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Legal Certainty of Auctions through Social Media (Instagram)

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ABSTRACT

Since the emergence of the internet and social media such as Instagram, it is used by its users to transact buying and selling goods among its users. In this case, the user as the seller in order to attract other users (potential bidders/buyers) by using auction methods, so that the goods offered get the optimal price. The method of auction through the Instagram in Indonesia is prohibited, because in addition to violating existing laws related to auctions, namely not being carried out in front of the Auction Official and also no Auction Minutes are made as evidence of the implementation of the auction, besides that there is also no legal certainty for the winner of the auction (buyer) or from the seller. The method used in this research is a juridical research empirical. The research found that auction through the Instagram in Indonesia is prohibited, because in addition to violating existing laws related to auctions, namely not being carried out in front of the Auction Official and also no Auction Minutes are made as evidence of the implementation of the auction, besides that there is also no legal certainty for the winner of the auction (buyer) or from the seller.

Keywords: *Buying and selling, Auctions, Instagram.*

I. INTRODUCTION

We often hear the words Auction and in the community since long ago it has often been done, for example in the fish market where there is a place called Fish Auction Place where fish catches from fishermen are directly auctioned [1], even now in malls or shopping places and even exhibitions often occur Auctions, be it electronic objects such as computers, laptops, mobile phones are often held auctions.

The auction regulated in the Indonesian Positive Law is still a Dutch residence and is still valid until now, which is regulated in the Vendue Reglement [2] contained in the Article 1 which defines an Auction as a general sale" (*openbare verkopingen*) is "An auction or sale of goods made to the public at an increased or decreased bid price or by the inclusion of a price in a closed cover, or to persons invited or previously notified of that auction or sale, or permitted to participate, and given the opportunity to bid a price, agree to the price offered or include the

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price in the closed cover."

Instructions for Auction Implementation, which is regulated in the Regulation of the Minister of Finance Number: 213/PMK.06/2020 which means the Auction listed in Article 1 paragraph 1 reads: Auction is the sale of goods that are open to the public with a written and/or oral price offer that is increasing or decreasing to reach the highest price, which is preceded by an Auction announcement.

By observing the meaning of the auction, here the auction is only in the aspect of selling goods, while the purchase aspect is not categorized as an auction [3]. With the auction scheme, these sellers who offer their goods/services to the buyer are also not harmed because they before making their bidding have calculated the general values of the goods/services and the personal value offered to the buyer. This is in accordance with the latest auction theory developed by Paul Robert Milgrom and Robert Butler Wilson, economists from the United States who just won the Nobel prize in Economics in 2020 for the development of auction theory and the development of innovative auction forms that can benefit sellers, buyers and taxpayers [4].

Auction is one of the ways or processes of selling goods in certain ways to get an item through a buying and selling process where one party binds himself to hand over a treasury, and the other party to pay the promised price. So that there is an agreement between the parties regarding the object being auctioned and its price. The occurrence of the agreement when the bidder makes an offer agreed by the seller or buyer. Without an agreement between the seller and the buyer, this sale and purchase will not be carried out, because the auction is only a way or process to bring together the will of the parties in the process of buying and selling the goods.

Since the emergence of the internet and social media such as Instagram, it is used by its users to transact buying and selling goods among its users. In this case, the user as the seller in order to attract other users (potential bidders/ buyers) by using auction methods, so that the goods offered get the optimal price. The method of auction through the Instagram in Indonesia is prohibited, because in addition to violating existing laws related to auctions, namely not being carried out in front of the Auction Official and also not making Auction Minutes as evidence of the implementation of the auction, besides that there is also no legal certainty for the winner of the auction (buyer) or from the seller. In addition, Instagram is not an auction application or an e-marketplace auction platform.

So here it is necessary to have laws and regulations that regulate the implementation of auctions through Instagram in order to create a legally compliant auction for the community, and create an auction system that is efficient, transparent, causes competition, is legally reasonable and

and can be accounted for.

