

The Role and Authority of Class I Auctioneers in Indonesia within the Framework of State Administrative Law

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Abstract

Keywords:

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This study analyzes the position and authority of Class I Auction Officials in Indonesia from the perspective of state administrative law. The research finds that the legal basis for the position and authority of Class I Auction Officials is a ministerial regulation, not a law, which contradicts the legal requirements for authentic deeds as stipulated in Article 1868 of the Civil Code. The current system grants the Ministry of Finance the dual role of regulator and executor of auctions, which raises concerns about independence and neutrality. This dual role can lead to legal uncertainty because the official's authority is based on ministerial delegation rather than attribution from a higher law. The ideal arrangement, from a state administrative law perspective, would be to establish a clear legal framework at the level of a law (undang-undang) to regulate the position, authority, and recruitment of Class I Auction Officials. This would ensure their independence and neutrality. It is suggested that the role of auction officials be given to professionals outside the civil service, while the Ministry of Finance should act as a supervisor to prevent conflicts of interest and ensure a fair and just auction process. This would align the Indonesian auction system with the principles of good governance and legal certainty.

INTRODUCTION

Ubi Societas Ibi Ius (when there is a society, there is a law) (Ilham W. M). In accordance with Cicero's opinion, it is known that the law always follows the development of society. Likewise, what happens in the Indonesian legal state mentioned in the constitution, where Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia reads: "The state of Indonesia is a state of law" (Constitution of the Republic of Indonesia) The existence of Indonesia as a state of law provides a necessity for the state of Indonesia to make the law the main foothold in the implementation of the life of the nation and state, One of them is in the implementation of auctions. Therefore, as a state of law, all state actions, in this case the government, must be based on written law, namely the applicable laws and regulations. Laws and regulations have also regulated the process of the mechanism for selling goods through auctions.

Auction is a mechanism from the results of the development of buying and selling implementation. Etymologically, auction comes from the English language, namely *auction*. While in Latin, it is *augere* or *auctus* which means "to increase" (Wahyu Hidayat, et.all). According to Satrya Haprabu, an auction is a sale of goods that are open to the public with written and verbal price quotes that are increasing or decreasing to reach the highest price which is preceded by an auction announcement (Ni Made Ayu Sintya, et.all).

Historically, the implementation of auctions in Indonesia has been known since the time of the Dutch East Indies Government, where at that time an auction regulation was promulgated,

namely *Staatsblad* Number 189 which took effect on April 1, 1908 concerning *Vendu Reglement/VR* and is still valid today. The existence of this regulation became the forerunner of the implementation of auctions before and after Indonesia's independence. However, in its development, the implementation of auctions in Indonesia is not regulated in a law and is only regulated by ministerial-level regulations.

On the basis of this legal vacuum, the implementation of auctions until now has only been regulated by Ministerial Regulations, namely the Regulation of the Minister of Finance Number 122 of 2023 concerning Guidelines for the Implementation of Auctions (Regulation of the Minister of Finance Number 122 of 2023 concerning Guidelines for the Implementation of Auctions). This provision regulates administrative technicalities and does not regulate the legitimate authority in the auction process. This certainly has an impact on the ambiguity of auction policy in Indonesia, where the Ministry of Finance (Kemenkeu) not only plays a role as a rulemaker regarding auctions, but also as an auction organizer.

According to Article 1 Number 1 of the Minister of Finance Regulation Number 122 of 2023 concerning Auction Implementation Guidelines, an auction is a sale of goods that are open to the public with a written and/or oral price quote that is increasing or decreasing to reach the highest price, which is preceded by an Auction Announcement. Auctions are divided into 2 (two) categories, namely: Mandatory Auction and Voluntary Auction. Mandatory Auctions are divided into 2 (two) types, namely: Execution Auction and Non-Execution Auction. Each auction must be carried out by and/or in the presence of the Auction Official, unless otherwise specified by Law or Government Regulation.

