

Time Limit Exception Provisions for Heirs of Auction Buyers in Voluntary Auctions of Immovable Property

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ABSTRACT

This study is motivated by the incompleteness of the norms in Article 88 Paragraph (2) of Minister of Finance Regulation No. 122 of 2023 regarding the exception of the 5 working days time limit from the auction for heirs of individual voluntary auction buyers. The aims of this study are to analyze the urgency of establishing time limit exclusion arrangements for the heirs of individual voluntary auction buyers for immovable property. Furthermore, this study was of a normative juridical type using a statute approach and conceptual approach. The results of this study shows that upon death, rights and obligations transfer to heirs. So that the heirs must settle auction payments within 5 working days and pay BPHTB. Thus, necessary to add a clause to Article 88 Paragraph (2) of Minister of Finance Regulation No. 122 of 2023 ensures legal certainty and justice for heirs of individual voluntary auction buyers.

Keywords:

Heirs; Auction Buyers; Voluntary Auction.

INTRODUCTION

In order to fulfill the obligation to provide guarantees for citizens for recognition, guarantees, and fair legal certainty as stipulated in Article 28D Paragraph (1) of the Constitution of the Republic of Indonesia. The Government of Indonesia issued Minister of Finance Regulation No. 122 of 2023 concerning Guidelines for the Implementation of Auctions as a form of guarantee and certainty of auction implementation. Auction procedures and requirements are specifically stated in Minister of Finance Regulation No. 122 of 2023 concerning Instructions for Implementing Auctions. Article 1 Number 1 Minister of Finance Regulation No. 122 of 2023 defines auction as the process of selling goods intended for the public by offering prices in writing or verbally, where the price will continue to increase until it reaches the highest price.

Referring to Article 2 Paragraph (1) Minister of Finance Regulation No. 122 of 2023, one of its types is a voluntary auction. Voluntary Auction is an auction which takes place voluntarily by the owner of the goods to sell goods belonging to private parties, individuals, legal entities or business entities which is conducted at the request of the applicant or owner of the goods (Erwin Cahyono, 2019). Meanwhile, the auction object referred to in Article 6 can be in the form of immovable goods. The immovable goods referred to are land and/or buildings.

Before the auction is held, the voluntary auction seller first submits an application along with the bidding method at the time the auction is held. After the formal legal requirements are met, the auction organizer is obliged to provide an announcement which the auction will be held (Syamsul et al., 2023.) . On the other hand, prospective voluntary auction participants are required to submit bid collateral which can be in the form of money. For voluntary auctions, the bid guarantee amount is determined at 0% (zero percent) to 100% of the value limit. Voluntary auctions begin

based on the bidding method which has been determined in accordance with the auction announcement (Ersa Malida Astriani & Ngadino, 2022). The auction process takes place with participants bidding according to their ability and desire. When a participant submits a bid that exceeds the limit and highest value, the participant is confirmed as the buyer. This matter is in accordance with Article 85 Paragraph (1) of the Minister of Finance Regulation No. 122 of 2023.

Buying and selling activities will give rise to a reciprocal agreement between the seller and the buyer, which means an agreement in which each party has accomplishment towards each other so that it will create rights and obligations for both the seller and the buyer. (Habeahan & Tamba, 2021). It applies to sales by auction. Therefore, by confirming the auction buyer, a reciprocal agreement between the two of them applies. Furthermore, according to Article 88 Paragraph (1) Minister of Finance Regulation no. 122 of 2023, buyers of auctions which have been approved are required to pay auction fees within a maximum of 5 working days after the auction is held. Buyers also cover BPHTB. Meanwhile, the seller is obliged to pay income tax (Cecilia Kurniawaty et al., 2022).

However, if the buyer of a voluntary auction after 5 working days after the auction has been held does not pay it off, he will be deemed to have committed an act of default, as stipulated in Article 89 Paragraph (1) Minister of Finance Regulation no. 122 of 2023 . This regulation will cause problems if an individual voluntary auction buyer dies within 5 working days after its implementation but has not yet conducted his obligation to pay off the auction payment and fulfill other obligations. Meanwhile, there is little possibility of being able to make payments and fulfill obligations due to limited time so that it causes the heirs exceeding the repayment time limit given and being considered in default. On the other hand, the heirs are obligated to pay the BPHTB and required to submit the required documents consisting of a Certificate of Inheritance, Death Certificate, and Decision on Determination of Heirs as requirements. For example, the death certificate must be obtained from the Civil Registration Office within 14 days at the latest (Jimmi Abraham, 2021). As a result, this causes the heirs to exceed the provided settlement time limit, leading to a breach of contract. Individual voluntary auction buyers who are deemed to be in default will have legal consequences in which their authorization as a buyer will be canceled and their bid security deposit will be deposited with the state treasury, the auction house, the owner of the goods or the Class II auction official's office. It is certainly detrimental to the heirs of individual voluntary auction buyers (Salim & Subagyono, 2022). This will inevitably cause losses for the heirs of the individual voluntary auction buyer.

