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THE URGENCY OF FORMING AUCTION LAW TO SUPPORT LEGAL CERTAINTY FOR AUCTION OFFICIALS THROUGH ONLINE AUCTIONS

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ABSTRACT
The transition to an electronic auction system (e-auction) has created a discrepancy between the analogue Vendu Reglement (1908) and the Minister of Finance's Regulation governing digital auctions. This discrepancy has led to legal uncertainty, particularly regarding auction procedures and the protection of auction officials. The aim of this study is to analyse the urgency of this regulation and to determine the formulation of content that is adaptable to technology. Identifying ways to create content that can adapt to new technologies and assessing the importance of this regulation are the objectives of this research. This study uses normative and conceptual legislative approaches. The research findings indicate that: 1) The enactment of a national Auctions Act is urgently needed to address regulatory dualism. Currently, the primary legal basis for auctions remains the Vendu Reglement (Staatsblad 1908 No. 189), a colonial-era Dutch regulation governing public sales procedures which has remained in force since 1 April 1908. Hierarchically, the Vendu Reglement holds the same status as an Act under the Transitional Provisions of the 1945 Constitution. A conflict emerges because electronic auction rules are set only by Finance Minister regulations, which are inferior. These can be overturned for deviating from Vendu Reglement procedures. 2) National codification is required as a basis for legal certainty and protection for Auction Officers. The formulation of legal provisions should redefine 'reading' of digital auction minutes, recognize electronic signatures as legally valid like authentic deeds, and limit Auction Officers' liability for electronic system failures.

INTRODUCTION

The value of an item is determined by rising or falling bids, whether verbal or written, until the best price is reached following the announcement of the auction. An auction is defined as the sale of goods through a system of

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ascending or descending bids or sealed bids in accordance with Article 1 of the Vendu Reglement, Staatsblad 1908, No. 189. Invited or notified parties may bid, accept, or submit a sealed bid for the sale (Pulumoduyo, 2023).

The Vendu Reglement was first enacted by Ordinance dated 28 February 1908 (Staatsblad 1908 No. 189) and has undergone several amendments, most recently by Staatsblad 1941 No. 3. Although Indonesia has undergone significant constitutional developments since independence, to date it does not yet have a national Auction Law that specifically and comprehensively regulates the conduct of auctions. This situation indicates that the development of national auction legislation has not kept pace with the evolving needs of modern society and the rapid advancements in information technology (Yasin, 2019).

Advances in digital technology have brought about significant changes to various sectors of public service, including the conduct of auctions. Whereas auctions were previously conducted solely by conventional means, requiring participants to be physically present at a specific time and place, they can now be conducted electronically via the internet (e-auctions). The electronic auction system offers various benefits, including broadening the reach of participants, improving time and cost efficiency, enhancing transparency, and supporting the modernisation of public services in the areas of asset management and enforcement.

The Indonesian Government has responded to these developments through various technical regulations issued by the Ministry of Finance, including Minister of Finance Regulation No. 122 of 2023 on Guidelines for the Conduct of Auctions and Minister of Finance Regulation No. 86 of 2024 on Auction Minutes. Through these regulations, the government has accommodated the conduct of electronic auctions, the use of electronic documents, and the publication of auction minutes in electronic form as part of the digital transformation of national auction services.

However, the development of the electronic auction system in Indonesia has not yet been accompanied by the enactment of legislation at the statutory level that specifically governs national auctions. The auction regulations currently in force are still dominated by technical regulations at the level of Minister of Finance Regulations. In fact, auctions are not merely routine administrative activities, but rather a legal mechanism with direct implications for the transfer of property rights, the enforcement of security interests, the settlement of state receivables, the management of state assets, and the protection of the rights of the parties involved in the auction. Therefore, the substance of the provisions concerning auctions is, in essence, of a strategic nature, requiring regulation at the level of an Act in order to ensure greater legitimacy and legal certainty (Sanusi, 2024).

The absence of a national Auctions Act also raises issues regarding the legal protection of Auction Officers. As public officials authorised by the state to conduct auctions and draw up Auction Minutes as authentic deeds, Auction Officers hold a crucial position in ensuring the legality of the entire auction process. In practice, Auction Officers frequently face various legal risks in the form of civil claims, administrative disputes, or allegations of unlawful acts brought by parties who feel they have been aggrieved by the conduct of the auction (Gumilang, 2020).

This issue has become increasingly complex with the development of electronic auction (e-auction) models, which utilise information technology as the primary means of conducting auctions. The digital transformation taking place across various public service sectors has altered the patterns of legal interaction within society, including the transition of auction mechanisms which were previously conducted conventionally to electronic systems. In practice, the conduct of online auctions no longer brings bidders and auction officials together in the same place and at the same time, as is characteristic of conventional auctions; instead, they are conducted via an electronic platform that allows participants to take part in the auction process from different locations. This fundamental change presents a range of new legal issues that require more comprehensive and systematic regulation within a legal instrument at the level of an Act (Berry, 2021).

These legal issues relate, amongst other things, to the validity of electronic documents in the auction process, the evidential value of electronic data, the validity of bidders' identities verified digitally, the security of the information systems used in conducting auctions, the protection of bidders' personal data, and the mechanisms for accountability in the event of an electronic system failure resulting in losses for the parties involved. These various issues essentially concern not only the administrative aspects of conducting auctions, but also the protection of the public's civil rights and legal certainty regarding the results of auctions conducted via electronic means. In the context of a state governed by the rule of law, legal certainty is a crucial element, as every governmental action and every

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legal consequence arising therefrom must have a legal basis that is clear, certain and predictable to the public (Amini, 2022; Rahardjo, 2014).

