of the administrative requirements of each member of the public who registers as a prospective tenant.
- f. Determine and announce the names of prospective tenants who are designated as land lease holders.

In the Implementation of the Auction for the Annual Rent of Land formerly Guaranteed by Village Officials and/or Development Reserve Land belonging to the Bima Regency Government, in the event that the auctioneer or auction committee does not have KPKNL elements or Class II Auction Officials or the Auction Center as general auction officials even though Article 7 of the Ministerial Regulation Finance Number 213/PMK.06/2020 which reads Auction Organizer is the KPKNL, Auction Center, or Office of Class II Auction Officials that organizes the Auction.

Based on Article 7 of Bima Regent Regulation No 30 of 2019 letter E it is explained that apart from the BPPKAD, the Government Administration Section, the Regional Secretariat and the Legal Section of the Regional Secretariat, in fact there are other related elements which are also part of the tender committee, other related elements as intended are not explained in more detail. However, we can understand that each of these related elements is required by taking into account the aspects of needs, competence and coordination in the context of the smooth implementation of the annual lease and various considerations, ranging from administrative considerations, technical considerations and also legal considerations.

while basically every auction must be carried out by and/or before the auction official, unless otherwise stipulated by laws or government regulations. This is as emphasized in the provisions of article 1a paragraph (1) and paragraph (2) of the *Vendu Regulation*, that "sales in public cannot be made other than in front of the auctioneer. With government regulations, public sales can be carried out without the intervention of the auctioneer. Then the necessity or obligation of implementation to be carried out by and/or before the Auction Official is emphasized again in Article 2 of the Minister of Finance Regulation Number: 93/PMK.06/2013, which states that "every auction must be carried out by and/or in the presence of an auction official. , unless otherwise stipulated by laws or government regulations"

## 2. Auction Participant

prospective tenants of ex-Village Official Collateral Land and/or Development Reserve Land belonging to the Bima Regency Government. specified in article 4A of the Bima Regent Regulation Number 30 of 2019 as which reads "every Bima community member has the right to become a prospective tenant and apply for the lease of Land formerly Guaranteed by Village Officials and/or Development Reserve Land belonging to the Bima Regency Government.

Bidders as referred to in Article 4A must meet the following requirements:

- a. Are aged 18 years or more and/or are married or have been married
- b. Residing in a district whose territory includes the location of the land that is the object of lease as evidenced by an identity card (KTP).
- c. Take the blank rental application provided by the committee.
- d. Open an account at the bank appointed by the committee.



In the event that the land that is the object of lease is outside the Bima district area, a lease application can only be made by:

- a. Residents of the Bima community who live in an area directly adjacent to the area where the land object is leased and.
- b. Residents outside the Bima district area who live in the sub-district where the object is rented.

Furthermore, Article 4A paragraph 2 excludes that Bima community members as referred to in paragraph 1 do not include:

- a. Government employees.
- b. Indonesian Republican Army and
- c. Indonesian National Police.

Meanwhile, based on Minister of Finance Regulation Number 213/PMK.06/2020 concerning Technical Instructions for Implementing Auctions, legal subjects who cannot participate or who cannot become bidders include:

- a. Auction Officer
- b. Sales Officer
- c. Auction Guide
- d. Judge
- e. prosecutor
- f. Bailiff
- g. Registrar
- h. Notary Public
- i. PPAT
- j. Evaluator
- k. DJPLN employee

- I. Auction Hall Officer
- m. Class II Auction Officer Office Employees

According to the author, the qualifications and exclusions of bidders as stipulated in article 4 A paragraph (2) of the Bima Regent Regulation No. 30 of 2019 are still very narrow because they have not accommodated the interests and objectives of the auction process for ex-guaranteed village land and/or development reserve land. Belongs to the Bima Regency Government which is not only seeking the highest bidder but also allocating and prioritizing the ex-guaranteed land of village officials and/or development reserve land belonging to the Bima Regency government for people who do not have cultivated land.

Therefore, according to the author, the conditions as stipulated in Article 4 A of the Bima Regent's Regulation must be tightened and provide greater opportunities so that bidders are truly Bima district residents who do not own cultivated land. The additional conditions referred to by the author include that bidders must accompany a statement that they do not own cultivated land from the local village government, so that bidders who truly do not own cultivated land can be designated as priority participants.