Basically, the Regulation of the Minister of Finance has provided an exception to the repayment period of 5 working days after the auction is held as stated in Article 88 Paragraph (2) Minister of Finance Regulation No. 122 of 2023, but only excludes Special Scheduled Auctions; Auction where the Buyer is an agency established by statutory regulations; and Auction with a minimum limit value of IDR 500,000,000,000.

The issue described above is problematic because the current regulations do not address exceptions for repayment within 5 working days after the auction. This creates legal uncertainty and injustice for the heirs of individual voluntary auction buyers. In the absence of provisions for such exceptions, the heirs are considered in default, and the legal consequences of the bid guarantee may transfer to the seller or the class II auction office. Additionally, it does not provide legal certainty regarding the rights of heirs, who, according to Article 1100 of the Civil Code and Article 175

Paragraph (1) of the Compilation of Islamic Law, have the right and obligation to handle the unresolved obligations of the deceased auction buyer. (Palayukan Yuyu et al., 2021).

Therefore, the incompleteness of the norms in Article 88 Paragraph (2) of Minister of Finance Regulation No. 122 of 2023 results in the lack of provisions for exceptions to the 5 working days settlement period after the auction for heirs, leading to legal uncertainty and injustice for the heirs of individual voluntary auction buyers. Thus, the purpose of this writing is to analyze the urgency of establishing time limit exemption regulations for the heirs of individual voluntary auction buyers of immovable property.

METHOD

This type of research is normative legal research, which involves the process of discovering legal rules, principles, and doctrines to address the legal issues at hand (Peter Mahmud Marzuki, 2005). The legal issue addressed in this writing is the incompleteness of the norms in Minister of Finance Regulation No. 122 of 2023 regarding Auction Implementation Guidelines, specifically concerning the 5 working days period exception for heirs of individual voluntary auction buyers. The methods used include a statutory approach and a conceptual approach. The legal materials used are primary, secondary, and tertiary sources. The legal materials found will be analyzed using systematic interpretation and grammatical interpretation. Systematic interpretation is the interpretation of an article in a statutory regulation which is connected to an article in another regulation (Kumala, 2021). Meanwhile, grammatical interpretation is explaininxg the meaning and arrangement of words in Minister of Finance Regulation No. 122 of 2023.

RESULTS AND DISCUSSION

Urgency of Establishing Time Limit Exemptions for Heirs of Individual Voluntary Auction Buyers of Immovable Property

Legislation in Indonesia classifies auctions as a buying and selling method with specific procedures or procedures for implementing them since the method of conducting auctions is stated in separate regulations so that they are Lex Specialist in nature. The specificity of an auction can be seen from its transparent nature by establishing competitive price decisions and the requirement that auction officials lead the auction (Erwin Cahyono, 2019). In its implementation, Auctions should be based on Minister of Finance Regulation No. 122 of 2023 concerning Instructions for Implementing Auctions.

In conducting a voluntary auction, the owner of the goods is required to submit a written application to the appointed auction organizer; such as, the Auction Center or KPKNL, accompanied by complete required documents (Ersa Malida Astriani & Ngadino, 2022). Furthermore, the owner of the goods has the right to propose the desired bidding method, either verbally increasing or decreasing or in writing; besides, if they haven't found a participant who bids the highest price, it can be conducted by written offer followed by an oral offer. However, if the legality requirements for the subject and object of the auction have been completely fulfilled, the the class II auction official announces that a voluntary auction for the sale of immovable property will be held no sooner than 7 days before the auction date. After that, prospective voluntary auction participants register themselves as voluntary auction participants for

immovable goods. Individual voluntary auction participants who have been declared to comply with the requirements are required to submit an auction bid guarantee worth at least 0-100% of the limit value.