On the other hand, the position of the Auctioneer as a public official authorised by the state to conduct the sale of goods by auction and to draw up the Auction Minutes as an authentic deed places the Auctioneer in a position vulnerable to various legal risks. Any dispute arising from the conduct of an auction will generally have direct implications for the actions and legal documents produced by the Auctioneer. It is not uncommon for Auction Officers to be named as defendants in civil cases or administrative disputes, as they are deemed responsible for the conduct of auctions that are contested by certain parties. This situation demonstrates that legal protection for Auction Officers does not merely depend on the professionalism with which they carry out their duties, but is also significantly influenced by the adequacy and clarity of the regulations underpinning their authority.

The urgency of establishing more comprehensive regulations becomes increasingly apparent when considered in the context of the development of the digital economy, which has led to auctioned assets becoming increasingly diverse and complex. Auctioned assets today are no longer limited to movable or immovable property as recognised in classical civil law, but also encompass various forms of modern assets possessing their own distinct legal characteristics. Technological developments have given rise to various forms of assets with high economic value that can be the subject of transactions, such as intellectual property rights, digital rights, information technology-based assets, and various other forms of assets that continue to evolve in line with the dynamics of the digital economy (Asari & Hartini, 2024). The diversity of these assets requires a regulatory framework capable of providing certainty regarding auction procedures, mechanisms for establishing rights, and legal protection for all parties involved in the auction process.

Although various technical aspects of conducting electronic auctions have been regulated through a Minister of Finance Regulation, the existence of such technical regulations cannot, in essence, replace the need for regulation at the level of legislation. This is because the substance of the regulations governing the conduct of auctions concerns fundamental aspects relating to the transfer of property rights, the enforcement of judgments, the management of state assets, the protection of citizens' rights, and the powers of public officials. Based on the theory of legislative drafting, matters that have a far-reaching impact on the rights and obligations of citizens should be adequately regulated at the level of legislation in order to possess greater legitimacy, binding force and legal certainty (Soeprapto, 2020).

The absence of a national Auction Act has ultimately created a gap between the development of modern auction practices and the existing regulatory framework. On the one hand, public demand for electronic auction mechanisms continues to rise in line with technological advancements and the digitalisation of public services. On the other hand, however, Indonesia does not yet have a legislative instrument that comprehensively regulates the national auction system, including the status of Auction Officers, electronic auction mechanisms, the legal validity of digital documents, legal protection for the parties involved, and forms of accountability in the conduct of online auctions. This situation has the potential to create legal uncertainty, which could ultimately undermine public confidence in the national auction system.

Finnally, the enactment of a new Auctions Act is no longer merely part of the national legal reform agenda, but has become an urgent necessity in order to achieve legal certainty, legal protection and the modernisation of the national auction system. It is hoped that the Auction Law will serve as the primary legal foundation for integrating various developments in information technology into the conduct of auctions, clarifying the status and powers of Auction Officials, providing adequate legal protection for all parties involved, and creating a modern, effective, transparent and legally certain auction system.

METHODS

This study employs a normative legal methodology, which focuses on the analysis of applicable positive legal norms and principles. This method is known as a literature review, as its primary data sources are derived from legislation, legal literature and previous research findings. The focus of the research is not on collecting field data, but rather on analysing legal materials to find solutions to the legal issues under investigation (Johnny, 2006).

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In its implementation, this study employs two approaches: the statutory approach and the conceptual approach. The statutory approach involves analysing various regulations relating to the subject matter of the study, whilst the conceptual approach is used to examine theories, doctrines and legal principles developed in legal literature. The use of these two approaches aims to provide a comprehensive understanding of the legal issues under investigation (Marzuki, 2007).

The sources of legal material used comprise primary, secondary and tertiary legal sources. Primary legal sources include various legislative provisions relevant to the research, namely the Vendu Reglement (Staatsblad 1908 No. 189), the Vendu Instructie (Staatsblad 1908 No. 190), Act No. 1 of 2024 concerning the Second Amendment to Act No. 11 of 2008 on Electronic Information and Transactions, Minister of Finance Regulation No. 122 of 2023 concerning Guidelines for the Conduct of Auctions, Minister of Finance Regulation No. 86 of 2024 concerning Auction Minutes, Minister of Finance Regulation No. 124 of 2023 on Class I Auction Officers, and Minister of Finance Regulation No. 189/PMK.06/2017 on Class II Auction Officers. Secondary legal sources consist of books, academic journals, expert opinions, and relevant court rulings to support the legal analysis. Meanwhile, tertiary legal sources include legal encyclopaedias, regulatory reviews, and journal indexes, which serve to aid in understanding the legal concepts and terminology used in the research (Johnny, 2006).

The collection of legal materials was carried out through a literature review and a document review. The literature review involved searching for and analysing various primary, secondary and tertiary legal sources relating to the research topic. Meanwhile, the document review involved examining various legal documents originating from legislators, judges or courts, interested parties, legal experts and researchers relevant to the subject of the research (Fajar & Achmad, 2017).

The analysis of legal material in this study was carried out using descriptive, argumentative and systematisation techniques. The descriptive technique was used to objectively describe the facts and applicable legal provisions. Furthermore, the argumentative technique was used to formulate the legal grounds and justifications supporting the analysis of the issue under investigation. The systematisation technique, meanwhile, involved grouping and organising the legal material in a structured manner so that the relationship between legal rules and relevant concepts could be understood more clearly and systematically (Muhaimin, 2020).