- 3. Announcement
  - a. The committee announced the implementation of the annual lease
  - b. The announcement as referred to in letter a is made on the government announcement board at the regency secretary, the sub-district committee secretary on the announcement board at the sub-district office and the village office for the Bima district.
  - c. Announcement as referred to in letter b at least contains
    - a) Annual lease implementation rules
    - b) Time and place to apply/request land lease
    - c) The conditions referred to in article 5 of the Bima Regency Regulation No. 30 of 2019 concerning Auctions for Land Leases that were formerly Guaranteed by Village Officials and/or Development Reserve Land belonging to the Bima Regency Government.
    - d) Location and area of land that is the object of lease and
    - e) Land standard price

#### 4. Limit Value

Based on Article 4 of Bima Regent Regulation No 30 of 2019.

- 1) The committee announces the standard rental price of the land which is the object of the lease based on the standard price set.
- 2) The standard price as referred to in paragraph (1) is determined by considering
  - a. Land location potential value/soil class.
  - b. Prices that develop in society.
- 3) The standard annual rental price for land as referred to in paragraph (1) is determined by a district head's decision.

Based on PP No. 28 of 2020 Concerning Management of State or Regional Property, the formula for rates/amount of rent for State/Regional Property in the form of land and/or buildings is determined by:

- a. Property Manager, for State Property or
- b. Governor/Regent/Mayor, for Regional Property.

#### 5. Auction Winner

Based on Article 11 of the Bima Regent Regulation Number 30 of 2019 concerning Auctions for Leases of Land that was ex-Guaranteed by Village Officials and/or Development Reserve Land Owned by the Bima Regency Government, the determination and determination of winners and/or lease holders is carried out based on

- 1) Determination and determination of annual lease rights holders based on:
  - a. The results of inspection of requirements and verification equipment as referred to in article 11 of the Bima Regency Regulation No. 30 of 2019 concerning Auctions for Leases of Land Formerly Guaranteed by Village Officials and/or Development Reserve Land belonging to the Bima Regency Government.
  - b. The highest bid price submitted by the prospective tenant.

- 2) In the event that there is more than one prospective lessee who fulfills the requirements for a leased object and the same bid price, a deliberation to determine the lease rights holder is carried out to reach a consensus facilitated by the committee and included in the minutes of the deliberation.
- 3) Prospective tenants who have been designated by the committee as the holders of lease rights are announced on the local government bulletin board at the district regional secretariat, bulletin board at the sub-district office, bulletin board at the sub-district committee secretariat and village office.
- 4) The announcement as referred to in paragraph (3) contains:
  - a. The name and address of the lease holder.
  - b. Location/origin of land/persil/class and area of land leased
  - c. The price determined by the lease right holder.

According to Article 77 of the Minister of Finance Regulation Number 213/PMK.06/2020, the auction official certifies the highest bidder who has reached the limit value as a buyer. Limit Value as Buyer. In the implementation of a Voluntary Non-execution Auction that does not use a Limit Value, the Auction Official certifies the Bidder who submits the highest bid as a Buyer based on the Seller's approval. In the implementation of the Special Scheduled Auction, validation of the Auction Participant submitting the highest bid as a Buyer is carried out following the provisions referred to in paragraph (1) and paragraph (2) of Article 77 of Minister of Finance Regulation Number 213/PMK.06/2020.

In the auction which is followed by a get it now bid as referred to in Article 66 paragraph (2) letter a, the Auction Official certifies the Bidder as a Buyer who fulfills the following conditions:

- a. the first bid received through the e-Marketplace Auction Platform; And
- b. has reached or exceeded the Limit Value, or according to the price desired by the Seller.

In the event that more than one Auction Participant submits the highest bid verbally or in writing with the same value and/or has reached or exceeded the Limit Value in the Auction using the Limit Value, the Auction Officer has the right to certify the Buyer by doing:

- a. follow-up bids are only made to Auction Participants submitting the same bid, which are made verbally or in writing based on the approval of the relevant Bidder; or.
- b. drawing lots between Auction Participants submitting equal bids if the provisions referred to in letter a cannot be implemented.