Voluntary auction participants initiate bidding based on the auction announcement (Ria Desmawati Rianto, 2017). The participant who provides the highest bid that exceeds or is equal to the specified limit value is designated as the buyer followed by a gavel bang as in Article 85 Paragraph (1) Minister of Finance Regulation no. 122 of 2023. The auction participants who have legally as buyers voluntary auction will be obliged to pay the auction price and fulfill the obligations of costs arising from the transfer of rights. Article 88 paragraph (1) regulates that voluntary auction participants who are individuals will be given time limit of 5 working days from the time the auction is held in order to complete payment of the remaining price submitted during the bidding and auction fees. Based on Article 1 Number 33 of Minister of Finance Regulation No. 122 of 2023 Auction fees are fees charged according to law for conducting or participating in an auction to the Seller and/or Buyer.

In addition to the auction fee, individual sellers of immovable property in a voluntary auction are also subject to Income Tax (referred to as PPh). According to Article 3 Paragraph (1) of Government Regulation No. 34 of 2016, the tax rate for individual sellers of immovable property in a voluntary auction is 2.5% of the gross value of the transfer of ownership of land and/or buildings.

Not only the seller, but the individual voluntary auction buyers are also required to pay off the payment is subject to payment of other costs for the movement of the immovable property; such as, Fees for Acquisition of Land and/or Building Rights. Based on Article 85 Paragraph (2) number 8, individual voluntary auction buyers are subject to BPHTB or are subject to BPHTB. Then referring to Article 88 Paragraph (1) of Law No. 28 of 2009, the highest BPHTB rate is 5%.

After the seller and the individual voluntary auction buyer fulfill their respective obligations, they can sign the auction minutes (Gunanegera, 2022). The signing of the auction minutes for the implementation of a voluntary auction for immovable goods occurs when payments have been made in full and the obligations arising from the transfer of rights have been fulfilled. It is proven by showing proof of payment receipt, proof of deposit of Land and/or Building Rights Acquisition Fee, and proof of Income Tax deposit (Veronica Tyas Woro, 2023). According to Article 101 Paragraph (1) Minister of Finance Regulation No. 122 of 2023 relevant parties are permitted to request authentic quotations or copies of the Auction Minutes. The seller can request a copy of the auction minutes to be used as a report on the implementation of the auction. Meanwhile, the buyer can request a quotation from the auction minutes which will be used as the sale and purchase statement. In addition, the excerpt of the minutes of the auction can be used for name change purposes, as regulated in Article 41 Paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration.

Conversely, if an individual voluntary auction buyer does not settle the auction payment and pay the BPHTB within the specified period, it is considered a breach of contract. According to Article 1 Number 32 of Minister of Finance Regulation No. 122 of 2023, a breach of contract occurs when the buyer fails to fulfill the auction payment obligation within the designated timeframe. As a result, their status as a buyer is canceled, and the consequences are outlined in Article 53 Paragraph (5) of Minister of Finance Regulation No. 122 of 2023 the bid guarantee will be deposited into the

state treasury, become the property of the seller, or be transferred to the class II auction official's office.

However, it is a different matter if an individual voluntary auction buyer dies within the settlement period while still having not settled the payment and fulfilled other obligations. Death of a person is an undesirable event, which can happen at any time. Human death is not only an event or destiny, but it also can be included as a legal event. The event of death gives rise to legal consequences for the heirs as all the rights and obligations of the heirs are transferred to the heirs. Therefore, the event of death results in the automatic transfer of the rights and obligations of the heir to the heirs (Letezea Tobing, 2014).

Based on the provisions of civil inheritance law, the heir legally replaces the position of the heir in all matters relating to assets. The rights and obligations of the heir will automatically transfer to the heirs, regardless of whether the heirs are aware of the existence of the inheritance or not. It is emphasized in Article 833. Heirs who receive inheritance rights are entitled to all the assets belonging to the heir. The wealth in question can be in the form of assets and liabilities. Assets are property assets while liabilities are debts or obligations to third parties. If referring to Article 1100 of the Civil Code, it will be liable for the heir's debts (Palayukan Yayu et al., 2021).

Meanwhile, if viewed from Islamic inheritance law, the heirs have the obligation to settle debts in the form of medical treatment, maintenance, including the heir's obligations or collect receivables, as regulated in Article 175 Paragraph (1) letter b of the Compilation of Islamic Law. However, the responsibility of the heirs is only limited to the amount of assets left behind so that based on Islamic inheritance law, heirs are required to settle the debt first and then distribute it to other heirs (Palayukan Yayu et al., 2021).