RESULTS AND DISCUSSION

The Urgency of Enacting an Auctions Act to Support Legal Certainty for Auctions Officers in Conducting Online Auctions

Auctions are a legal instrument that occupies a strategic position within Indonesia’s economic and legal systems. Through the auction mechanism, the transfer of rights to an item can be conducted in an open, competitive and transparent manner, whilst providing equal opportunities for the public to acquire the auctioned item through a bidding process. In practice, auctions are not only used as a means of ordinary commercial transactions, but also serve as a legal instrument in the enforcement of court judgements, the realisation of security interests, the management of state assets, the sale of state-owned property, the settlement of state receivables, and the sale of assets belonging to business entities or individuals. Hence, the existence of an auction system capable of providing legal certainty is a vital requirement in supporting the stability of economic activity and legal protection for the parties involved (Rachmadi, 2016).

The development of auction law in Indonesia has seen significant changes in line with the dynamics of the national legal system and advances in information technology. Auctions, as a legal mechanism, are in essence understood not merely as ordinary buying and selling activities, but as a public law instrument with direct consequences for the transfer of property rights, the enforcement of judgments, the management of state assets, and the legal protection of the parties involved. These characteristics make auctions an important part of the state administrative and civil law systems; consequently, their existence requires clear, definitive regulations that possess strong legitimacy within the hierarchy of legislation.

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In modern legal systems, the existence of a legal instrument governing the transfer of property rights through open-market mechanisms such as auctions is a vital component of the guarantee of legal certainty in a state governed by the rule of law. Auctions are not merely understood as ordinary buying and selling mechanisms, but as instruments of public law that have direct implications for the transfer of rights, the enforcement of judgments, the management of state assets, and the protection of the rights of the parties involved. Consequently, most countries generally enshrine auction regulations within the framework of legislation to ensure strong legitimacy and provide predictable legal certainty (Soeprapto, 2020).

Historically, the regulation of auctions in Indonesia cannot be separated from the influence of the Dutch colonial legal system that once applied in the Dutch East Indies. During that period, the colonial government enacted the Vendu Reglement Staatsblad No. 189 of 1908 and the Vendu Instructie Staatsblad No. 190 of 1908 as legal instruments specifically governing the conduct of public sales. These two regulations were introduced in response to the colonial administration’s need to regulate the disposal of state assets, the sale of confiscated goods, and various forms of transactions requiring an open bidding mechanism for the public. Through these regulations, the colonial government sought to establish an auction system characterised by standardised, transparent procedures capable of providing certainty for both sellers and buyers (Rachmadi, 2016).

The provisions set out in the Vendu Reglement and Vendu Instructie cover various key aspects of auction conduct, ranging from the procedures for announcing auctions, the bidding mechanism, the powers of the auctioneer, to the preparation of the Auction Minutes as official evidence of the auction’s conduct. This entire series of procedures was designed in accordance with the characteristics of society and technology in the early 20th century, which still relied on face-to-face meetings. Thus, every stage of the auction process at that time was conducted conventionally, bringing together the seller, auction participants and the authorised officials in the same place at the same time. Such a regulatory model is understandable given that the development of information and communication technology at that time did not yet permit remote transactions or the use of electronic documents as is common in today’s digital age.

Although the Vendu Reglement and Vendu Instructie played an important role in the history of the development of national auction law, the existence of these two regulations must essentially be understood within the historical context of the formation of Indonesian law. Following the Fourth Amendment to the 1945 Constitution of the Republic of Indonesia, the provisions of the Transitional Rules which had previously formed the basis for the validity of various colonial regulations underwent fundamental changes. This situation meant that the Vendu Reglement could no longer be regarded as a primary legal foundation on a par with legislation within the current Indonesian legal system.

As a result of the absence of a national Auctions Act specifically governing the conduct of auctions, modern auction practices, particularly electronic auctions have ultimately developed through various sectoral regulations issued by the government, notably through Minister of Finance Regulations serving as operational guidelines for the conduct of auctions. It was this situation that subsequently became the starting point for a discourse on the urgency of enacting a national Auctions Act capable of providing a stronger, more comprehensive legal framework, in line with technological developments and the needs of modern society.

This development became increasingly apparent as national economic activity began to undergo transformation due to advances in information and communication technology. The digital revolution occurring across various sectors of life has driven a shift in public transaction patterns from conventional systems towards electronic systems. This phenomenon has not only affected the trade and services sectors but has also had an impact on the auction system. The need for services that are faster, more efficient, transparent and accessible from various regions has prompted the government to modernise the auction system, which had hitherto operated conventionally. This modernisation was carried out through the issuance of various Minister of Finance Regulations that gradually introduced information technology-based auction mechanisms (Khairandy, 2013).

One of the key milestones in this digitalisation process was the issuance of Minister of Finance Regulation No. 106/PMK.06/2013 amending Minister of Finance Regulation No. 93/PMK.06/2010 on Guidelines for the Conduct of Auctions. This regulation marked the government’s first step in opening up the use of electronic means in the conduct of auctions. Through these provisions, the bidding process was no longer restricted to the physical presence of

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participants at the auction venue, but began to allow the use of electronic media as a means of submitting bids. The introduction of this regulation reflects the government's efforts to adapt the auction system to developments in information technology, which were beginning to transform the patterns of transactions across society at large.

