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Limits of Criminal Liability in Public Auctions by Indonesian Officials

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ABSTRACT. The implementation of auctions by public officials is part of government action that has administrative and criminal legal implications. In practice, legal issues often arise that lead to criminal liability for auction officials, especially when procedural deviations or abuse of authority occur. This study aims to analyze the limits of criminal liability in the implementation of auctions by public officials based on the Indonesian constitutional system. The research method used is normative legal research with a statutory and conceptual approach. The results show that criminal liability for public officials in the implementation of auctions must be clearly demarcated between administrative errors and criminal acts, while still paying attention to the principle of legality, general principles of good governance, and the doctrine of abuse of authority. Therefore, it is necessary to strengthen regulations and harmonize state administrative law and criminal law to create legal certainty and protection for public officials in carrying out their duties.

KEYWORDS: criminal liability, auctions, public officials, state administrative law, state system.

INTRODUCTION

Auctions in Indonesia are a strategic tool for managing state assets and settling financial obligations, both private and public. These activities are carried out by public officials who are authorized by applicable laws and regulations. Within the framework of Indonesia's constitutional system, this authority is part of the government's function and must be carried out based on the principles of legality and accountability. Therefore, every action by public officials in auctions must have a valid legal basis and be accountable both administratively and legally (Ridwan HR, 2016).

Furthermore, auctions in Indonesia are also understood as a legal mechanism used to sell goods openly to the public with the aim of obtaining the most optimal price. This mechanism reflects the principle of economic efficiency while ensuring healthy competition in the price-setting process. Therefore, auctions not only serve an economic function but also have significant legal implications, particularly in relation to the implementation of court decisions and the enforcement of collateral in debt-receivable relationships (Sutedi, 2010).

In a broader context, auctions play a crucial role not only in economic activity but also in law enforcement. This is evident, for example, in the implementation of execution auctions based on court decisions or against debtor's debt collateral. Thus, auctions are an

integral part of the legal system, aiming to protect the rights of both creditors and debtors, while simultaneously ensuring legal certainty (Harahap, 2005).

Accordingly, auction implementation must be based on the principles of transparency, accountability, and legal certainty. Transparency requires that all stages of the auction be openly accessible and monitored by the public. Accountability demands that auction officials be responsible for every action and decision taken. Meanwhile, legal certainty requires clear norms and procedures governing the auction process, thereby providing legal protection for all parties involved (Asshiddiqie, 2010).

However, in practice, auctions do not always proceed according to established regulations. Various irregularities frequently occur, both administrative and leading to legal violations. One such irregularity is the practice of collusion among auction participants (bid rigging), a form of collusion aimed at fixing auction results, thereby eliminating the element of fair competition. This practice not only harms other parties but also violates the principles of fairness and transparency in the auction system (KPPU, 2020).

Furthermore, price manipulation is also a common problem in auction practices. This manipulation can occur through setting unreasonable price limits or through hidden agreements between auction participants. Such actions have the potential to harm the state or the goods owner and undermine the integrity of the auction mechanism as a means of obtaining objective and competitive prices (Sutedi, 2010).

Another problem that exacerbates auction procedures is document falsification. This falsification can involve various important documents, such as ownership documents, collateral documents, and other administrative documents that form the basis for the auction. This act not only violates administrative law but can also be classified as a criminal offense because it involves elements of fraud and falsification (Moeljatno, 2008).

Furthermore, abuse of authority by auction officials is also a crucial issue. Abuse of authority occurs when public officials use their power for purposes inconsistent with the intent for which the authority was granted. From the perspective of state administrative law, this action constitutes a violation of the general principles of good governance and can lead to the revocation of administrative decisions. However, under certain circumstances, such actions can also result in criminal consequences if they meet the elements of a crime stipulated in criminal law (Indroharto, 1993; Ridwan HR, 2016).

