

## Authority of a Notary as Auction Official Class II in Implementing Voluntary Non-Execution Auctions at the Request of the Auction House and the Seller at the Office Area of the Directorate General of State Assets Central Java and Diy

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**Abstract.** *Notaries as class II auction officials have the authority to make deeds of minutes auction. This authority still exists among the general public and has not now and understand the authority of a notary as a class II auction official. The aim of this research is to analyze: 1) The authority of a notary as a Class II Auction Officer in carrying out a voluntary non-execution auction upon request Auction House and Seller at the Regional Office of DJKN Central Java and DIY. 2) Legal force of evidence action minutes deed made by a Notary as a Class II Auction Officer. The approach method in this research is the Legislative Approach. This type of research is normative research. The types and sources of data in this research is secondary data obtained through literature studies. Analysis in research This is qualitative in nature. The research results concluded: 1) Other authorities held by a Notary are: can make a deed of auction minutes. In order to carry out this authority, a notary must first be appointed by the Minister of Finance as a Class II Auction Official. The authority of a notary as a Class II auction official to make a deed of auction minutes continuous with the theory of legal certainty and the theory of proven utility in Article 15 paragraph (2) letter Auction Rules. Auction minutes may provide legal certainty and guarantee the security of the parties, as well as providing benefits law in ensuring legal certainty in the implementation of auctions. 2) Legal force proof of the auction minutes deed made by a notary as a class II auction official is an authentic deed which is categorized as a deed relax who has the power perfect proof law*

**Keywords:** Auction; Authority; Official.

## 1. Introduction

The Republic of Indonesia is essentially a state based on law. as stated in Article 1 paragraph (3) of the State Constitution Republic of Indonesia 1945 (known as the UUD NRI 1945) which states "The State Indonesia is a country of law". This has consequences for The Republic of Indonesia itself is a country of law, where the state must provide legal certainty for all Indonesian people. Legal certainty which must be provided by the state has 2 (two) meanings, namely with the existence of general rules which make the individual knowing what his actions are allowed or not allowed carried out, and legal certainty in the form of legal security for individuals from government arbitrariness due to the existence of regulations that It is general in that individuals can know what is allowed and what is not allowed carried out by the state against individuals or the Indonesian people.<sup>3</sup>Expansion of authority This can be seen from the provisions of Article 15 paragraph (2) letter g which states: that one of the authorities that a notary has is to make deeds auction minutes. In addition, in the provisions of the Minister of Finance Regulation Number 189/PMK.06/2017 concerning Class II Notary Auction Officials appointed as Officials Class II Auction before the Minister of Finance of the Republic of Indonesia. The provisions in Article 15 paragraph (2) letter g of UUJN concerning the authority of a notary to make deeds Auction minutes are basically difficult for notaries to put into practice directly because in the explanation of the article, it must go through the appointment stage by the minister who carry out government affairs in the financial sector.

If you look at the provisions above, you are a Notary who has been sworn in and being appointed as a Notary does not automatically make you a Class Auction Official II, but by looking at the provisions of the UUJN Notary in carrying out his/her duties has given the authority to make auction minutes as mentioned in Article 15 paragraph (2) letter g. This makes the notary in a dilemma and confused in practice, which is indeed very rare to find a notary who immediately held the same position as Class II Auction Officer in the absence appointment of positions from the Ministry of Finance, even though the UUJN has provide authority and provisions for Notaries to be able to make deeds auction minutes.

The authority of a Notary as a Class II Auction Official must be truly carried out in order to create a sense of justice for the parties. In implementation auction must be really thorough with all documents and complete requirements, and of course the auction must be preceded by an auction announcement.