According to Article 1 Number 49 of PMK No. 122 of 2023, Auction Officials are public officials who are given special authority to carry out Auctions. Auction Officials as general officials are divided into 2 (two) types, namely: Class I Auction Officials and Class II Auction Officials. Class I Auction Officials are Civil Servants (PNS) at the Ministry of Finance (Kemenkeu) who are appointed as Auction Officials placed at the Office of State Wealth and Auction Services (KPKNL) (Fayakundia Putra Sufi). Meanwhile, Class II Auction Officials are individuals from the private/public sector who are appointed as Auction Officials, in this case they are intended to hold auctions at the Auction Hall and Class II Auction Officials' Office. This type is not only distinguished from the origin of the official appointed, but also distinguished in the authority to carry out auction activities. Class I Auction Officials are authorized to conduct Mandatory Auctions and Voluntary Auctions, while Class II Auction Officials are only authorized for the Voluntary Auction category.

Examining the position and authority of public officials given to Class I Auction Officials, the term general official itself has not been found in any law, except as mentioned in Article 1 Number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (Law on Notary Positions) (Hamalatul Qurani). Article 1 Number 49 of PMK No. 122 of 2023 which states that Class I Auction Officials (Auction Officials) are public officials do not have a legal basis in the form of basic rules in the form of laws. So that the phrase "public official" is only regulated in regulations at the level of Ministerial Regulations, namely PMK No. 122 of 2023.

On the other hand, from the perspective of civil law, where there has been Law Number 30 of 2004 concerning the Notary Position, it is known that public officials are people who carry out some of the state's public functions, especially in the field of civil law (M. Syahrul Borman). However, when viewed in terms of auction implementation, Class I Auction Officials are part of

the State Civil Apparatus under the power of the government executive who is authorized to hold auctions and issue Auction Minutes which are authentic deeds of auction implementation. As stipulated in Article 1868 of the Civil Code (KUHPercivil) that: "An authentic deed is a deed made in the form specified by law by or in the presence of a public official authorized for it at the place where the deed was made".

The provisions of Article 1868 of the Civil Code read above, there are two very important phrases, namely the phrase "determined by law" and the phrase "public official". This phrase refers to Notaries as the only "public official" who has been "determined by law", namely in the Law on the Notary Position. Meanwhile, Class I Auction Officials do not have criteria as per Article 1868 of the Civil Code, where as a general official, Class I Auction Officials should have a form of regulation at the legal level so that the phrase "determined by law" can be fulfilled.

Based on the above background description, a problem arises regarding the position of Auction Officials as general officials, especially Class I Auction Officials who have the status of Civil Servants (State Civil Apparatus). Therefore, the researcher took a research in the form of a journal with the title: "The Position and Authority of Class I Auction Officials Reviewed from the Perspective of State Administration Law in Indonesia". Based on the background, the questions that are problematic in this study include: How is the position and authority of the Class I Auction Officer Position in Indonesia reviewed from the perspective of State Administrative Law?, and how is the ideal arrangement of the position and authority of the Class I Auction Officer Position reviewed from the perspective of State Administrative Law?

METHODS

The research method applied is normative juridical, which means normative juridical legal research (or often called doctrinal law research) can be briefly understood as research that traces the existence of law in a particular jurisdiction. The researcher in this case seeks to collect and then analyze legal regulations and related legal norms (Solikin, 2021). This is usually done by reviewing other sources such as journal articles or other writings that comment on laws and regulations (Tan, 2021).