In practice, these various problems often result in criminal prosecution of public officials. However, not all violations occurring during auctions can be categorized as criminal acts. Many are actually administrative errors that should be resolved through state administrative law mechanisms. This situation creates legal uncertainty and creates anxiety among public officials in carrying out their duties and authorities. This phenomenon also indicates a tendency to use criminal law as the primary instrument in resolving administrative problems, which should be considered a last resort (*ultimum remedium*) (Marzuki, 2011).

The fundamental problem faced is the lack of clarity on the boundaries between administrative errors and criminal acts in auctions. This lack of clarity has the potential to lead to the criminalization of policies or administrative actions taken by public officials in exercising their authority. In Indonesia's constitutional system, the application of criminal law should be proportional and should not ignore the principle of *ultimum remedium*. Therefore, a comprehensive study is needed regarding the limits of criminal liability in

auctions conducted by public officials, in order to create a balance between law enforcement and the protection of public officials in carrying out their duties legally and responsibly.

RESEARCH METHODS

This research is a normative legal research that analyzes legal norms related to the implementation of auctions and the limitations of criminal liability of public officials. The approach used includes a statute approach by examining various regulations, especially *Vendu* as the legal basis for auctions in Indonesia that is still in effect (Republic of Indonesia, 1908), as well as Regulation of the Minister of Finance Number 213/PMK.06/2020 as a strengthening of technical regulations (Ministry of Finance of the Republic of Indonesia, 2020). In addition, Law Number 30 of 2014 concerning Government Administration (Republic of Indonesia, 2014) and the Criminal Code (Moeljatno, 2008) are also analyzed. A conceptual approach is used to examine the doctrine of criminal liability, abuse of authority, and general principles of good governance (Ridwan HR, 2016). Legal limitations consist of primary, secondary, and tertiary legal materials collected through literature studies. Furthermore, the legal materials were analyzed qualitatively using descriptive-analytical methods to obtain a comprehensive understanding of the limits of criminal liability in the implementation of auctions by public officials in Indonesia (Marzuki, 2011).

RESULTS, DISCUSSION AND ANALYSIS

Implementation of Auctions in the Indonesian Constitutional System

The implementation of auctions in the Indonesian legal system is an inseparable part of government administrative activities carried out by public officials based on legitimate authority. From the perspective of state administrative law, every action of a public official must be based on clear authority, whether obtained through attribution, delegation, or mandate. Attribution is understood as the direct granting of authority by law to a state organ, while delegation is the transfer of authority from one organ to another, and a mandate is the exercise of authority by a specific official on behalf of the mandate giver (Hadjon et al., 2011). Thus, the implementation of auctions is a manifestation of government authority that must be carried out legally and responsibly.

In practice, the authority of auction officials stems from statutory provisions closely related to state financial management and law enforcement functions. Historically, auction regulations in Indonesia have referred to the *Vendu Reglement* (State Gazette 1908 Number 189) as the primary legal basis, which remains in effect until revoked or replaced by new regulations (Republic of Indonesia, 1908). Developments in national law subsequently strengthened these regulations through Minister of Finance Regulation Number 213/PMK.06/2020, which regulates in greater detail the procedures and mechanisms for auction implementation. Therefore, auctions are viewed not merely as administrative activities but also as legal instruments with strategic roles in the economic, state financial, and law enforcement sectors (Ministry of Finance of the Republic of Indonesia, 2020).

As part of governmental action (*bestuursdaad*), auction implementation must comply with the basic principles of state administrative law, known as the general principles of good governance (*algemene beginselen van behoorlijk bestuur*). These principles serve as

guidelines for the use of authority and as benchmarks for assessing the legitimacy of an administrative action. These principles include the principles of legality, legal certainty, due diligence, and the prohibition of abuse of authority (Craig, 2012; Wade & Forsyth, 2014). In the context of auctions, the principle of legality requires that each stage be carried out in accordance with applicable legal provisions, while the principle of legal certainty provides guaranteed protection for the parties involved. The principle of due diligence requires caution in the process of verifying documents and auction objects, while the principle of prohibition of abuse of authority aims to prevent the use of authority for deviant interests (de Smith et al., 2018; Hirsch Ballin, 2014).