(A) Literature review

Auction via the internet is one of the innovations to meet the demands of the times in the economic field in terms of buying and selling goods. The emergence of auctions using internet media, one of the goals is to create an efficient, clean and accountable auction organization that can be accounted for. In the past, before the auction using internet media, the auction was carried out conventionally, namely the auction was held at the auction venue with physical attendance by the auction participants or their attorneys. The organization of the auction can give rise to the auction mafiamama, namely the parties involved in the auction, it can occur between the bidders or participants with the auction organizer or with the auction organizer which causes the credibility of the institution whose name is "auction" to acquire a bad image in the community. The mafia has conspired in terms of the auction process so that the principle of competition does not occur, because the winner and auction price can be guessed or known who the winner is and what price is formed. So that auctions using internet media can eradicate these auction mafias, because in the auction process using these internet media, the auction participants do not know each other and do not know each other, making it difficult to conspire with the auction process in terms of determining the winner and the price.

With the development of information and communication technology, the presence of auction participants and the bidding process can be bridged by technology so that the auction process can be carried out without having to physically meet the seller and buyer directly. Bidders through technology with electronic media that allows auction participants to be present electronically so that they can see and hear each other directly the process of the auction [5]. For the implementation of auctions using internet media, the way to bid the auction can be by sending an electronic mail (e-mail) or by using an auction application or the e-Marketplace Auction Platform [6].

To make it easier for us to understand what an Auction Through the e-Marketplace Auction Platform is, then we must know what is called the Platform and e-Marketplace Auction. Platform is a container in the form of an application, site, web, and/or internet-based electronic system used for transactions and/or auction facilities without the presence of auction participants [7], for example PCs (Personal Computers) and smartphones (ios or android). Meanwhile, e-Marketplace Auction is an Auction market in the form of an internet-based application to facilitate Auction transactions without the presence of participants, which relies on independence, trust, security, and ease of transactions [8]. As an e-Marketplace Platform

Provider, it can be individuals, entities, or Permanent Establishments [9] who are resident or domiciled or have business activities within the territory of the Unitary State of the Republic of Indonesia that provides a Platform in the form of an e-Marketplace. For example Tokopedia, Bukalapak, Shoppe, Lazada and Blibli.

(B) Research methodology:

Research on the Expansion of the Meaning of the Definition of Auction and its Relation to Auction through Instagram Social Media is a juridical research empirical, namely research that describes a reality that occurs in society, then analyzed by comparing the demands of values ideals (both theological and philosophical values), legal norms (both written and unwritten), and the reality of empirical law (both facts and phenomena). From research this can be seen the gap that occurs between *das sollen* and *das sein*.

II. INSTAGRAM IS A SOCIAL MEDIA NOT AN E-MARKETPLACE PLATFORM

Instagram is a social media that is used to communicate and share photos, videos, statuses, experiences or anything else so that it can be read viewed and even commented on by its users on a platform that uses internet media [10]. It is easy to use Instagram to share anything, which was originally only used to share photos or videos, by the user used for buying and selling goods. Where there is a seller who offers his goods by uploading photos and videos accompanied by a description of the object of the item along with the price offered. Often to attract enthusiasts or there are targeted buyers and make it easier for potential buyers to find the desired item, the seller uses hastags (#) accompanied by keywords to make it easier for other users to search for goods. If anyone is interested in relating to this information, it is used as an online medium to offer goods by Instagram users. The goods offered range from movable goods whose value is tens of thousands to hundreds of millions and there are also auctions of land and buildings. In selling these goods, users often use the word auction which aims to attract many enthusiasts, besides that it is also offered at a low value.

In conducting an auction through Instagram, Instagram users will upload photos / videos of an item then offer an auction price with the terms and conditions they make themselves starting with the lowest auction price, or there are even those who do auctions live offering their goods through Instagram guided by the account owner, with terms and conditions of auctions made by themselves. Auction theory says that auction is the process of buying and selling goods or services which are then sold to bidders at the highest price.