In the event that more than one Bidder submits the same highest bid in an auction bid via electronic mail (e-mail) or Auction Application with closed bidding, the Auction Official certifies the Bidder whose bid is received first as a Buyer.

In the event that more than one Bidder submits the highest bid with the same value in the implementation of the written auction with the presence of the auction participant which is carried out simultaneously with the written auction bid without the presence of the auction participant as referred to in Article 63 paragraph (8), the Auction Official shall certify Buyer by way of drawing lots among the Auction Participants submitting the same highest bid.

In the implementation of the Special Scheduled Auction, if the Default Buyer applies the following conditions:

- a. The Auction Participant submitting the second ranking bid may be legalized as a Buyer; or.
- b. in the event that the Auction Participant submitting the second ranking bid is not willing to be legalized as a Buyer, the Auction Participant submitting the third ranked bid may be legalized as a Buyer.

The Auction Participant submitting the second ranking bid or the Auction Participant submitting the third ranking bid as referred to in paragraph (1) may be legalized as a Buyer according to the bid price submitted, in the event:

- a. the bid submitted by the Auction Participant has reached or exceeded the Limit Value; or.
- b. approved by the Seller for Auctions that do not use Limit Values

In the event that there are more than 1 (one) person in the Auction Participant submitting the second ranking bid or the Auction Participant submitting the third rank bid as referred to in paragraph (1), the Buyer's validation by the Auction Official is carried out based on:

- a. drawing lots between the Auction Participants submitting the second ranking bid or the Auction Participants submitting the third ranking bid, for the Special Scheduled Auction in the presence of participants; or.
- b. bids received first, for Special Scheduled Auctions through the e-Marketplace Auction Platform.

Approval of the Auction Participant submitting second or third rank bids as a Buyer as referred to in paragraph (1) is carried out by the Auction Official on the following working day after cancellation of the Default Buyer.

Financial service institutions as creditors can buy their collateral in an auction as long as it is regulated and does not conflict with laws and regulations.

(1) In the event that a financial services institution will purchase collateral as referred to in paragraph (1), the financial services institution must submit to the Auction Officer a statement in the form of a notary deed containing a statement that the purchase will be made for another party to be appointed later within 1 (one) year. years from the date of the auction.

In the event that the time period referred to in paragraph (1) has passed, the financial services institution shall be determined as the Buyer.

If we look at it based on Bima Regent Regulation Number 30 of 2019 and Minister of Finance Regulation Number 213/PMK.06/2020. There are similarities in determining the auction winner, which is determined based on: the highest bid submitted by the bidder or prospective lessee, besides that in the event that there are several bidders or prospective tenants bidding the same price based on Bima Regent Regulation Number 30 of 2019 the determination of the auction winner or lease rights holders based on the results of a consensus deliberation of bidders or prospective tenants bidding the same price. This consensus deliberation is carried out to find, find and determine the right prospective tenants,

Meanwhile, according to Article 77 of the Minister of Finance Regulation Number: 213/PMK.06/2020, in the event that there are bidders with the same bid, the auction official has the right to continuation bids are only for Auction Participants submitting the same bid, which shall be made verbally or in writing based on the approval of the relevant Bidder or drawing lots between Auction Participants submitting the same bid, if the provisions referred to in the first section cannot be implemented.

In the opinion of the author regarding the differences in how to determine/determine the candidate winner of the auction as stipulated in Article

12 of the Bima Regent Regulation Number 30 of 2019 and what is stipulated in Article 77 of the Minister of Finance Regulation Number 213/PMK.06/2020 are not contradictory to one another . So that Article 12 of the Bima Regent Regulation Number 30 of 2019 does not have to be adjusted to Article 77 of the Minister of Finance Regulation Number 213/PMK.06/2020.

Article 77 paragraph (1) stipulates that in carrying out an auction using a Limit Value, the Auction Official certifies the Auction Participant who submitted the highest bid that has reached or exceeded the Limit Value as a Buyer. according to the author what is regulated in article 77 paragraph (1) above has been fully accommodated in article 12 paragraph (1) letter b Bima Regent Regulation Number 30 of 2019 which reads the committee determines and determines the holder of rental rights based on the highest bid price submitted by prospective tenants . From the sound of article 77 paragraph (1) PMK No. 213/PMK.06/2020 above, in the event that there is more than one prospective tenant submitting the same bid, the auction committee is not required to submit another bidder for a price increase. The most important thing is that the bidding value submitted by the prospective tenant has exceeded the limit value.