In addition to these general principles, auction implementation is also based on specific principles that have developed in auction law practice, including the principles of openness, competition, fairness, and accountability. The principle of openness requires that the entire auction process be carried out transparently and be accessible to the public. The principle of competition requires healthy competition to achieve optimal prices, while the principle of fairness ensures equal treatment for all auction participants. The principle of accountability emphasizes the importance of accountability of auction officials for every decision and action taken. Thus, these principles represent a concrete implementation of the principles of state administrative law in auction practice (Sutedi, 2010).

Although the normative framework for auction implementation in Indonesia has been regulated relatively comprehensively, both through the *Vendu Reglement* and Minister of Finance Regulation No. 213/PMK.06/2020, the reality on the ground shows a gap between legal provisions and their implementation. This gap is particularly evident in the suboptimal application of auction principles at every stage of implementation.

One common problem is the failure to adhere to the principle of transparency. In practice, information regarding auction objects is often incompletely disclosed or difficult for the public to access, opening up opportunities for manipulation and fixing of auction results. Transparency is crucial for ensuring the credibility and public trust in the auction mechanism as a fair and objective instrument (Wade & Forsyth, 2014). Furthermore, the principle of fair competition has not yet been fully realized. The practice of bid rigging is still common, particularly in auctions involving high-value assets. In this practice, auction participants collaborate to determine the auction outcome, resulting in prices that do not reflect true market conditions. This not only harms the state but also contradicts the principles of fairness and efficiency in auction implementation (KPPU, 2020).

From the perspective of state administrative law, these various deviations are essentially forms of administrative errors that should be resolved through administrative law mechanisms, such as the annulment of decisions or the imposition of administrative sanctions. However, in law enforcement practice, these administrative violations are often immediately classified as criminal offenses, particularly in cases associated with state losses. This phenomenon reflects a tendency toward overcriminalization of criminal law, without proportional consideration of the nature of the violations (Hirsch Ballin, 2014).

This situation ultimately creates a dilemma for public officials. On the one hand, they are required to exercise their authority professionally, transparently, and accountably. However, on the other hand, the potential for criminalization of administrative actions makes public officials overly cautious and tend to avoid making decisions. Consequently,

the effectiveness of government administration, including the implementation of auctions, can be compromised.

Thus, the implementation of auctions in the Indonesian constitutional system requires not only adequate legal regulations but also consistency in the application of administrative law principles and auction principles. A balance between administrative and criminal approaches is also necessary to ensure proportional law enforcement. This approach is crucial to ensure that auctions not only meet formal legal requirements but also achieve substantive justice, legal certainty, and benefit the public.

Limitations of Criminal Liability in the Implementation of Auctions

Criminal liability for public officials in auctions cannot be separated from the strategic position of auctions within the legal system and governance in Indonesia. Auctions are not merely understood as administrative procedures, but also as important instruments supporting law enforcement in various fields, such as civil law, criminal law, and tax law. In the realm of civil law, auctions serve as a means of enforcing legally binding court decisions, particularly regarding the sale of collateral. Meanwhile, in the context of criminal law, auctions are used to follow up on the execution of confiscated state assets. Thus, auctions play a crucial role in ensuring the effectiveness of legal decision implementation and the certainty of dispute resolution (Mertokusumo, 2010; Subekti, 2005).

In addition to supporting law enforcement, auctions also contribute to orderly state administration and increased efficiency in the management of state-controlled assets. From a state administrative law perspective, auctions are a mechanism that ensures transparency and accountability in the management of public assets. Through the auction system, an asset's economic value can be optimized while minimizing the potential for irregularities or abuse of authority by authorized officials (Nasution, 2016).