The Validity of the Contract in Buying and Selling Transactions Through Instagram According to the Civil Code The existence of a buying and selling transaction between the seller and the

buyer through Instagram is actually a manifestation of the initiative of the parties to make an agreement, which is reflected in article 1457 of the Civil Code that buying and selling is an agreement, by which one party binds itself to hand over a treasury and the other party to pay the price that Promised. This is a reflection of the principle of freedom of contract contained in Article 1338 of the Civil Code, that is, all agreements made validly apply as laws to those who make them. The principle of freedom of contract is a principle in treaty law that gives the public the widest freedom to enter into agreements that contain anything and regulate the agreements themselves that will bind the maker provided that the agreement must not conflict with laws and regulations, decency, or general legality. The terms of validity of the contract in the provisions of Article 1320 of the Civil Code are then associated with buying and selling transactions through Instagram, which states as follows:

- a. Agreed those who tied themselves. An agreement is a meeting or conformity of will between the parties to the agreement. A person is said to give his consent and his agreement if he really wants what is agreed. In this case it uses the theory of trust to determine when an agreement occurs between the parties to the agreement. In this theory, agreement occurs when there is a statement from the recipient of the offer that is objectively (which can be heard or seen) and can be trusted by the party who made the offer.
- b. The ability to make an engagement. In buying and selling transactions through Instagram, it is very difficult to determine that the parties have been able to make an agreement because the element of offer and the element of acceptance through social media (Instagram) where the parties do not meet in person, although this proficiency requirement according to the Civil Code has not been fulfilled, this does not cause the contract to be invalid, but only provides consequences for the contract to be requested for cancellation by one of the parties who feel aggrieved for a person's skills, because the ability to make an engagement is included in the subjective requirement.
- c. A certain thing. This condition is fulfilled if the sale and purchase transaction through Instagram explains a clear object of agreement. For example, buying and selling t-shirts through Instagram. The sale and purchase is clear, that is, explaining the object of an object to be handed over to the buyer.
- d. A lawful cause. What the parties want to achieve in buying and selling through Instagram must be accompanied by good faith, and not contrary to laws and regulations, public order, and decency, so that this fourth condition is fulfilled.

Electronic transactions allow everyone, both sellers and buyers, to disguise or forge identities in every transaction or sale and purchase agreement electronically. The buyer or consumer in buying and selling transactions through Instagram must be difficult to sue directly for the losses experienced, because the offer and acceptance through the Instagram electronic system, where the two parties did not meet directly, so the buyer is very difficult to claim losses caused by default by the seller. In the event that a business actor or seller turns out to be using a fake identity or committing a gimmick in buying and selling transactions through Instagram, then the business actor can also be punished based on Article 378 of the Criminal Code concerning fraud and Article 35 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

Auctions via the internet regulated in the auction regulations are via email, auction applications and e-Marketplace Platforms, and those who hold auctions via the internet are KPKNL and Auction Houses [11]. In this case, users or Instagram users if they want to make sales or purchases that use auction methods are prohibited or not allowed because they are not in accordance with the laws and regulations regarding auctions.

Auction is a buying and selling process, so here in order to protect the parties involved in the buying and selling process, of course, it must be carried out in accordance with the rules. The rules for auctions in Indonesia have been regulated in the Regulation of the Minister of Finance Number: 213/PMK.06/ 2020 On Auction Implementation Guidelines.

The concept of a good auction is in accordance with legal principles, among others:

1. Useful means that the process of buying and selling through the auction provides benefits for the community, especially in buying and selling goods and the government in terms of tax revenue (auction duty) used for the welfare of the community.
2. Fairness means that the auction process must be open and transparent, there is no element of fraud. Where the highest bidder is determined as the winner of the auction.
3. Legal Certainty means that the auction process must provide certainty that the parties involved in the auction can be legally accountable and can be proven. Evidence that an auction has been held in accordance with the rules stated in an authentic deed made by an authorized official (Auction Minutes).

The holding of online auctions must still be subject to the principles of the law which must provide benefits, fairness and legal certainty. With an online auction, it will facilitate the process of buying and selling goods, because with the help of technology people can meet, see each

other and communicate, of course this will make it easier for parties involved in the auction, especially sellers and buyers, to carry out the price bidding process. The price quote can be submitted online from the auction participants without meeting in person, either via email, auction application or e-marketplace platform.