RESULTS AND DISCUSSION

The Role and Authority of Class I Auction Officials in Indonesia According to PMK Number 122 of 2023 Reviewed in the Perspective of State Administrative Law

Discussing the position of Class I Auction Officials who are State Civil Apparatus at KPKNL, it also discusses the legal umbrella of state administration regarding Civil Servants (State Civil Apparatus). Juridically, Class I Auction Officials who are included in civil servants (ASN) are regulated in Law Number 20 of 2023 concerning the State Civil Apparatus (ASN Law). In the regulation, there is no mention of the term "general official", but "Managerial Position" and "Non-Managerial Position" as per Article 13, as well as "state official" as per Article 58. This means that the ASN Law cannot be a law that refers to the phrase "public official" in PMK No. 122 of 2023 which is aimed at Class I Auction Officials as the principle of laws and regulations, namely *lex specialis derogate legi generali* and *lex superior derogate legi inferior*.

In addition to the ASN Law, the term "official" is contained in Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court (PTUN Law). In this PTUN Law, the term referred to is not "general official" specifically, but

only the term "official". This is stated in Article 1 Number 2 of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court which reads: "The Agency or State Administrative Officer is the Agency or Official that carries out government affairs based on the applicable laws and regulations".

However, the term "general official" given to Class I Auction Officials is not the term "official" which is within the scope of the PTUN Law. This is because the Auction Minutes issued by Class I Auction Officials are not a State Administrative Decree (KTUN), but an authentic deed. This is also what causes the dispute over the Auction Minutes having to go through the General Court system, and cannot go through the State Administrative Court (PTUN) system.

The difference between KTUN and an authentic deed can be seen from the definition of KTUN mentioned in Article 1 Number 3 of the PTUN Law which reads: "The State Administrative Decision is a written determination issued by the State Administrative Agency or Officer which contains the State Administrative legal action based on the applicable laws and regulations, which are concrete, individual, and final, which has legal consequences for a person or civil legal entity".

Based on this article, it is known that the term "general official" for Class I Auction Officials is different from the term "official" in the PTUN Law. KTUN legal products are different from authentic deeds, because the definition of KTUN is concrete, individual, and final; In contrast to an authentic deed whose content can be adjusted to the will of the parties. Furthermore, in Article 2 Letters a, b, and c of the PTUN Law, it is further clarified that: "Not included in the meaning of State Administrative Decree according to this Law: a. State Administrative Decree which is a civil law act; b. State Administrative Decrees which are general arrangements; c. State Administrative Decrees that still require approval (Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations).

Reflecting on the theory of the hierarchy of laws and regulations (*stufenbau theory*) in the Indonesian legal state system as stated in Article 7 of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (PPP Law). Hierarchically, laws and regulations in Indonesia have the following order:

1. the Constitution of the Republic of Indonesia in 1945;
2. Decree of the People's Consultative Assembly;
3. Government Laws/Regulations in Lieu of Laws;
4. Government Regulations;
5. Presidential Regulation;
6. Provincial Regulations; and
7. Regency/City Regional Regulations.

Hierarchically, PMK No. 122 of 2023 is a regulation that exists at the same level as the Presidential Regulation. However, the phrase "determined by law" contained in Article 1868 of the Civil Code has not been fulfilled as a requirement for Class I Auction Officials to have the

status of "public officials" because PMK No. 122 of 2023 is not a product of a law that is discussed and promulgated by the people's representatives, in this case the House of Representatives.

The legal force of PMK No. 122 of 2023 as a Ministerial Regulation that regulates the implementation of auctions is recognized and has binding legal force as long as ordered by higher laws and regulations as stipulated in Article 8 Paragraph (2) of the PPP Law.

If examined in the consideration of PMK No. 122 of 2023, the reference to laws and regulations only refers to 1 (one) law and regulation, namely Law Number 39 of 2008 concerning State Ministries. So that the content regarding the implementation of the auction does not refer to the existence of special rules in a legal product that regulates both auctions and Auction Officials. This can be said to be a legal vacuum in the product of the law that regulates auctions, so PMK No. 122 of 2023 is forced to fill the legal void. Normally, the content in PMK No. 122 of 2023 regulates many of the rights and obligations of the parties in buying and selling activities through auctions, which should be discussed by the Legislative Institution, not the Ministry of Finance as the Executive Institution.