### **3.2. Legal Consequences of the Auction Process for Land Former Guaranteed by Village Officials and/or Development Reserve Land Owned by the Bima Regency Government That Is Not Based on the Provisions of the Applicable Laws and Regulations**

The legal consequences of the bidding process for land that was formerly guaranteed by village officials and/or development reserve land belonging to the Bima district government that are not based on statutory regulations can be null and void by law. This is because the auction process is a buying and selling process and is a civil legal act whose implementation has been determined in statutory regulations.

In the event that the bidder with the highest bidder is not determined as the winner of the auction. As in the example case, the land auction for the ex-college of the Kaur Kesra of Kananta Village located in Moggo Village, the highest bidder was on behalf of Muhtar with a bargaining value of Rp. 8,000,000 (eight million rupiah) while on the notice board Muhsin won with a bargaining value of Rp. 4,550,000, (four million five hundred and fifty thousand rupiah) clearly violates the provisions of article 77 PMK Number: 213/PMK.06/2020 Concerning Instructions for Conducting Auctions as well as Article 11 letter b Bima Regent Regulation Number 30 of 2019 concerning Auctions for Former Land Leases Guarantee of Village Officials and/or Development Reserve Land Owned by the Bima Regency Government which explains that the determination and determination of the winner and/or the holder of the Lease Right is carried out based on.

Determination and determination of annual lease rights holders based on:

- a. The results of inspection of requirements and verification equipment as referred to in article 11 of the Bima Regency Regulation No. 30 of 2019 concerning Auctions for Leases of Land Formerly Guaranteed by Village Officials and/or Development Reserve Land belonging to the Bima Regency Government.
- b. The highest bid price submitted by prospective tenants.

In fact, in the clauses in the laws and regulations in the field of auctions, it is found that the principles of auction include the principles of transparency, competition, fairness, efficiency and accountability.

The principle of openness requires that all levels of society are aware of the auction plan and have the same opportunity to participate in the auction as long as it is not prohibited by law. Therefore, every auction implementation must be preceded by an auction announcement. This principle is also to prevent unfair business competition practices from occurring, and not to provide opportunities for corruption, collusion and nepotism (KKN) practices.<sup>8</sup>

The principle of competition implies that in the auction implementation process each participant or bidder is given the same opportunity to compete in bidding for the highest price or at least reaching and/or exceeding the limit value of the item to be auctioned and determined by the seller or owner of the item. Basically the highest bidder of the item to be auctioned is authorized by the auction official as the auction buyer.<sup>9</sup>

The principle of justice implies that in the process of implementing an auction, it must be able to fulfill a sense of justice proportionally to each interested party. This principle is to prevent the auction official from taking sides with certain bidders or taking sides only with the interests of the seller. Especially in executing auctions, the seller may not set a limit price arbitrarily which is detrimental to the executed party.<sup>10</sup>

The principle of legal certainty requires that an auction that has been carried out guarantees legal protection for parties with an interest in the implementation of the auction. At each auction, minutes of the auction are made by the auction official, which constitutes an authentic deed. Auction minutes are used by sellers

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<sup>8</sup>Sudiarto, 2021, Introduction to Indonesian Auction Law, Kencana, Jakarta, p. 128.

<sup>9</sup>Ibid.

<sup>10</sup>Ibid.



or owners of goods, buyers, and auction officials to defend and exercise their rights and obligations.<sup>11</sup>

The principle of efficiency will guarantee that the auction is carried out quickly and at a relatively low cost because the auction is carried out at a predetermined place and time and the buyer is authorized at that time.<sup>12</sup>

The principle of accountability requires that auctions carried out by auction officials be accountable to all interested parties. The accountability of auction officials includes auction administration and auction money management.<sup>13</sup>

According to Article 1320 of the Civil Code which reads "the legal requirements of an agreement are: The agreement of those who bind themselves, the ability to make an agreement, a certain thing, a lawful cause." In this case, the agreement was declared null and void due to non-fulfillment of the objective conditions of the agreement regarding a lawful cause or cause, in which case the bidder with the highest bid was not assigned as the winner of the auction and instead leased it to another party with a lower bid. . So that the tenant agreement is invalid or null and void by law.