On the other hand, auctions also have a significant fiscal dimension in supporting state revenues. Each auction contributes to state revenue through various components, such as auction fees, administrative fees, and taxes arising from auction transactions. In this regard, auctions are a source of Non-Tax State Revenue (PNBP). Furthermore, auction transactions for land and/or buildings are also subject to Income Tax (PPh) and Land and Building Acquisition Tax (BPHTB). Therefore, auctions are not only relevant from a legal perspective but also play a crucial role in strengthening the state's financial system (Siahaan, 2013).

The implementation of auctions is also closely related to efforts to realize the principles of good governance. This is reflected in the application of various principles in auction implementation, such as openness, legal certainty, competition, efficiency, and accountability. The principle of openness emphasizes the importance of information transparency to the public, while the principle of legal certainty ensures procedural clarity and protection of the rights of the parties. The principle of competition encourages healthy competition in determining prices, while the principle of efficiency aims to optimize the use of resources. The principle of accountability demands that public officials be held accountable for every action taken. All of these principles are manifestations of the principles of good governance that have become the standard in the implementation of modern public administration (Rosenbloom et al., 2015).

However, the complexity of the auction function in the practice of government administration cannot be separated from its inherent legal consequences, particularly in the context of criminal liability. In the reality of law enforcement, there is a tendency to qualify various administrative issues in the implementation of auctions as criminal acts, especially when associated with indications of state losses or alleged abuse of authority. This phenomenon demonstrates the need to formulate clear and measurable boundaries to determine when an action by a public official can truly be categorized as a criminal act, to prevent broad interpretations that could potentially lead to the criminalization of administrative policies (Butt & Lindsey, 2018).

In auction practice, criminal liability is not only related to abuse of authority, but also includes the possibility of general crimes such as fraud and embezzlement. The crime of fraud as regulated in Article 378 of the Criminal Code essentially contains elements of the use of deception or a series of lies to obtain unlawful benefits. In the context of auctions, this act can be manifested in various forms, such as conducting auctions for objects that are not real, providing misleading information regarding the condition or legal status of goods, or fabricating the identities of participants to influence the auction results. These acts indicate an element of intent and active action that is detrimental to other parties, so that it can no longer be categorized as a mere administrative violation, but has fulfilled the elements of a criminal offense (Prasetyo, 2017).

Furthermore, the potential for criminal acts in auctions can also be related to embezzlement as regulated in Articles 372 and 374 of the Criminal Code. Conceptually, embezzlement refers to the act of illegally controlling or exploiting goods or funds under the control of the perpetrator based on legal relations or their position. In auction practice, this can occur if the proceeds of the sale are not distributed to the rightful party or if the authorized official withholds the funds for personal gain. In such situations, the element of abuse of trust is the main factor that differentiates between administrative errors and criminal acts (Chazawi, 2016).

Empirically, various court decisions in Indonesia indicate that the determination of a crime in the implementation of auctions is generally based on the existence of clear malicious intent, accompanied by manipulative actions or unlawful control, and the occurrence of real losses. Courts generally distinguish between procedural violations of an administrative nature and acts containing criminal elements. If the violation is only a procedural non-compliance without any element of intent or unlawful gain, then the resolution is more appropriate through administrative mechanisms. Conversely, if elements of deception or unlawful control are found, then the act can be qualified as a criminal act (Butt, 2014).

The distinction between administrative errors and criminal acts in auctions must be made through a thorough analysis of the elements of the offense inherent in an act. This approach aligns with the principle of proportionality in law enforcement, which requires that each violation be handled according to the level of the error and the resulting impact. Therefore, the use of criminal law in the context of auctions must be selective and careful, while maintaining administrative law as the primary instrument in handling administrative violations (Hadjon, 2015).

In line with this, the limits of criminal liability in auction implementation must be based on measurable parameters, namely the presence of an element of fault (*mens rea*), abuse of

authority (*detournement de pouvoir*), actual state losses, and the application of the principle of *ultimum remedium*. These four elements must be understood comprehensively and applied cumulatively to avoid errors in qualifying an act as a crime.