This transformation was subsequently continued through the issuance of Minister of Finance Regulation No. 27/PMK.06/2016 on Guidelines for the Conduct of Auctions. This regulation expanded the use of electronic means in the conduct of auctions by allowing for the use of email, the internet, and various other digital communication media in the bid submission process. The introduction of this regulation demonstrates that the government has begun to integrate information technology into the national auction system as part of its efforts to modernise public services. At the same time, the digitisation of auctions is also seen as a means of improving administrative efficiency, broadening public access to auction services, and enhancing transparency in public sales processes.

Further developments followed with the issuance of Minister of Finance Regulation No. 90/PMK.06/2016, which specifically governs the conduct of auctions involving written bids without the physical presence of bidders via the internet. This regulation forms one of the administrative foundations enabling the conduct of online auctions, or e-auctions. With this system in place, bidders can participate in the bidding process from different locations without having to be physically present at the auction venue. The introduction of this mechanism has significantly expanded the market reach by enabling participation from people across various regions in a single auction. Furthermore, the use of information technology is also considered capable of improving cost efficiency, reducing geographical barriers, and accelerating the administrative processes of auctions.

The existence of Minister of Finance Regulation No. 90/PMK.06/2016 also demonstrates the government's commitment to utilising developments in information technology as a tool for modernising public services. An internet-based auction system enables a faster, more efficient, transparent and accountable auction process. From an administrative perspective, the digitisation of auctions reduces the use of physical documents, speeds up the verification of participants, and simplifies the storage of auction data and records. Meanwhile, from the public's perspective, conducting auctions online provides broader access, as participants can take part from various regions without incurring travel costs or the expense of attending in person. Consequently, the digitisation of auctions forms part of bureaucratic transformation in line with developments in the concepts of e-government and electronic public services (Rachmadi, 2016).

In line with the increasing use of electronic systems in the conduct of auctions, the government subsequently refined the existing regulations through the issuance of Minister of Finance Regulation No. 213/PMK.06/2020 on Guidelines for the Conduct of Auctions. This regulation repeals and replaces Minister of Finance Regulation No. 27/PMK.06/2016 and Minister of Finance Regulation No. 90/PMK.06/2016 in order to create a more integrated and comprehensive regulatory framework. The enactment of Minister of Finance Regulation No. 213/PMK.06/2020 was undertaken in response to the increasingly complex nature of auction practices and the public's growing demand for fast, transparent and information technology-based auction services.

In Minister of Finance Regulation No. 213/PMK.06/2020, the government has made various improvements to auction procedures, whether conducted conventionally or via electronic media. Provisions regarding the procedures for auction applications, auction announcements, bidding mechanisms, the conduct of auctions, payment of auction proceeds, and the preparation of auction minutes have been reformulated in a more systematic manner. This regulation also provides administrative certainty regarding the use of electronic means at various stages of the auction process, so that electronic auctions are no longer viewed as an alternative mechanism but have become an integral part of the national auction system. The introduction of this regulation demonstrates that the government increasingly recognises the role of information technology as a key instrument in the conduct of modern auctions (Rachmadi, 2016).

In addition to refining the mechanisms for conducting auctions, Minister of Finance Regulation No. 213/PMK.06/2020 also reinforces the principles of transparency and openness of information in the conduct of auctions. One aspect of this regulation is evident in the provision regarding auction announcements, which must be made publicly to the general public to ensure equal opportunities for all parties to participate in the auction. Such transparency is a crucial element in maintaining public trust in the auction system whilst preventing practices that could be detrimental to stakeholders. In the context of electronic auctions, this principle of openness has taken on a new form through the use of digital platforms, which allow information regarding auction items to be accessed more widely by the public (Bhismananda & Purwanto, 2024)..

A further development occurred when the government issued Minister of Finance Regulation No. 122 of 2023 on Auction Implementation Guidelines, which came into force on 1 January 2024. This regulation replaces Minister of Finance Regulation No. 213/PMK.06/2020 and serves as the latest administrative framework for the conduct of auctions in Indonesia. The enactment of Minister of Finance Regulation No. 122 of 2023 forms part of the government's ongoing efforts to adapt the auction system to advancements in information technology, public needs, and the rapidly evolving dynamics of economic transactions in the digital age.

Ministerial Regulation No. 122 of 2023 introduces a number of significant updates to the national auction system. One particularly significant change is the reclassification of auction types into mandatory and voluntary categories, with a broader scope than under previous regulations. This regulation also introduces various improvements regarding the identification of auction participants, the conduct of auctions for multiple items simultaneously, and provisions concerning special scheduled auctions tailored to the characteristics of the items being auctioned. These changes demonstrate that the government is striving to create a more flexible and adaptive auction system capable of meeting the needs of evolving practices.

Furthermore, PMK No. 122 of 2023 also reinforces the use of information technology across almost all stages of the auction process. From the submission of auction applications, auction announcements, participant registration, the submission of bids, the determination of the winner, to the preparation of auction result documents, the process has been directed to make optimal use of electronic systems. Consequently, digital transformation which previously served merely as a supporting tool has evolved into a central component of the organisation of national tenders. This situation demonstrates that tendering practices in Indonesia can no longer be separated from the use of information and communication technology.

This regulatory development was subsequently followed by the strengthening of the administrative and documentation aspects of auctions through provisions regarding the Auction Minutes as an official document certifying that an auction has taken place. In the modern auction system, the Auction Minutes continue to occupy a central position as they serve as a record of the entire auction process, from the identities of the parties, the items being auctioned and the bid values, to the final outcome of the auction. With the development of electronic systems, the process of compiling and managing Auction Minutes has also undergone a transformation through the use of digital technology, enabling these documents to be stored, accessed and managed electronically.