Based on this description, Class I Auction Officials who are referred to as "general officials" in ministerial regulations and as auction implementers who issue Auction Minutes as authentic deeds do not have standing rules in the form of laws. The formation of an auction law by the Legislature is very necessary considering that the Auction Minutes issued by the Class I Auction Officer are deeds that are used as evidence of a valid defense against the occurrence of a legitimate auction and are also used by buyers to change the name of ownership of the goods that have been auctioned (Rachmadi Usman).

Theoretically, the legal aspect of state administration according to Asep Bambang Hermanto, state administrative law has an instrumental legal function that is seen from or in the form of government actions, where the government in carrying out various legal actions uses juridical instruments such as regulations, decisions, policy regulations, and so on. The granting of broad authority to the government can create various juridical instruments as a means for the smooth administration of government.

Based on the above theory, in carrying out its government, the State makes policies in the public interest as a way and action of the government to overcome certain development problems or to achieve certain development goals, namely by issuing decisions, strategies, planning, and implementation using certain instruments (William). The implementation of government functions makes this policy carried out through government instruments, one of which is in the form of juridical instruments, which are instruments that include laws and regulations, or other policies that are government authority. In addition to juridical instruments, government instruments in carrying out other government functions are: Material instruments; are instruments of a material nature, such as procurement of goods and services, development financing, and so on; Personnel/personnel instruments; is an instrument held by the government in meeting the needs and welfare of employees. In addition, the government has the right to appoint and dismiss employees, or mutations. Every year, employee admissions are limited by quotas that have been set by the government; and State financial instruments; is a government instrument to regulate state expenditure and revenue by taking into account various possibilities for monetary impacts. In addition, this instrument is also related to the draft state budget, regional financing through financial balance between the central and regional governments (Leo Agustino). Therefore, state actions related to the implementation of auctions are realized through juridical instruments, namely by the stipulation and promulgation of PMK No. 122 of 2023.

According to Philipus M. Hadjon, every government action must rest on legitimate authority, which is obtained through three sources, namely attribution, delegation, and mandate.

The authority of attribution is usually outlined through the division of state power by law, while the authority of delegation and mandate is the authority derived from delegation (Philipus M. Hadjon). From the type of legal source, it is clear that PMK No. 122 of 2023 is not at the level or level of the Law but at the level of a Ministerial Regulation whose hierarchy is clear under the Law, and in line with that, the arrangement of Class I Auction Officials, including Class II, certainly has positions and authority that comes from the delegation of the Minister of Finance, in contrast to Notaries for example in their position and authority come from the source of authority by attribution according to legal instruments at the level of the Law, in this case the UUJN, as a public official who is authorized to make authentic deeds.

Of course, what is interesting is when Class I Auction Officials according to PMK No. 122 of 2023 are equated as "public officials" as according to Article 1 number 49 and number 50 of PMK No. 122 of 2023 which states that: "Auction Officials are public officials who are given special authority to carry out Auctions". It further states: "Class I Auction Officials are Civil Servants at the Ministry of Finance who are appointed as Auction Officials". Basically, a Class I Auction Officer is a public official like a Notary, but the Notary obtains the position and authority to make a deed as a public official by attribution based on the UUJN as a law, while the Class I Auction Officer obtains the position and authority to carry out the auction as a public official by delegation from the Minister based on PMK No. 122 of 2023 as a Ministerial Regulation.