Thus, the determination of criminal liability for public officials in the implementation of auctions must be carried out carefully, proportionally, and based on comprehensive legal considerations. This is important considering that auctions are not merely administrative actions, but also have a strategic function as an instrument of law enforcement, management of state assets, and a source of state revenue. Therefore, the application of criminal law must not be carried out in a reductionist manner by ignoring the characteristics of state administrative law, which fundamentally prioritizes oversight and correction mechanisms. From the perspective of modern legal theory, this condition is in line with the principle of differentiation of legal functions, where administrative law plays a preventive and corrective role, while criminal law is positioned as a repressive tool used as a last resort (*ultimum remedium*) (Ashworth, 2013).

Within this framework, harmonious synchronization is required between state administrative law, criminal law, and state financial law. This synergy between legal regimes is crucial to creating a legal system that not only provides certainty but also ensures justice and benefit. A lack of integration between norms has the potential to lead to overlapping authority and inconsistencies in law enforcement, which can ultimately hinder the effectiveness of auction implementation. Therefore, the integration of norms and consistency in the application of legal doctrine are key factors in determining the limits of criminal liability.

To prevent irregularities and criminalize administrative actions, structured preventive measures are needed in auction implementation. These efforts include improving regulations to be more responsive to the dynamics of auction practices, improving the competence and professionalism of auction officials through continuous education and training, and implementing a digital system to increase transparency and accountability. Furthermore, strengthening oversight mechanisms, both internal and external, is also a crucial element, including optimizing the role of supervisory institutions and public involvement in overseeing the auction process. From a good governance perspective, these measures reflect the application of the principles of transparency, accountability, and public participation (Rosenbloom et al., 2015).

On the other hand, repressive measures remain necessary as a form of law enforcement against violations that meet the elements of a criminal offense. However, their application must be selective and proportional, while adhering to the principle of *ultimum remedium*. Criminal law enforcement should focus on acts that involve deliberate action, abuse of authority, and cause real harm, such as fraud as stipulated in Article 378 of the Criminal Code, or embezzlement as stipulated in Articles 372 and 374 of the Criminal Code. Meanwhile, for administrative violations, a more appropriate approach is through administrative law mechanisms, such as imposing administrative sanctions or revoking decisions.

Furthermore, the effectiveness of repressive measures depends heavily on the consistency of law enforcement officials in distinguishing between administrative violations and criminal acts. Unclear distinctions have the potential to lead to overcriminalization, which can create excessive fear among public officials in exercising

their authority. The resulting impact is a decline in the quality of public services and a disruption to the effectiveness of government administration.

Thus, a balance between preventive and repressive approaches is a key element in building a fair and effective legal accountability system in auction implementation. An integrative and proportional approach not only prevents irregularities but also provides legal protection for public officials in carrying out their duties. Ultimately, this will support good governance and increase public trust in the legal system and state administration.

CONCLUSION

The implementation of auctions by public officials in the Indonesian constitutional system is essentially part of state administrative actions that must be guided by the principle of legality and general principles of good governance, while also playing a vital role in law enforcement, state asset management, and increasing state revenue. However, in practice, there is still a frequent tendency to qualify administrative violations as criminal acts without clear boundaries, thus potentially creating legal uncertainty and criminalizing policies. Therefore, criminal liability needs to be strictly limited by basing it on the existence of elements of fault (*mens rea*), abuse of authority, and actual state losses, including if the elements of criminal acts such as fraud as stipulated in Article 378 of the Criminal Code and embezzlement as stipulated in Articles 372 to 374 of the Criminal Code are met. Thus, the application of the principle of *ultimum remedium* is crucial so that criminal law is placed as a last resort, thus requiring synergy between state administrative law, criminal law, and state financial law, supported by balanced preventive and repressive measures to achieve legal certainty, justice, and protection for public officials in exercising their authority..

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