The evolution of auction regulations, from Minister of Finance Regulation No. 93/PMK.06/2010 to Minister of Finance Regulation No. 122 of 2023, demonstrates a gradual transition from a conventional auction system to an information technology-based auction system. These various changes indicate that the government is endeavouring to adapt auction mechanisms to meet the evolving needs of the public, who are increasingly relying on digital technology in various economic activities. Through this series of Minister of Finance Regulations, the conduct of auctions no longer depends on the physical presence of participants but can be carried out via electronic media, enabling the auction process to proceed more quickly, efficiently and reach a wider audience.

This digital transformation of the auction system is fundamentally inseparable from the development of information technology law in Indonesia. The use of electronic media in the conduct of auctions requires a legal framework capable of recognising the validity of electronic documents, electronic transactions, and various legal activities carried out via electronic systems. It is in this context that Law No. 11 of 2008 on Electronic Information and Transactions, subsequently amended by Law No. 19 of 2016 and most recently by Law No. 1 of 2024 plays a vital role in supporting the implementation of electronic auctions in Indonesia.

The Electronic Information and Transactions Act was essentially enacted to provide legal certainty regarding various legal activities carried out through the use of information technology. Prior to the enactment of the Electronic Information and Transactions Act, many electronic activities had not yet been explicitly recognised within the Indonesian legal system, thereby giving rise to doubts regarding the validity of documents and transactions conducted digitally. Consequently, the enactment of the Electronic Information and Transactions Act was intended to address

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the needs of a society that was becoming increasingly reliant on information technology across various aspects of life, including trade, public services, government activities, and other economic activities (Makarim, 2005).

One provision that is directly relevant to the conduct of electronic auctions is contained in Article 5(1) of the ITE Law, which states that Electronic Information and/or Electronic Documents, together with their printed copies, constitute valid legal evidence. This provision is further reinforced in Article 5(2), which affirms that Electronic Information and/or Electronic Documents constitute an extension of valid legal evidence in accordance with the applicable procedural law in Indonesia. Through these provisions, the state explicitly recognises the existence of electronic documents as legal instruments possessing the same evidential weight as conventional documents, provided they meet the requirements set out in legislation.

This recognition of electronic documents is of paramount importance in the conduct of internet-based auctions, as almost every stage of the process relies on the use of electronic systems. Participant registration is carried out via an online application, participant identification is conducted through an electronic system, bids are submitted via a digital platform, and various documents relating to the conduct of the auction are also stored in electronic form. Thus, the legal legitimacy of the use of electronic documents granted by the ITE Law forms the foundation that enables electronic auction systems to be conducted lawfully under Indonesian law (Makarim, 2005).

In addition to recognising electronic documents, the ITE Law also regulates electronic signatures as a means of authentication in electronic transactions. Article 1(12) of the ITE Law defines an electronic signature as a signature consisting of electronic information that is attached to, associated with, or linked to other electronic information and used as a means of verification and authentication. This provision is further reinforced by Article 11 of the ITE Law, which recognises the legal validity of electronic signatures provided they meet certain requirements. This provision is closely relevant to the development of electronic auction systems, as various documents used in modern auction processes have utilised digital technology in their administration.

Nevertheless, it is important to understand that the ITE Law does not specifically regulate the procedures for conducting auctions. The scope of the ITE Law is more focused on the use of electronic systems, electronic information, electronic documents, electronic signatures, and the conduct of electronic transactions in general. In other words, the ITE Law is not a legal basis that specifically regulates auction mechanisms, but merely provides legitimacy for the use of electronic means which are subsequently utilised in various sectors, including the auction sector. Consequently, the existence of the ITE Law cannot replace the need for specific regulations on auctions that comprehensively govern the rights and obligations of the parties, the status of Auction Officials, the mechanisms for conducting auctions, legal protection, and various other aspects relating to the conduct of electronic auctions.

In practice, the relationship between the ITE Act and the Minister of Finance Regulation on electronic auctions demonstrates that the two operate under different regulatory regimes but are complementary. The ITE Law provides a general legal basis for the use of information technology and electronic documents, whilst the Minister of Finance Regulation governs the technical and administrative aspects of auction implementation. This situation explains why the conduct of electronic auctions in Indonesia can take place lawfully even though there is as yet no national Auction Law specifically regulating the conduct of electronic auctions. However, at the same time, this situation also highlights that Indonesia's auction legal system still relies on sectoral regulations scattered across various pieces of legislation, meaning it lacks a single piece of legislation that specifically regulates auctions in a comprehensive and integrated manner.

For this reason, the need to enact a national Auctions Act can no longer be viewed merely as an effort to update regulations, but rather as an urgent legal necessity to ensure legal certainty in the conduct of electronic auctions in Indonesia. A National Auctions Act is required to establish a comprehensive legal framework for the conduct of auctions in the digital age, to integrate various developments in information technology into the national auction legal system, to clarify the status and powers of Auction Officials, and to provide adequate legal protection against the risks arising from the conduct of online auctions. Thus, the urgency of enacting the Auctions Act is, in essence, not only intended to support the modernisation of the national auction system, but also to realise legal certainty and legal protection for Auction Officials as the parties at the forefront of the conduct of electronic auctions in Indonesia.