If you pay attention to PMK No. 122 of 2023, it turns out that this PMK is not an implementation regulation regarding auction implementation guidelines regulated at the law level. PMK No. 122 of 2023 in the Remembering section or the legal basis in numbers 1, 2, and 3, at the legal level refers to Article 17 paragraph (3) of the 1945 Constitution related to "Every minister in charge of certain affairs in the government", the Auction Law (Vendu Reglement, Ordonantie 28 February 1908 Staatsblad 1908: 189 as amended several times, most recently by Staatsblad 1941:3 which has not been promulgated in Indonesia, and Law Number 39 of 2008 concerning State Ministries which are limited to regulating Ministries, where these three laws do not specifically regulate auctions. This is different from Notaries as public officials who do not refer to certain laws because they are in the form of laws in their entirety, namely UUJN. Then if you pay attention to the Regulation of the Minister of Finance of the Republic of Indonesia Number 124 of 2023 concerning Class I Auction Officials, it can be concluded that Class I Auction Officials are indeed not public officials who obtain authority by attribution from the law, although Article 1 numbers 1 and 2 state that they are public officials who are given special authority to carry out auctions with the status of Civil Servants at the Ministry of Finance who are appointed as Auction Officials.

The provisions of Article 1868 of the Civil Code stipulate that an authentic deed is a deed made in the form prescribed by law by or in the presence of a public official authorized for it at the place where the deed was made. Based on this provision, there is a main requirement that an authentic deed be made by and in the presence of a public official, and made in the form specified by law. Based on this provision and associated with the previous discussion, in the element as a general official, and in the context of a source of authority by attribution, the Class I Auction Official is not a public official because it obtains the position and authority of the Minister of Ministerial Regulation not based on the law. This certainly has an impact on its authority to make the Auction Minutes as an authentic deed which also requires that it be made in the form regulated by the Law.

As is known, in addition to being made by public officials, the requirements for an authentic deed according to Article 1868 of the Civil Code are made in the form regulated in the

law. For example, a Notary in making an authentic deed must be made in the form specified by law, then the form of the deed must be in accordance with the provisions of Article 38 of the UUJN, that each deed consists of the beginning of the deed or the head of the deed, the body of the deed, and the end or closing of the deed. In line with this, the form of the Auction Minutes so that they are declared authentic is not regulated according to the form regulated in the law, but only according to the Ministerial Regulation in this case PMK No. 122 of 2023 as contained in the Appendix section regarding the Format for the Preparation of Auction Minutes Minutes. By only being regulated at the Ministerial Regulation level, there is legal uncertainty that Class I Auction Officials are indeed authorized to make authentic deeds, although on the contrary Article 1 number 34 PMK No. 122 of 2023 stipulates that the Auction Minutes are minutes of the Auction implementation made by the Auction Officer which is an authentic deed and has perfect evidentiary power.

The Ideal Arrangement of the Role and Authority of the Class I Auction Officer Reviewed from the Perspective of State Administration Law

In the process of forming rules, the rulemakers or regulations must pay attention to theories, norms, principles, legal interpretation, and legal construction (Asep Bambang Hermanto). Likewise with the arrangement for the implementation of auctions in Indonesia. In the system of the state of law, there is a mechanism to realize that State Institutions do not experience *abuse of power*, this mechanism is called *checks and balances systems* or systems of mutual supervision (konstrul) and balance each other. This system is adopted in Indonesia with the separation of powers in the state institutional body, where based on Montesquieu's theory state power has 3 (three) categories, including (Fitra Arsil):

1. Legislative power, the power exercised by a House of Representatives (in the formation of laws);
2. Executive power, the power exercised by the Government (President or King with the assistance of Ministers or Cabinet) to implement laws or executions; and
3. Judicial power, the power exercised by the Judiciary (the Supreme Court and its subordinate courts) to resolve disputes or legal problems that arise.

When viewed from the theory of separation of powers, the Ministry of Finance is a State Institution that enters the executive power. In relation to auctions, the Ministry of Finance should be limited in its authority over the formation of legal products that regulate the substance of auctions. The Ministry of Finance should only issue ministerial regulations that are technical regarding the implementation of auctions. However, due to the urgency of the rules and the legal vacuum regarding legal products regarding auctions, finally PMK No. 122 of 2023 became the main reference for all auction implementation activities.