Therefore, heirs essentially have the right and obligation to settle the unpaid obligations of the deceased individual voluntary auction buyer. If an individual voluntary auction buyer dies and has not settled the auction payment and paid the BPHTB, the heirs are responsible for fulfilling these obligations. To complete the payment and fulfill the obligations, the heirs must provide supporting evidence, such as the death certificate and Certificate of Inheritance. As previously mentioned, individual voluntary auction buyers of immovable property are required to pay the BPHTB, and heirs must submit the necessary documents for processing the BPHTB, which include (Septian Nugraha, 2024) :

- a. Photocopy of the SPPT PBB for the Application Year;
- b. Photocopy of the Certificate of Inheritance; Photocopy of the Death Certificate;
- c. Photocopy of the Family Card (KK);
- d. Photocopy of Identification Card (KTP/residence certificate); Photocopy of Land Certificate/Copy of C and Land History Statement from the Village; and
- e. Statement of Transaction Price

Based on the explanation, the required supporting documents are the death certificate and the Certificate of Inheritance. The death certificate is an official document issued by the Civil Registration Office (Disdukcapil) as written proof of a person's death. The process of obtaining a death certificate takes no more than 14 working days (Jimmi Abraham, 2021). Meanwhile, the Certificate of Inheritance is processed from the time of the deceased's death. This certificate is also used for managing savings or deposits in banks, changing ownership of inherited property, providing information about the deceased and the heirs' rights, protecting the

deceased's assets, and preventing abuse of authority (Habib Adjie, 2020). The issuance of the Certificate of Inheritance takes a maximum of 1 working day. However, applying for and processing the determination of heirs in court depends on the court's schedule; the Religious Court has a maximum timeframe of no more than 30 (thirty) days from the submission of the application. Therefore, there is a need to establish regulations for time limit exemptions for individual voluntary auction buyers who have passed away, as heirs need additional time to process the necessary BPHTB payment documents.

The establishment of time limit exemptions for heirs of individual voluntary auction buyers aims to prevent losses incurred by the heirs. Heirs who exceed the 5 working days deadline for settling the voluntary auction payment after the auction will be considered in breach of contract. As a result, their status as buyers is canceled, and the bid guarantee is deposited into the state treasury, auction house, property owner, or class II auction office. This situation disadvantages the heirs of the individual voluntary auction buyer, as the bid guarantee is part of the inheritance left by the auction buyer.

Discussion

Based on the explanation above, the author argues that it is necessary to establish an exception to the period of 5 working days after the implementation of the auction for the heirs of individual voluntary auction buyers in terms of the theory of Legal Certainty and the theory of legal justice.

1. Analysis of the Urgency of Establishing Time Limit Exemption Regulations for Heirs of Individual Voluntary Auction Buyers from the Perspective of Legal Certainty Theory

According to Article 88 Paragraph (1) jo. Article 91 Paragraph (1) Minister of Finance Regulation No. 122 of 2023, an individual voluntary auction buyer who has been confirmed has the obligation to settle the auction price, auction fee, and BPHTB. These obligations legally transfer to the heirs if the individual voluntary auction buyer dies within the settlement period. Therefore, the unpaid obligations of the individual voluntary auction buyer become the responsibility of their heirs. The heirs are required to settle the auction payment and auction fee within the specified 5 working days after the voluntary auction. Subsequently, after settling the auction payment, the heirs must pay the BPHTB due to the transfer of ownership of the land and/or building resulting from the auction.

Meanwhile, as previously explained, heirs who need to pay the BPHTB are required to submit supporting documents. However, processing these documents takes a considerable amount of time, as detailed above, causing the heirs to exceed the established deadline for fulfilling the auction obligations, resulting in a breach of contract. Additionally, the bid guarantee will be forfeited and transferred to the state treasury, auction house, seller, and/or class II auction office.

Therefore, the urgency of establishing a time limit exemption for heirs of individual voluntary auction buyers arises because heirs need additional time to process the BPHTB payment documents. According to Sudikno Mertokusumo's Legal Certainty Theory, which states, "Guaranteeing that the law functions properly, meaning that with legal certainty individuals pay attention to the rights of each individual" (Sudikno Mertokusumo, 2007), ensuring legal certainty for heirs to settle the obligations of the deceased buyer is essential. Therefore, to provide legal

certainty for the heirs in settling the deceased buyer's obligations, it is necessary to establish an exemption for the repayment period in the form of guidelines for Auction Officers. This will ensure that if a death occurs requiring a court determination, the current regulatory requirements can be adjusted to allow the heirs to fulfill their obligations without undue delay. The goal of these provisions is also to streamline the process and avoid involving additional legal complexities, so that heirs can fulfill their rights to settle the obligations of the deceased without a lengthy process.