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Based on Jan Michiel Otto's thinking, legal certainty in this study is understood as a condition where there are clear, consistent and accessible legal provisions that can be effectively applied by all competent institutions. Legal certainty not only requires the existence of norms governing a particular field, but also necessitates harmony between the substance of the law, the implementation of the law, and the enforcement of the law. Therefore, a legal system cannot be said to provide legal certainty if there are still regulatory gaps, ambiguities in norms, or limitations in the legal basis that lead to differences in interpretation in practice.

When Jan Michiel Otto's theory is applied to the conduct of online auctions in Indonesia, the first indicator, the availability of clear, consistent and easily accessible legal regulations becomes a crucial aspect. The current development of electronic auctions has given rise to various new legal issues that are no longer limited to the procedures for public sales as known in the conventional auction system. The conduct of online auctions involves the use of electronic systems, electronic documents, electronic signatures, data security, verification of participants' identities, and various forms of digital evidence, all of which require comprehensive legal regulation. However, to date, the regulation of auctions in Indonesia still relies on various Minister of Finance Regulations that are constantly changing in line with technological developments. This situation indicates that auction regulations remain at the level of technical and administrative regulations and have not yet been enshrined in a comprehensive statutory framework.

The second and third indicators highlighted by Jan Michiel Otto also underscore the importance of regulations that can be consistently enforced by the government and adhered to by the public. In the context of online auctions, the Auction Officer as a public official authorised by the state which requires a clear legal basis for carrying out their duties and exercising their powers. Such clarity is essential to ensure that every action taken by Auction Officials possesses strong legal legitimacy and is protected from potential legal disputes in the future. The increasing complexity of electronic transactions, which form part of modern auction practices, demands regulations that are not merely administrative in nature, but are also capable of providing certainty regarding the scope of authority, responsibilities and legal protection for Auction Officials.

Furthermore, the fourth and fifth indicators, relating to the consistency of judicial decisions and the concrete enforcement of such decisions, are also closely relevant to the conduct of online auctions. Legal certainty can only be achieved if there are clear legal standards that serve as a common guide for government officials, the public and the judiciary in assessing the validity of a legal action. Conversely, if the legal framework governing a particular field remains limited to technical regulations that are subject to constant change, the potential for differing interpretations in practice will increase. This situation may ultimately affect the level of legal certainty enjoyed by the parties involved, including Auction Officials as the primary implementers of the auction process.

Based on Jan Michiel Otto's theory of legal certainty, the existence of an Auctions Act is essential to ensure the availability of clear, consistent and strongly legitimate regulations for the conduct of online auctions in Indonesia. The enactment of an Auctions Act is intended not only to adapt the auction system to developments in information technology, but also to provide legal certainty for Auction Officers in the exercise of their powers. With regulations at the statutory level, it is hoped that all aspects relating to the conduct of electronic auctions, ranging from implementation procedures, the use of electronic documents, the powers of Auction Officials, legal protection, to dispute resolution can be regulated more comprehensively.

Provisions in the Auction Act that can provide legal certainty and protection for auction officials in dealing with the risks and challenges of online auctions

The enactment of an Auctions Act within the Indonesian legal system is a normative necessity aimed not only at filling a regulatory gap, but also at providing legal certainty and comprehensive legal protection for Auctioneers as public officials who carry out state functions in the field of the sale of goods by auction. In a state governed by the rule of law, every authority exercised by a public official must have a clear and measurable legal basis, capable of guaranteeing certainty in its implementation, including in the conduct of auctions, which are now increasingly taking place in electronic form.

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Developments in information technology have brought about significant changes to public service mechanisms, including the conduct of auctions. Auctions, which were previously conducted conventionally with the physical presence of the parties, have now transformed into an electronic auction system (online auction). This change is not merely technical in nature but also has implications for legal aspects, particularly regarding the validity of electronic legal acts, digital evidence, and the responsibilities of the parties involved in the auction process. Consequently, regulation at the level of legislation is essential to ensure that all these aspects possess strong, uniform legal legitimacy and can be applied consistently.

From the perspective of legislative theory, the enactment of legislation is understood not merely as a formal process of creating legal norms, but also as a systematic process that must comply with the principles of sound legislative drafting as set out in Law No. 12 of 2011 in conjunction with Law No. 13 of 2022. These principles include clarity of purpose, appropriate institutional framework, consistency between the type of legislation and its content, enforceability, clarity of wording, and transparency. Consequently, an Auctions Act must be designed with a forward-looking vision so that it is not only capable of regulating current conditions but also of anticipating future developments, particularly in the conduct of digital auctions (Prayogo, 2016; Susilawati et al., 2025).

The stages of law-making also reinforce the principle that every regulation must be enacted through a systematic and structured process. At the planning stage, the need for regulations on electronic auctions must be included in the National Legislation Programme as a priority of national legal policy. At this stage, the academic paper serves as the scientific basis explaining the urgency of regulation, including the philosophical, sociological and legal aspects of the need for an Auctions Act (Asshiddiqie, 2019).

Subsequently, at the drafting stage, the legal material is formulated into more technical provisions whilst adhering to good legislative practice, including the possible use of an omnibus approach to accommodate the complexity of cross-sectoral auction regulation (Soeprapto, 2020). The deliberation stage serves as a forum for discussion between the House of Representatives and the Government, involving meaningful public participation, so that every provision formulated truly reflects the needs of society. Subsequently, the enactment stage provides formal legitimacy for the law’s entry into force, whilst the promulgation stage ensures that the provisions have general binding force through the Official Gazette of the Republic of Indonesia.