The legal product in the form of PMK No. 122 of 2023 concerning Auction Implementation Guidelines finally makes ambiguous about the position of "general officials" intended for civil servants at KPKNL who become Class I Auction Officials.

Finally, KPKNL not only acts as a rulemaker who is a representative of the Ministry of Finance, but also as an auction implementer. This will certainly give rise to a "non-neutral" perspective in the implementation of the auction conducted by the agency. If there are regulations for the implementation of the auction that are not suitable, the Ministry of Finance can easily revise and change it to suit the interests of the auction implementer, namely the KPKNL. Of course, this

authority must be limited by the existence of legal products and laws on auctions. This is also strengthened by the existence of the auction principle, namely: the Principle of Openness (Transparency), the Principle of Competition (*Competition*), the Principle of Justice, the Principle of Legal Certainty, the Principle of Efficiency, and the Principle of Accountability.

Ius Constituendum or the law aspired to in the administrative law regarding the position of Class I Auction Officer must be a good and fair law. The function of the government as a regulator and regulator cannot be made into one. If the Ministry of Finance wants to fill the legal void regarding auctions in Indonesia, the Ministry of Finance should only act as a supervisor of the implementation of the auction, not as an auction executor (in this case a Class I Auction Official). This can be compared to the role of Notaries who are also "public officials" appointed by the Ministry of Law and Human Rights and Land Deed Making Officials (PPAT) related to the Ministry of Agrarian and Spatial Planning/National Land Agency (Ministry of ATR/BPN)

The supervision mechanism for Auction Officials has actually been regulated in PMK No. 122 of 2023, where supervision is carried out by the Auction Superintendent. As Article 1 Number 48 states that: "The Auction Superintendent, hereinafter referred to as the Superintendent, is an official who is authorized by the Minister to provide guidance and supervision to the Auction Official".

The duties of the Superintendent are explained in the articles in PMK No. 122 of 2023 as follows:

1. Article 99 Paragraph (4): "In the event that a Class II Auction Official is relieved of duty, leaves or dies, the recording and signing of the Minutes of the Auction Minutes shall be carried out by the Head of the local Regional Office as the Superintendent";
2. Article 100 Paragraph (4): "In the event that a Class II Auction Officer quits or is dismissed from his position, the Minutes of Auction made by the Class II Auction Official, shall be kept and administered by the Superintendent";
3. Article 100 Paragraph (5): "The Superintendent may appoint the State Wealth Service Office (KPKNL) in his work area to store and administer the Minutes of the Auction Minutes made by the Class II Auction Officer as intended in Paragraph (4)", and
4. Article 101 Paragraph (4) Letter c: "The Superintendent obtains a copy of the Auction Minutes for the Implementation Report/Interest of the service".

Based on the description above, it is known that the Superintendent is a position that conducts direct supervision with inspection activities for Class I and Class II Auction Officials in the context of coaching and supervision. Then the Superintendent also conducts indirect supervision by examining auction documents and activity reports of Class I Auction Officials and Class II Auction Officials and other data. In the institutional context, the Superintendent who has the status of executive power should supervise the activities of non-government public officials. Until now, the auction is still dominated by Class I Auction Officials who are part of the executive/government (ASN) so it is not in accordance with the implementation of the Principle of No Abuse of Authority as referred to in the General Principles of Good Government. (Supriadi Jufri)

On the other hand, juridically, the status of civil servants (ASN) owned by Class I Auction Officials should refer to the ASN Law. The law does not regulate "general officials" given to civil servants (ASN), in this case civil servants at KPKNL. Public officials are only mentioned in the Notary Position Law. Therefore, the position of ASN as Class I Auction Officer should be abolished and the Auction Officer as a "public official" should be given to the private sector, not

from the Ministry of Finance's Civil Servants (ASN). This is supported by the status of the Auction Minutes which is an authentic deed and is not a KTUN. Furthermore, KPKNL can function as a supervisor over the implementation of auctions by the private sector, in this case Class II Auction Officials. This is certainly supported by the legal product of the law on auctions that should be formed by the Legislative Institution, not the Ministry of Finance as the Assistant to the President in the Executive Institution.