### **3.3. Legal Consequences of the Deed of Minutes of Auction From the Auction Process for Land of Former Village Officials Collateral and/or Development Reserve Land Owned by the Bima Regency Government That Is Not Based on the Provisions of the Applicable Laws and Regulations**

Based on Article 15 of Bima Regent Regulation Number 30 of 2019, the holder of the lease right is required to sign a land lease agreement with the local government represented by an authorized official.

Furthermore, the land lease agreement is evidence for the holder of the annual lease right to control, cultivate and utilize the land for the leased object with legal lease rights according to law.

Based on article 29 paragraph (7) PP Number 28 of 2020 concerning Management of State or Regional Property. Rent of State/Regional Property is carried out based on an agreement, which contains at least:

- a. the parties bound in the agreement.

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<sup>11</sup>Ibid.

<sup>12</sup>Ibid.

<sup>13</sup>Ibid.

- b. type, area or number of goods, rental amount, and period of time.
- c. lessee's responsibility for operational and maintenance costs during the rental period.
- d. the rights and obligations of the parties.

In practice, this annual lease is carried out through an auction process to find prospective tenants with the highest price. Then the lease of goods owned by the State or Region must be carried out with the deed of minutes of auction. Which deed of minutes of auction must accommodate what is stipulated in article 29 paragraph (7) PP Number 28 of 2020 Concerning Management of State or Regional Property. Rent of State/Regional Property.

The Minutes of Auction has one special feature, namely that it is prepared by an Auction Officer who is appointed by the Minister of Finance to prepare the Minutes of Auction at the end of the auction process, as regulated in PMK No. 213/PMK.06/2020 concerning Instructions for Conducting Auctions. The existence of the Minutes of Auction is very important in the auction process for both movable and immovable objects. The strength of proof consists of physical, formal and material evidence as stipulated in Article 1868 of the Civil Code. Then a question arises whether the Minutes of Auction is meant as an Authentic Deed.

As proof of the implementation of the auction, the auction official is required to make an auction report, which is called the auction minutes deed. with the Regulation of the Minister of Finance Number 106/PMK.06/2013, which states that "the auction official conducting the auction is obliged to prepare the minutes of the auction"

Previously, article 35 of the Vendu Regulation stated that "for each public sale carried out by the auctioneer or his attorney, during the sale, for each day of the auction or sale a separate report must be made" of this provision, the auctioneer who carries out each auction required to make a report on the auction procedure, which is then referred to as "tender minutes".

The provisions of Article 35 of the Vendu Regulation regulate that the minutes of the auction are the same as the minutes of the auction which are the basis for authenticating auction sales, meanwhile according to the provisions of Article 1 number 32 of the Minister of Finance Regulation Number 93/PMK.06/2010, as amended by the Minister of Finance Regulation Number 106/PMK.06/2013, the minutes of the auction are the minutes of the auction made by the auction official which is an authentic deed and has perfect evidentiary power.

Based on article 1868 of the Civil Code, an authentic deed is a written document made in a form determined by law, made by or before a public official who is authorized to do so at the place where the contract was made, which deed has full evidence.

The law expressly states that a deed is authentic if:

- a. The form is determined by law
- b. Made by or before a public official
- c. Made within the jurisdiction of the official who made the deed.

With regard to the need for an authentic certificate as the strongest civil evidence according to the applicable legal order, it is necessary to have a public official assigned by law to carry out the making of the authentic deed. The embodiment of the need for the presence of a public official for the birth of an authentic deed cannot be avoided. In order for an article to have the weight value of an authentic deed whose form is determined by law, it has a logical consequence that the public official who carries out the making of an authentic deed must also be regulated by law.

An authentic deed is a deed drawn up by an official who is authorized to do so by the authorities according to predetermined conditions, either with or without the assistance of interested parties, which records what is requested to be included in it by interested parties. The authentic deed contains a statement from an official explaining what he did or saw in front of him.