It is fair in the online auction system that this online auction was created, one of which is to avoid the auction mafia where if the conventional auction system the participants and auction organizers gather at a certain time & place. This is what is misused by auction individuals/mafias to use unfair/unfair ways to win an auction for an item, so that the price and winner of the auction are known before the auction process is opened. So the auction process is only limited to formalities to win or legalize the implementation of the unfair auction. So here with the existence of online auctions, it is hoped that it will provide justice for auction participants who do not know each other and know each other, where in the online auction process it is carried out fairly, openly and transparently through a process of price bidding competition between auction participants who outperform each other and determine the highest bidder as the winner of the auction.

It is legal in the concept of online auction here that the implementation process can provide certainty for the parties involved in the auction [3]. Of course, so that there is no misuse of buying and selling with this auction system, then of course it must be organized by competent parties and in front of people who have been authorized to supervise and enforce the rules or procedures for organizing a good and correct auction and make notes as evidence that the auction has been carried out properly and correctly.

So to fulfill these principles, online auctions through Instagram in order to meet the principles of expediency, the principle of fairness and legal certainty, for Instagram users who sell their goods on a voluntary non-execution auction, they can cooperate with the Auction House or Class II Auction Officials to sell their goods, while Instagram can only be used only for information media and announcements to the public, to attract enthusiasts or bidders to participate in the auction, not as a venue for holding an online auction.

Selling goods through the auction system has been done since ancient times, starting from items sold such as daily necessities such as fish, livestock and so on even to antiques such as paintings, cars and so on. In the past, auctions were carried out simply or conventionally where they were held on a certain market day in a field place attended by prospective buyers and sellers who brought their merchandise, then these items were offered by sellers to potential buyers. For buyers who make the highest bid, the item will be released by the seller.

The development of the times is not only movable and immovable goods and tangible goods but also intangible goods can be sold by auction such as stocks, receivables and so on. And the auction implementation has also experienced developments where it used to be done conventionally where sellers and buyers met in person but now with technological advances it can be done online which brings together sellers and buyers online. So that there are 2 (two) auction implementation systems, namely the conventional auction system and the online system.

In both systems, there are several alternative auction price bids, namely the presence of auction participants and without the presence of auction participants, including:

1. Offers by oral means at increasing prices;
2. Offers by oral means at declining prices;
3. Offer in writing;
4. Combined Oral and Written Offers

III. INSTAGRAM AUCTIONS ARE OFF-LIMITS

Auction using Instagram media is prohibited, but here if the parties agree, of course, here is not canceling from the sale and purchase of the item where the seller agrees to hand over the object and the buyer agrees to pay the price, in other words, the parties carry out their obligations and get their rights, because auction is only one of the ways of sale made by the seller in offering the object, in order to benefit from each party that conducts the auction. For the seller, of course, expect the goods to sell at a high price while for the buyer who expects to get good quality goods at a low price. It is said to be prohibited because the auction violates the rules regarding auctions, including:

1. Not done in the presence of the auction official
2. No auction minutes
3. Not paying auction duty as Non-Tax State Income
4. Auction announcements are not in accordance with the rules
5. The conduct of the auction is not transparent
6. The seller and its participants are unclear because there is no verification.

For this reason, in order not to occur fraud and the implementation of auctions to be in accordance with the rules, the public who will use the auction method in selling goods (voluntary non-execution auctions) can use several ways, including:

1. Cooperate with the Auction House / Office of the Class II Auction Officer for the process of organizing the auction so as to create legal certainty while the use of Instagram media is only for the addition of announcement media to the public or users of Instagram users to be aware of the sale of the auction object
2. Can use lelang.go.id media for the sale of goods.

IV. CONCLUSION

Based on the research discussion in the chapters above, it can be concluded that Auction is a way or system used by its user (user) to get or obtain something as he wants or expects. For example, for the Seller using the auction system, he wants that with the auction system he (the seller) can promote and get buyers who buy their goods at high prices.

So here there must be a law regulating auctions to achieve legal certainty in the auction process, not just a Regulation of the Minister of Finance. For auctions related to sales through online media, interested parties, especially the Directorate General of State Assets of the Ministry of Finance, should be more socialized to the public related to online auctions of goods sales, so that here the public will be more educated in the use of online auction systems that are in accordance with legal rules and can be legally accounted.

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