The problem of legal uncertainty regarding the position and authority of Class I Auction Officials is about independence or independence, for example because the Notary is a public official who obtains the position and authority of attribution through the law, namely the UUJN, the Notary exercises the authority to make deeds independently in accordance with the limitations stipulated in the laws and regulations, but it is different from the Class I Auction Officer who is in his position and authority is a delegation from the Minister, so the Auction Officer is in his position under the Minister, so his independence is not in line with the concept and norms regarding general officials, which are independent and not under the leadership. Therefore, in the future, regarding auctions, their implementation, and auction implementers, the idea is regulated at the level or level of the law, with the consequence that the Auction Officer is a public official who does not come from civil servants or civil servants, but from competent legal practitioners and others, so that independence and independence are realized, and the Auction Officer becomes a public official who is indeed in a position and authorized to carry out auctions with legal instruments at the level of law, with the legal product of the Auction Minutes Act, which is authentic and determined by the law, as a fulfillment of the requirements of an authentic deed according to Article 1868 of the Civil Code.

CONCLUSION

The position and authority of the Class I Auction Officer Position in Indonesia is reviewed from the perspective of State Administrative Law is not administratively regulated at the legal level other than only in the form of a Ministerial Regulation, namely PMK No. 122 of 2023, so that its position which is delegated under the Minister of Finance as an executive power has an impact on the authority to carry out auctions that are not independent or neutral, especially because they are in a position as Civil Servants (PNS). It is different if the position and authority are derived by attribution based on the law, because a public official in state administration must obtain position and authority by attribution from the law to be categorized as a non-governmental/non-civil servant public official, so that the authority to carry out the auction is synchronous with the condition that the auction minutes must be made by the public official in the form regulated in the law as stipulated in Article 1868 Civil Code, not as a State Administrative Decree. This shows the legal uncertainty regarding the position and authority of the Class I Auction Official as a public official, even though Indonesia as a welfare country should be administratively involved in making legal instruments regarding auctions including instructions and auction implementers, as a form of government action to realize the public interest related to auctions, through the realization of the position and authority of the Auction Officer obtained through attribution through law. The position of class I auction official should be selected through open recruitment with a transparent selection process through the non-governmental/non-civil servant route, then determined by the Minister of Finance. The Auction Officer annually provides its performance report to the Minister. The term of office of the Auction Official, which is 5 years, can be re-elected for one period. This should be regulated in laws and/or government regulations so that it has definite legal force.

The ideal arrangement for the position and authority of the Class I Auction Officer Position reviewed from the perspective of State Administration Law in the future is to be located outside

the scope of executive power, but carrying out executive duties and authorities is based on regulations at the level of the law and also needs to be regulated by the recruitment mechanism for the position of auction official in an open and open manner with certain conditions. So far, the position of Class I Auction Official is a civil servant, so it is difficult to be independent and neutral in carrying out legal duties and legal obligations, because civil servants who serve as auction officials will be obedient and subject to their superiors, it will be difficult to carry out their legal duties and obligations independently in the auction process. Therefore, the role of the Ministry should only be limited to supervision and control in auctions held by auction officials and also the Ministry is only limited to making policies/regulations related to the auction process which has been considered inadequate for the parties dealing with it. The House of Representatives and the Government form laws and regulations at the level of the Law on Auctions that comprehensively regulate in general the principles, principles, guidelines for the implementation of auctions, auction implementing officials, with special arrangements including the position, authority, duties, obligations and responsibilities, term of office, and recruitment of Auction Officials, including budgets, auction objects/scopes, performance reports and others.

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