Based on this framework, the content of the Auctions Act must be formulated comprehensively to address the need for legal protection for Auction Officials in facing the risks and challenges of online auctions. These risks relate not only to procedural aspects but also encompass issues of evidence, legal liability and the security of the electronic systems used in the conduct of auctions. The following is a formulation of the provisions that must be accommodated in the forthcoming Auctions Act to ensure legal protection for Auction Officials:

1. **Legitimacy of Electronic Reading Procedures and Virtual Attendance**

   The main provisions must radically redefine Article 37 of the Auction Regulations. The new Auction Law must adopt the spirit of Article 72A of Law No. 13 of 2022, which officially recognises that the formulation of regulations may be carried out electronically. If the enactment of the law itself is already recognised digitally, then the procedures for conducting auctions as a legal product must also receive similar recognition. The Auction Law must explicitly state that the obligation to ‘read out’ is deemed to have been legally fulfilled through the display of documents on the application system. Furthermore, the definition of ‘attendees’ must be expanded to include legal entities verified within the electronic system, so that virtual attendance is treated as absolutely equivalent to physical attendance. This is crucial to mitigate the risk of the Auction Minutes being annulled by judges who still adhere to the rigid paradigm of the Vendu Reglement.

2. **Recognition of the Authenticity of Electronic Auction Minutes and Their Evidentiary Value**

   The Auction Act must explicitly stipulate that Auction Minutes created electronically have the status of an authentic instrument in accordance with Article 1868 of the Civil Code. The wording of this provision must align with the mechanisms for the use of certified electronic signatures (digital signatures). With this clarification at the level of the Act, Auction Officers are protected from legal challenges questioning the validity of deeds lacking a wet signature. This provision must also ensure that electronic Auction Minutes possess full evidential weight in terms of form, substance and material validity, so that they cannot be downgraded to the status of a private document during court proceedings.

3. **Clauses on Protection of Office and Limitation of Liability**

Within the online auction ecosystem, Auction Officials are often caught in a liability dilemma when technical issues arise on the e-auction platform. Therefore, the provisions of the forthcoming Auctions Act must incorporate an operational risk mitigation system that provides specific protection for Auction Officials against technological malfunctions, such as server failures (server down), network latency hindering the submission of bids, and cyber-attacks capable of manipulating price data. In the absence of an explicit 'limitation of liability' clause enshrined at the statutory level, Auction Officials risk being drawn into civil litigation on grounds of negligence, even though such failures are systemic in nature and lie beyond the human control of the officials concerned (Fuady, 2013).

Therefore, this new codification must clearly distinguish between the personal and professional responsibilities of Auction Officials regarding document verification and the responsibilities of the electronic system operator regarding the reliability of the technological infrastructure. This is in line with the principle of protection for public officials carrying out their state duties, whereby they cannot be held liable for unforeseeable digital force majeure events (Hr, 2018).

With a legal framework in place to protect against these technical risks, Auction Officials can carry out their duties independently without the spectre of fear of disproportionate claims for material damages.

4. **Demarcation of Responsibilities Between Formal and Substantive Correctness**

The ideal content of the Auction Law should provide for the protection of Auction Officials in the event of post-auction information disputes arising from incomplete data on auction items on the auction portal. In online auction systems, physical interaction between participants and the auction items is very limited, meaning that participants rely entirely on the descriptions and photographs uploaded by the Seller to the system. Auction Officials are often the target of legal action when the item received by the winning bidder does not meet expectations or contains undisclosed hidden defects. The new Auction Law needs to clarify the scope of the verification obligations incumbent upon Auction Officials, namely that these are limited to the formal accuracy of documents, whilst responsibility for the substance of the item remains with the Seller.

This clarification is vital to prevent the excessive extension of legal liability onto Auction Officials. With the standardisation of legal disclaimers in every electronic auction notice, reinforced by statutory authority, Auction Officials will have a strong negotiating position in court when facing lawsuits seeking the annulment of an auction based on a buyer's subjective dissatisfaction with the physical condition of the goods. This certainty not only protects officials but also fosters a healthier and more integrity-driven auction ecosystem through a fair and proportionate distribution of liability amongst the parties (Fuady, 2013).

5. **Administrative Appeal Mechanisms as a Repressive Safeguard**

In accordance with the principles of Administrative Law and the tenets of Law No. 13 of 2022, the drafting of the Auction Law must first incorporate a pre-litigation administrative dispute resolution mechanism. Before a participant or third party files a claim with the general courts, they are obliged to pursue the objection procedure with the supervisory body of the Auction Official. This serves as a filter to protect Auction Officials from being constantly positioned as Defendants in cases of Unlawful Acts (PMH), which often drain their time and undermine their professional integrity.

6. **Certainty of Enforceability and Inter-agency Coordination**

Finally, the harmonisation of the Auction Law with modern civil procedural law must address the enforceability of published digital auction records. As public officials, Auction Officers are authorised to issue documents possessing legal force equivalent to a court judgement that has attained the force of *res judicata* in the context of enforcement auctions. The provisions of the Auction Law must ensure that the transfer of rights carried out via an electronic system possesses validity that cannot be challenged by land registration agencies or motor vehicle registration authorities on the grounds of the absence of a wet signature. By conferring

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absolute legal validity upon these digital legal documents, Auction Officers are protected from the risk of administrative claims arising from the refusal of title transfers by the relevant agencies.

The enactment of the Auction Act essentially serves not only as a means of establishing and codifying legal norms, but also as an instrument of social engineering aimed at aligning legal practice with societal developments, particularly in the context of digital transformation. From this perspective, the law cannot be understood as a static set of rules, but rather as a dynamic normative system that must be capable of responding simultaneously to social, economic and technological changes (Rahardjo, 2014). Consequently, the existence of the Auction Act is important not only for providing legal certainty in a formal sense, but also for establishing legal order within the increasingly complex and evolving practice of electronic auctions (Haris, 2017; Liono et al., 2023).