In Article 1868 of the Civil Code, what is meant by "an authentic deed is a deed made in a form determined by law by/or before a public official authorized for that purpose, at the place where the deed was made".

In Article 165 HIR it is stated that "Authentic deed, namely a deed drawn up by or in the presence of an official who is authorized to do so, is complete evidence between the parties and their heirs and those who receive rights from him regarding what is listed in it as mere notice." The deed is called authentic if it fulfills 3 elements, namely:

- a. Made in the form according to the provisions of the law.
- b. Made by or before a public official.
- c. The general official must have the authority to do so at the place where the deed was made.

Irawan Soerodjo also stated that there are 3 (three) essential elements in order to fulfill the formal requirements of an authentic deed, namely:

- a. In the form prescribed by law.
- b. Made by and in the presence of a General Officer.
- c. The deed made by or before the authorized Public Official for that purpose and at the place where the deed was made.

Authentic deed is a perfect proof of what was done/stated in the deed. This means having the strength of evidence in such a way because it is considered attached to the deed itself so that it does not need to be proven again and for the judge it is "Compulsory/Required Evidence".

A deed is an authentic deed, so the deed has 3 (three) functions for the parties who make it, namely:

- a. as proof that the parties concerned have entered into a certain agreement.
- b. as evidence for the parties that what is written in the agreement is the goal and desire of the parties.

as evidence to third parties that a certain date, unless specified otherwise, the parties have entered into an agreement and that the contents of the agreement are in accordance with the wishes of the parties.

Based on this definition, it is known that a deed can be said to be an authentic deed, must meet the requirements, namely made in the form determined by law, made by an official or public employee, and the official or public employee must be authorized to make the deed in the place where deed made.

Deed of Minutes of Auction

1. The Minutes of Auction consist of:
  - a. head section.
  - b. body parts.
  - c. leg section.

Tender Minutes made in Indonesian.

Each Minutes of Auction shall be numbered sequentially in accordance with the numbering standards of the Minutes of Auction.

2. The Head of the Minutes of Auction shall contain at least:
  - a. the day, date and time of the auction is written in letters and numbers.
  - b. full name and domicile of the Auction Officer.
  - c. full name, occupation, place of domicile or domicile, and mechanism of presence of the Seller.
  - d. place of auction.
  - e. the nature of the item being auctioned and the reason for the item being auctioned.
  - f. in the event that the Auction Object is in the form of immovable property in the form of land or land and buildings it must be described.
  - g. title status or other documents explaining proof of ownership. Number and date of Land Certificate (SKT) / Land Registration Certificate (SKPT) from the Land Office, and. other burdensome information, if any.
  - a. in the event that the Auction Object is in the form of movable goods, the quantity, type and specifications of the goods must be described.
  - b. in the case of the Auction Object in the form of Enjoying Rights, the terms of sale from the Seller, if any, are described.
  - c. in the event that the Auction Object is in the form of a claim right, the terms of sale from the Seller are described, if any, and.
  - d. Auction terms and conditions.
3. Body part of the Minutes of Auction shall contain at least:
  - a. Buyer's identity which includes name, occupation and address, on behalf of himself or as a proxy on behalf of a legal entity/business entity/other person.
  - b. creditor financial services institution as a Buyer for a person or legal entity or business entity whose name will be appointed, in the case of a creditor financial services institution as a Buyer.

- c. Auction Price with numbers and letters spelled out; And.
- d. description of items sold.
- 4. The foot part of the Minutes of Auction contains at least:
  - a. the number of items offered or auctioned, written in numbers and letters spelled out.
  - b. the amount of goods sold, written with numbers and letters spelled out.
  - c. total price of goods sold, written with numbers and letters spelled out.
  - d. the amount of the price of goods held, written with numbers and letters spelled out.
  - e. the number of documents or letters attached to the Minutes of Auction, written with numbers and letters spelled out.
  - f. signature of the Auction Officer and the Seller or the Seller's proxy, in the case of an Auction of movable goods.
  - g. signature of the Auction Officer, the Seller or the Seller's and the Buyer's proxies or the Buyer's proxies, in the case of immovable goods auctions; And.
  - h. witness signatures for Mandatory Execution and Non-Execution Auctions for immovable property with bids without the presence of the Bidder via postal drum, electronic mail (e-mail) or Auction Application with closed bidding.