The auctioneer must give notice of each sale through public auction, regarding information about the auction objects offered for sale, the time and place the auction will be held.<sup>5</sup>Ministry Regulation Finance Number 122 of 2023 concerning Guidelines for the Implementation of Auctions in Article 1 paragraph (34) explains that the Auction Minutes are minutes of the auction

implementation. made by the Auction Officer which is an authentic and valid deed perfect proof power. In this study the author focuses on the relationship between on the authority of the notary as a class II auction official in carrying out action voluntary non-execution at the request of the auction house and the seller, where the notary have the opportunity to carry out auctions, namely as an auction official class II. The interesting problem in this study is related to implementation of the auction carried out by a notary as a class II auction official where not many people know and understand one of the things authority held by a notary. In addition to that, Class II Auction Officials has duties and functions in the implementation of the auction and has the authority which is limited compared to Class I Auction Officials, because based on provisions in Article 35 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 189/PMK.06/2017 concerning Class II Auction Officials states that auction officials.

Class II only carries out voluntary non-execution auctions. Apart from the explanation above, the author's consideration in choosing this title is because with the development of financial and banking institutions that cannot separated by the risk of problems arising from collateral or guarantees and lack of knowledge regarding legal remedies for auctioning collateral or guarantees or company assets that are no longer being used. Apart from that that, lack of knowledge regarding one of the authorities held by Notary is related to the authority to conduct voluntary non-execution auctions. By therefore, in this research the author wants to examine the authority that owned by a notary as a class II official in the implementation of non-execution auctions voluntary.

## 2. Research Methods

This research uses an approach with a method that is *descriptive analytical* namely describing the applicable laws and regulations associated with legal theories and the practice of implementing positive law. concerning the problems that have been formulated.<sup>6</sup> Analytical descriptive research serves to describe or provide an overview of authority notary as class II auction official in carrying out non-execution auctions voluntarily at the request of the auction house and the seller at the Directorate General's Regional Office General of State Assets of Central Java through the data that has been collected as is without testing the hypothesis and making conclusions that applies to the public.

This type of research is categorized as research Normative Jurisprudence, that is search conducted based on primary legal materials by means of reviewing theories, concepts, legal principles and statutory regulations – invitations related to this research.

### 3. Results and Discussion

#### 3.1. The Authority of a Notary as a Class II Auction Official in Carrying Out Voluntary Non-Execution Auction at the Request of the Auction House and the Seller in Regional Office of DJKN Central Java and DIY

Based on the Regulation of the Minister of Finance Number 122/PMK.06/2023 Article 1 number 43, the Auction House is an Indonesian Legal Entity in the form of Limited Liability Company (PT) which is specifically established to carry out activities business in the field of auctions. Auction House Article 9 paragraph (3) of the Minister of Finance Number 122/PMK.06/2023 as referred to in paragraph (1) letter b of the Minister of Finance Regulation Number 122/PMK.06/2023 has the authority hold a Voluntary Non-Execution Auction at the request of the Seller. That the authority to draw up the auction minutes deed lies with the auction official, and the auction officials are divided into 2 (two), namely Class I Auction Officials with the status of a civil servant who is authorized to carry out all type auctioneers and Class II Auction Officials with the wrong private employee status The other is a Notary who is only authorized to carry out Auctions Voluntary Non-Execution. Notaries may have the authority to make auction minutes deed by holding concurrent position as Auction Officer Class II, meaning the Notary makes a deed of auction minutes in his capacity as an Auction Officer, not a Notary. That legal certainty regarding the implementation of auctions is a guarantee that the law can be applied properly. Every individual who have received legal certainty have received a decision from the legal provisions. The authority of the Notary as stated in Article 15 paragraph (2) letter g, a notary can make a deed of minutes The auction contains incomplete legal norms, which are not stated in the UUJN. expressly stated regarding the requirements for a Notary who can make Deed of Auction Minutes. Notaries and Class II Auction Officials are two fields different professions. Notaries can carry out their duties as Notaries after the letter of appointment was issued and inaugurated by Minister of Law and Human Rights of the Republic of Indonesia, whereas if Notaries who want to become Class II Auction Officials must have a decree the appointment and inauguration are issued and carried out by the Minister Finance of the Republic of Indonesia.