Within the framework of legislative theory, the quality of a law is determined by its ability to fulfil the principles of good legislative drafting as stipulated in Article 5 of Law No. 12 of 2011 in conjunction with Law No. 13 of 2022, specifically the principles of clarity of purpose, appropriate institutional framework, consistency between type, hierarchy and substance, enforceability, clarity of formulation, and transparency. The principle of enforceability requires that every legal norm be not only conceptually sound but also realistic in its implementation, in line with the factual conditions of society and technological developments. In the context of electronic auctions, this means that every provision must take into account the technical aspects of digital systems, data security, and the readiness of the legal and technological infrastructure supporting their implementation.

Furthermore, the principle of clarity of formulation plays a crucial role in the context of online auctions because the characteristics of electronic systems which involve information technology, automated systems and remote interactions are highly susceptible to differing interpretations. Therefore, every provision in the Auctions Act must be formulated unequivocally, without room for multiple interpretations, and capable of providing legal certainty for all parties, particularly Auction Officers as public officials exercising the state's authoritative functions. This clarity of wording also serves as a means of preventing legal disputes arising from ambiguous provisions in the practical implementation of electronic auctions.

Furthermore, the principle of consistency between type, hierarchy and subject matter emphasises that matters relating to the powers of public officials, legal evidence and the transfer of property rights must be regulated at the level of legislation. This indicates that the regulation of auctions cannot be entirely delegated to technical regulations under the Act, as it concerns the civil rights of citizens and the state's authority to carry out legal actions that are final and binding (Hsb, 2016).

Within the context of the structure of legal norms, Hans Nawiasky's theory provides a conceptual foundation that the legal system is organised hierarchically and in layers, ranging from fundamental norms to implementing regulations. Within this structure, legislation occupies a strategic position as a formal legal norm that serves as the basis for the legitimacy of subordinate regulations. Consequently, the existence of the Auctions Act is of paramount importance in providing normative legitimacy to the practice of electronic auctions, which has hitherto developed through technical administrative regulations (Mafita, 2020).

Furthermore, from the perspective of the theory of legal certainty, the existence of the Auction Law serves to ensure that every legal action in the auction process has a clear basis, is predictable, and is consistent in its application. This legal certainty is not only necessary for auction participants but is also vital for Auction Officials, as the implementers of state authority, to ensure they are not placed in a vulnerable position facing legal claims due to unclear regulations (Junaidi et al., 2023; Sari & Romlaini, 2025). With explicit provisions in the law, every action taken by an Auction Official is afforded strong legal protection and is legally accountable (Huda, 2020).

Upon further analysis, the six key provisions of the Auction Law outlined above form a single, integrated normative system. The legitimisation of electronic procedures provides the legal basis for the validity of digital auctions; the recognition of the authenticity of auction minutes confers full evidential weight; the limitation of liability clause provides protection against technical risks associated with electronic systems; the delineation of responsibilities establishes clear boundaries of authority between the Auction Officer and the seller; the administrative objection

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mechanism provides an effective dispute resolution channel; and the enforceability clause guarantees the effective implementation of the auction results.

If all these elements were integrated into a single Auctions Act, a legal system would be established that is not only normative but also functional and adaptable to developments in information technology. This is in line with the primary objective of legislation, namely to create laws that are not only formally valid but also effective in their implementation within society. Thus, it can be affirmed that an ideal Auction Act must be built upon the integration of legislative theory, the theory of the structure of legal norms, and the theory of legal certainty, which are then contextualised to the empirical needs of electronic auction practice. This integration forms the primary basis for formulating the substance of the Auction Law, which not only provides legal protection for Auction Officials but also creates a modern, transparent national auction system characterised by a high degree of legal certainty.

CONCLUSION

The urgency of enacting the Auctions Act lies in the need to provide legal certainty for auction officials in the conduct of online auctions in Indonesia. Currently, the regulation of electronic auctions remains scattered across various technical regulations, such as Minister of Finance Regulations and the ITE Act, and therefore does not yet provide comprehensive, consistent and uniform legal certainty. This situation demonstrates the need for legislation at the statutory level that specifically and comprehensively regulates all aspects of electronic auctions, in order to ensure legal certainty within the regulatory framework.

Meanwhile, legal certainty and protection for Auction Officers in facing the risks of online auctions can only be realised through a comprehensive Auction Act. Such regulations should cover the legitimacy of electronic procedures, the authenticity of auction records, limitations on official liability, the separation of formal and material responsibilities, administrative objection mechanisms, and certainty regarding enforceability. Therefore, the Government, together with the House of Representatives (DPR RI), is advised to promptly enact an Auctions Act that is adaptable to technological developments, whilst Auction Officers (Class I and Class II/Notaries) are advised to enhance their professional competence and due diligence in the conduct of electronic auctions to minimise legal risks and disputes.

In light of these circumstances, the Government, together with the DPR RI, is advised to promptly enact a comprehensive Auction Law that is adaptable to developments in electronic auction technology, serving as a strong legal basis and providing effective legal protection. Furthermore, Auction Officers (Class I and Class II/Notaries) are advised to continue enhancing their competence and understanding of the regulations and information technology used in electronic auctions, and to apply the principle of professional diligence at every stage of the auction process in order to minimise legal risks and disputes.

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