Based on the provisions of article 35 VR jo.1868 of the Civil Code, there are 3 elements that must be fulfilled in order for the Minutes of Auction to have authentic characteristics, namely:

- a. The deed is drawn up and formalized in the form determined by law.

The deed must be made in a form determined by law, related to the Minutes of Auction as an authentic deed must be made in a form determined by law in the field of auctions, what is meant by form is the format of the deed. Regarding the format for making the Minutes of Auction, it has been regulated in articles 37, 38, 39 VR jo. Articles 87, 88, 89, 90, and 91. Also refined in Appendix letter E of the Minister of Finance Regulation Number 213/PMK.07/2020 concerning Instructions for Conducting Auctions.

- b. The deed is made by or before a Public Official.

Public Officials are state organs equipped with general powers, authorized to exercise part of the state powers to produce written and authentic evidence in the field of civil law. In connection with the implementation of the auction, the Minutes of Auction as an authentic deed must be made by the authorized Public Official, namely the Auction Officer.

c. The deed is drawn up by or in the presence of the official who is authorized to make it at the place where the deed is made.

An authentic deed must be made within the jurisdiction of the relevant public official, meaning that in making an authentic deed, attention must be paid to the jurisdiction or area of office where the public official is authorized. This means that an authentic deed may not be made by a public official who does not have the authority for that and at that place. The making of tender minutes by the auction official must also pay attention to the work area that has been determined in accordance with that stipulated in the Decree on the Appointment of Auction Officials issued by the Director General of State Assets.

Based on the description above, it can be concluded that the Minutes of Auction is an authentic deed because it has fulfilled the elements or requirements of an Authentic Deed as stipulated in article 1868 of the Civil Code, the Minutes of Auction as an authentic deed is a perfect means of evidence, which has the power of proof:

a. Outwardly, namely that the deed itself has the power or ability to prove itself as an authentic deed, considering that its presence is in accordance with the provisions of an authentic deed in the Civil Code.

b. Formal, namely that the deed proves the truth of what is witnessed, seen, heard and also carried out by the Auction Officer as a General Official in carrying out his position, the correctness of the date is guaranteed, the signature contained in the deed, the identities of the parties and the people present, as well as the truth of the place where the deed was made.

c. Material, namely that the information contained in the minutes of auction applies as correct, so that when it is used as evidence before a court it is considered sufficient and the judge is not permitted to ask for other proofs

The Power of Evidence in the Auction Minutes

In Civil Law (Events), evidence that is legal or recognized by law, consists of:

a. proof of writing;

- b. evidence with witnesses;
- c. guesswork;
- d. confession; And
- e. oath.

Proof aims to determine the law between the two parties concerning a right in order to obtain a truth that has a value of certainty, justice and legal certainty.

Proof by writing is done by authentic writings or by private writings. Authentic writings in the form of authentic deeds, which are made in a form that has been determined by law, made in the presence of authorized officials (public employees) and at the place where the deed was made. Private writing or also called private deed is made in a form that is not determined by law, without intermediaries or not in the presence of an authorized public official. Both authentic deeds and underhanded deeds are made with the aim of being used as evidence.

As previously explained, authentic Auction Minutes can be seen from the way the Auction Minutes are made. Minutes of Auction are said to be authentic deeds if the making or occurrence of the deed is carried out by and or in the presence of a Public Official who is authorized to make it, namely the Auction Officer. Thus the Minutes of Auction made by the auctioneer is valid and has binding legal force as an authentic deed.

If the elements in Article 1868 of the Civil Law Code are applied in the Minutes of Auction, there is evidence that the treatises of the auction are Authentic Deeds, namely:

- a. Minutes of Auction are made in the form determined by law (Articles 37, 38, 39, VenduReglement/Auction Regulations);
- b. Drafting of Auction Minutes is carried out before or by the Auction Official;
- c. The Auction Official who makes the Minutes of Auction has the authority to:
  - a) Making Deeds made (Class II Auction Officials are authorized to make Minutes of Auctions and types of Voluntary Auctions)
  - b) When the deed was made (still active as an Auction Officer or not)



c) Where the deed was made (in relation to the area of office) For whom the deed was made (for the benefit of users of the auction service).

d. Minutes of Auction as Authentic Deed

According to the law, the Minutes of Auction are included in the category of authentic deeds. The terms as a Deed are:

a) The letter must be signed

b) The letter must contain the events that form the basis of a right to an engagement.

c) The letter is intended as evidence.