The incompleteness of legal norms in the UUJN is that it does not determining in detail the requirements for becoming a Notary Class II Auction Officer who is responsible for making the Auction Minutes Deed causing the lack of legal certainty from the provisions of Article 15 paragraph (2) letter g. According to the theory of legal certainty, it is a regulation legislation that is made and enacted with certainty so that will not give rise to doubt or conflict and does not conflict with norms that exist in community life. Should be in UUJN the authority of the Notary in making the Auction Minutes Deed is emphasized so that in accordance with the theory of legal certainty.

The authority of a notary and anticipating that this does not happen misinterpretation of Article 15 paragraph (2) letter g in the UUJN, then systematic interpretation is carried out by paying attention to the rules in the Auction Regulations. In Article 35 VR on Auction Regulations states that from each general sale made by the clerk auction or its proxy for each auction implementation must be recorded separate event, and in the Regulation of the Minister of Finance Number 112/PMK.06/2023 concerning Guidelines for the Implementation of Auctions in Article 1 paragraph (32), Auction Minutes are the Minutes of the Auction Implementation made by Auction Official which is an authentic deed and has force perfect proof.

The authority of a notary to make a deed of auction minutes in the implementation cannot directly create a deed of auction minutes because in making a deed of auction minutes by a notary, the notary does not automatically have the authority to do so to make a deed of auction minutes, the notary must be appointed by Directorate General of State Assets on behalf of the Minister of Finance and must participate in education and training organized by the Ministry finance then there is an obligation to do an internship. Article 15 paragraph (2) letter g UUJN cannot be implemented automatically, but must be accompanied by provisions applicable in the Ministry of Finance.

### **3.2. Legal Power of Evidence of Auction Minutes Deeds Made by a Notary as Class II Auction Officer Every auction is carried out by a class II auction official**

Auction Minutes must be made, called Auction Minutes, in accordance with with Article 35 of the Vendu Reglement which states "From every sale in public by the auction official or his attorney, during the sale, "For each auction or sale day, a separate report is made."7From these provisions, then the auction official who carries out each auction required to make auction minutes. Meanwhile, according to the provisions in Article 1 number 34 of the Regulation of the Minister of Finance Number 122/PMK.06/2023 concerning Auction Implementation Guidelines, which states that the auction minutes are minutes of the auction implementation made by Auction Official which is an authentic deed and has force perfect proof.

The Auction Minutes is an authentic deed and has force perfect proof and contains all the events that occurred in auction sales process as proof of authentication of auction implementation as regulated in the Auction Regulations. The auction minutes can be categorized as an authentic deed because the auction minutes contain the authentic deed based on Article 1868 of the Civil Code, namely because of its form determined by law, made by and/or in the presence of official general authorities, made in the work area of the general official who concerned, namely those determined by the Minister of Finance based on Article 3 Vendu Regulations.

The auction minutes deed is included in the deed of the official or the official called a deed relax or legal act because the notary is currently acting as a class II auction official by actually attending and writing or record everything you see or hear directly notary carried out by the parties in this case the auction implementation. As authentic deed made by an official, in this case a class II auction official.

In terms of legal certainty, it is necessary to emphasize that legal security can only be achieved by a moral and Class II Auction Officer dignified. In addition, legal skills, auctions, and science is also very important. Therefore, the role of Class II Auction Officer is very important important to ensure legal stability. Class II Auction Officials must understand the applicable laws and regulations and improve their knowledge and skills in the field of law and auctions so that Auction minutes can provide the necessary legal certainty.<sup>8</sup>By Therefore, Class II Auction Officer is not only responsible for auction administration, but is also responsible for providing a stable and reliable legal environment for all parties involved involved in the auction process.

Auction minutes as an authentic deed guarantee legal certainty against the perfect rights attached to the auction buyer. As long as the lawsuit submitted can prove the untruth regarding the contents of the minutes auction, then the auction minutes can be cancelled. If there is a case regarding

denial of the auction minutes, then what should be denied it must be proven whether there are things that are not in accordance with procedures specified in the provisions of statutory regulations, including having to be able to prove that there has been a violation of external aspects, formal aspects, and material aspects of the auction minutes. Burden Proving what is denied is the responsibility of the person the denying party. If the party denying it is incapable proves the untruth, then the auction minutes are automatically valuable must be accepted by anyone.