2. Analysis of the Urgency of Establishing Time Limit Exemption Regulations for Heirs of Individual Voluntary Auction Buyers from the Perspective of Legal Justice Theory

As provided in Article 89 Paragraph (1) of Minister of Finance Regulation No. 122 of 2023, individual voluntary auction buyers will be considered in default if they exceeded the auction payment repayment period. Voluntary auction buyers are given a maximum time limit of 5 working days after the day of the auction. According to Article 86 Paragraph (2) of Minister of Finance Regulation No. 122 of 2023, individual voluntary auction buyers who commit default will have their authorization as buyers canceled. In such cases, the auction authority can either appoint the second-highest bidder or conduct a re-auction.

As previously explained, if an auction buyer defaults, the bid guarantee submitted at the pre-auction stage will be forfeited or transferred to the seller, the auction house, the state treasury, or the class II auction office. According to Article 52, letter c of Minister of Finance Regulation No. 122 of 2023, the bid guarantee required for voluntary auctions ranges from 0% to 100%.

Given the current regulations on bid guarantees, the author believes that the seller is not significantly disadvantaged because they have received the bid guarantee and can either re-auction the item or offer it to the second or third highest bidder if there is a defaulting buyer. Therefore, if an individual voluntary auction buyer dies, and the heirs need time to handle BPHTB payment requirements and other administrative tasks, the seller should extend the deadline for the heirs. This is because the seller has the right to receive the guarantee. On the other hand, death is considered a force majeure event that could not be anticipated or controlled by the parties involved. It is only right that the heirs get their rights to be able to pay off the auction payment obligations.

It can be concluded that the urgency of establishing a regulation for the exclusion period for individual voluntary auction buyers who have died, when viewed through Aristotle's theory of justice, emphasizes that justice is interpreted as a balance that provides fairness rather than mere equality. Therefore, the formation of the exclusion period must create a balance between the positions of the seller and the buyer. Aristotle's distributive theory emphasizes proportional allocation of rights (Hyronimus Rhiti, 2015). Thus, the exemption regulation should balance the rights of the seller, who has the right to receive the bid guarantee before the auction, with the heirs' need for additional time to complete administrative or BPHTB requirements, which might exceed the 5 working days. Thus, the buyer who has received an exception should first prove this to the organizer or auction official by presenting a death certificate. Then, the buyer can also approach the auction official and the seller to make a statement or agreement, ensuring that the heirs will fulfill the buyer's obligations. The heirs can request

additional time to handle the BPHTB payment requirements, using the bid guarantee that can be disbursed in advance. In this way, both the seller's and the buyer's rights are addressed: the heirs of individual voluntary auction buyers can fulfill the obligations of the deceased, and the seller receives part of the payment through the disbursed bid guarantee.

Based on the analysis above, the author argues that, referring to the theories of legal certainty and justice, it is necessary to establish an exception to the time limit for heirs by adding a clause to Article 88, Paragraph (2) of Minister of Finance Regulation No. 122 of 2023. This exception is intended to ensure legal certainty for heirs who are entitled to fulfill the obligations of individual voluntary auction buyers who have not met their obligations. Additionally, this exception serves as a measure of justice to prevent any potential losses. Thus, the author argues that there is also a need for adjustments regarding the requirements and mechanisms for heirs who want to pay off the obligations of the heir or auction buyer in Minister of Finance Regulation No. 122 of 2023.

CONCLUSION

The urgency of establishing a time period exception for the heirs of individual voluntary auction buyers, when examined through the lens of legal certainty, underscores the need to ensure that heirs have the ability to fulfill the buyer's obligations. Therefore, it is necessary to create an exception arrangement for the repayment period in the form of guidelines for the Auction Officer. From the perspective of legal justice, balancing the respective rights is crucial. The seller, who has the right to receive a bid guarantee before the auction, should allow the heirs additional time to handle the BPHTB requirements, which may take more than 5 working days. Heirs granted an exception should first provide proof by showing a death certificate and make a statement or agreement guaranteeing their ability to fulfill the buyer's obligations. They can then request additional time to handle the BPHTB payment requirements with the bid guarantees that can be disbursed in advance. This arrangement ensures that both the seller's and the buyer's rights are fulfilled. Consequently, it is essential to add a clause to Article 88, Paragraph (2) of Minister of Finance Regulation No. 122 of 2023 to establish this time period exception for heirs.

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