The minutes of auction when connected with the definition of the deed as mentioned above are as follows:

a. That each Minutes of Auction must be signed by the parties, both Auction Officials, Sellers and Buyers (vide Article 38 Vendu Regulation);

b. The contents of the Minutes of Auction are Minutes of events or what happened and experienced by the parties, namely buying and selling in public/auction. So that the contents of the Minutes of Auction are a series of events that form the basis of a right to an agreement.

c. The Auction Minutes originally made by the auctioneer were indeed intended as valid evidence in accordance with the meaning of the Auction Minutes themselves.

d. Regarding the provisions of an authentic deed as a means of proof, it is found in the law of evidence (*bewijsrecht*) which is regulated in book IV of the Civil Code, that written evidence, especially authentic deed and what the conditions are, see Articles 1869 and 1870 of the Indonesian Book of Laws. Civil.

Article 1869 of the Civil Code states: "A deed which, because of the powerlessness 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 underhanded deed if the deed is signed by the parties." .

Based on Article 1869 of the Civil Code above, when an authentic deed is drawn up by a public official who is not authorized to do so, the deed no longer has the strength of proof as an authentic deed, namely perfect evidentiary power but only has underhanded evidentiary power.

Public officials who are not authorized in this matter are other than those mentioned in PMK No. 213/PMK.06/2020 Concerning Instructions for Conducting Auctions, PMK No.94/PMK.06/2019 concerning Class I Auction Officials, and PMK No.189/PMK.06/2017 concerning Class II Auction Officials. Likewise, if there is a defect in the form of the authentic deed, for example the form deviates from what has been determined by the relevant law, then the perfect proof of the authentic deed will be degraded to a deed under the hand.

#### 4. Conclusion

The process of carrying out the auction begins with the announcement of the auction which contains the rules for implementation, the time and place for submitting the application, the location and area of the land that is the object of lease and the standard price of the land that is the object of lease. The next stage after the announcement of the auction is the implementation of the auction, in the implementation of the auction the bidders submit a lease application accompanied by the annual rental bargaining value to the auction committee. after that the committee determines the bidder with the highest bidding value as the auction winner. And if there is more than one bidder with the same highest bid, the auction committee will summon each bidder with the same bidding value to conduct deliberations in determining the auction winner.

#### 5. References

##### Journals:

Agung Nugroho Dan Sukarmi, 2020, Notaruy Autoritiy In Instaling Mortgage As Effort To Serrie Bad Credit (Second Way Out), Sultan Agung Notary Law Review, Vol. 2, No. 2, p. 93.

Istanti, 2017, Akibat Hukum dari Akta Jual Beli Tanah Dihadapan PPAT yang dibuat Tidak Sesuai dengan Prosedur Pembuatan Akta PPAT, MKn Unissula, Vol 4, No 2 (2017)

Linggar Pradiptasari, 2017, *Sinergitas Hukum Islam dengan Peranan Notaris dan Pejabat Pembuat Akta Tanah (PPAT) dalam Menghadapi Masyarakat Ekonomi ASEAN (MEA)*, MKn Unissula, Vol 4, No 4.

Slamet Khudhori, 2018, *Peran Pejabat Pembuat Akta Tanah (PPAT) Dalam Membuat Akta Jual Beli Tanah Menggunakan Cek/BilyetGiro Sebagai Alat Pembayaran*, MKn Unissula, Vol 5 No 1, March 2018

##### Books:

Sudiarto, 2021, Pengantar Hukum Lelang Indonesia, Kencana, Jakarta

Supriyadi, (2010), *Aspek Hukum Tanah Aset Daerah*, Prestasi Pustaka Publiser, Jakarta

Urip Santoso, (2020), *Hukum Agrarian Dan Perkembanganya Perspektif Politik Hukum*, Kencana, Jakarta

**Regulation:**

Regulation of the Minister of Finance of the Republic of Indonesia Number: 213/PMK.06/2020.