So that the Auction Minutes Deed shows an effort to provide legal certainty to all parties involved in the auction process. This in line with the principles of civil law which provide protection law to parties involved in an agreement or transaction. As a result, Class II Auction Officer and his responsibility for preparing the Deed of Minutes Auctions play an important role in maintaining fairness and stability. Law in the field of auctions. Auction Minutes Deed made by the Auction Official lass II now has legal legitimacy, allowing it to be accepted as valid evidence in court. Therefore, the Auction Minutes Deed very important for auctions because it provides legal certainty for purchase and sale transactions and determine the rights and obligations of the parties involved in addition, it can be relied on as valid and verifiable evidence be accounted for in court. Therefore, the duties of the Auction Officer Class II is more than just running auctions; they also have to make solid and reliable legal documents the legal force of proof of the auction minutes deed made by a

notary as a class II auction official, is still included type of authentic deed. Auction minutes as an authentic deed are evidence which is perfect, which has the power of external, formal and evidentiary evidence material. The Auction Minutes also serve as a basis for carrying out reverse name/transfer/transfer of rights according to the object stated in the auction minutes to the authorized institution. The community that Buying goods/land/buildings through auction will be more secure its validity, in other words the Auction Officer has confirmed the object. The auction was not problematic. By providing an explanation of the contents of the deed auction minutes to the auction parties, will have an impact there is a sense of trust from the parties conducting the auction to the notary as class II auction official. With a high sense of trust and security in It is hoped that the notary will trigger an increase in the frequency of auctions.

Voluntary non-execution from the community. So it refers to the theory that used in this research are the theory of legal certainty and the theory usefulness, legal force of proof of the auction minutes deed made by the auction official must guarantee legal certainty and have benefits for the binding parties so as not to cause disputes at a later time.

#### 4. Conclusion

The authority of a notary as a class II auction official has the authority to make an authentic deed in the form of an auction report. This continuous with the theory of legal certainty and the theory of utility proven in Article 15 paragraph (2) letter g Regulation of the Minister of Finance No. 122/PMK.06/2023 concerning Auction Implementation Guidelines, with the minutes Auctions can provide legal certainty and guarantee the security of the participants parties. The legal force of proof of the auction minutes deed made by a notary as a class II auction official in the form of an authentic deed categorized as a deed *relax* which has the force of legal proof perfect as stipulated in Article 1 number 32 of the Ministerial Regulation Finance Number 122/PMK.06/2023 concerning Auction Implementation Guidelines. From This is in line with the theory of legal certainty and usefulness, in ensuring legal certainty of the auction minutes deed These are categorized as deeds *relax* must have 3 (three) aspects proof, including the power of external proof, the power of proof formal and material evidentiary power. So that these three aspects must be fulfilled if necessary to be proven in court proceedings and does not experience degradation of evidentiary power as a private deed. The suggestion in this research is that there needs to be harmonization of regulations. which regulates the authority of a notary as a class II auction official, because there is an overlap in the current regulations between UUJN and auction implementation regulations, where the notary does not immediately carry out his authority to make a deed of auction minutes as regulated in Article 15 paragraph (2) letter g. In order for a notary to be able to exercise his

authority, he must: appointed in advance by the Minister of Finance as regulated in Regulation of the Minister of Finance Number 189/PMK.06/2017<sup>1</sup> and Ministerial regulation Finance Number 122/PMK.06/2023. The Role of Class II Auction Officials in providing legal certainty can be reflected in the preparation of the Minutes the auction must be made correctly, clearly and completely so that what will be proven to be easily known, do not dream of loading formulations that may give rise to disputes because they are incomplete or unclear, so that the authentic deed can guarantee legal certainty. Legal certainty can only occur if the Auction Official, especially the Auction Official, Class II Auctions have high dignity and morality.

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