

# Modernization of Regular Vendu Reviewed from Sociological Philosophy and Juridistic

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**Abstract-** The legal basic for sales auctions in Indonesia today is the Vendu Reglement Staatsblad (Law of Auction) in 1908 number 189 which is the highest source of auction law in Indonesia and is valid until now as the only "law" governing the procedures for conducting auctions in Indonesia. Vendu Reglement consists of 49 (forty nine) Articles, most of which are not valid or cannot be implemented anymore, because they cannot accomodate legal developments and the increasing role of the auction, with details : 9 Articles have been revoked, 19 Articles have been inactive, and 21 Articles are still active with various adjustments. Reglement Vendu was made by the Dutch East Indies government for the purposes of trading and selling Dutch East Indies offical assets at the time where it is surely not based on Pancasila, the 1945 Constitution of the Republic if Indonesia, and a national legal system serving the national interest. Considering the condition of the Reglement Vendu, it strongly supports the urgency to immediately prepare Auction Legal Updates in Indonesia by drafting a new auction law. The study aims to analyze and find scientific studies related to the auction both literature review, regulatory studies, and results of data collection as the basic material for formulating regulations, providing direction, and setting the scope for the preparation of Auction Legal Updates In providing input for making Academic Scripts in order to prepare the Auction Bill as mandated by law Number 12 of 2011 concerning Establishment of Legislation. The research method is normative juridical research, or the scope of dogmatic law holding the "sui generis" character. While the benefits of this research can be used as input to support the concept of academic texts, the Auction Bill which will be discussed jointly between the Government and the House of Representatives in preparing the National Legislation Program;

**Index Terms-** Modernization, Vendu Reglement : Philosophy, Sociology, Juridical

## I. INTRODUCTION

A philosophical problem is that the current auction of sales in Indonesia is based on Vendu Reglement, Ordonantie 28 February 1908 Staatsblad 1908-189 as amended several times, most recently by Staatsblad 1941: 3. Vendu Reglement, which was born before the Volksraad (People's Representative Council in the Dutch East Indies era), has made this regulation the highest legal tender source in force in Indonesia. This regulation applies to date as the only "law" governing the procedures for conducting auctions in Indonesia. Vendu Reglement was made by the Dutch

East Indies government for the purpose of trading and selling assets of Dutch East Indies officials at that time certainly did not come from the Pancasila, the 1945 Constitution of the Republic of Indonesia, and the national legal system that served the national interests.

Juridical problem, vendu reglement consists of 49 (forty nine) articles, in which most of these articles are no longer valid or even cannot be implemented anymore, because they cannot accommodate legal developments and the increasing and outdated auction role (out of date).

Sociological problems, along with the times, the pattern of community transactions underwent a fundamental change. Conducting auctions with a conventional pattern, namely meeting buyers, sellers and auction operators in a physical forum is no longer sufficient. Information technology-based auction sales mechanism following the issuance of Auction Deed that uses digital mechanism is still not accommodated in the regulation. One manifestation of its underdevelopment is the absence of internet-based auction arrangements even though the electronic auction process is currently developing. The auction process without having to be busy attended by prospective buyers is commonly applied. Moreover, there is no regulation regarding Digital Auction Deed, including auction signatures in the process of purchasing auctioned goods (digital signatures).

The term auction is currently used in 2 (two) terms. First the auction as "sale", the second auction as "purchase". Auction Auction is an auction used by a Seller to designate a buyer who is willing to pay the highest price. Auction is one way to make buying and selling transactions. Buying and selling that is carried out by the seller and the buyer. According to Rochmat Soemitro, the auction function can be seen from the use of the auction for various purposes, namely: first, the auction becomes an instrument in the completion of law enforcement as mandated in various laws, Second, the auction can free the parties from alleged KKN and unfair competition in the mechanism of determining the winner in a business process. In its development, business entities, both government and private, carry out many corporate actions that are prone to being caught in the law. The auction mechanism will reduce the legal trap because it offers competitive procedures that are accountable and open to the public. A credible auction system can also be used to support government efforts to prevent and eradicate money laundering.

Third, the auction can realize transactions that are easy, effective, transparent, and accountable. Easy because there are procedures that are always updated so that Sellers and Buyers can make requests for auction sales and submit bids according to

standards that have been standardized in an integrated marketplace. Effective because in one day the auction can be done many transactions according to the market's ability to agree on prices. Transparent because efforts are made to gather interested people through auction announcements or other credible methods so that many interested people can be gathered to compete in healthy competition. It can be accounted for because the auction mechanism is protected by law, led by an authorized public official, obtains an auction deed or legal tender. From a legal perspective, auction buyers are always regarded as good faith buyers.

### **Formulation of the problem :**

Does Vendu Reglement in Indonesia need to be Modernized?

## **II. DISCUSSION**

### **Philosophical Basic**

To ensure the fulfillment of the objectives of the state as mandated by the constitution in question, sustainable legal development is carried out in order to achieve "discipline" as one of the classic functions of the law in guarding development. Change which is the essence of development and order or order which is one of the important functions of law is the twin goal of the developing society..

Because the essence of development is change, the law must play a role in it, the law cannot be understood as a static element that is always behind the change itself - the law must be ahead guarding the change. The law is not only as a follower (the follower), but must be the main driver of development.

To understand the relations and interactions between law and development, it is necessary to emphasize two things: first, legal issues as tools of change (development) and; second, the development or development of the law itself. With regard to the first thing the law as a means of community renewal. The formation of legislation is the most rational and fast way compared to other legal development methods such as jurisprudence and customary law. In this case the laws and regulations as a concrete form and the main means in carrying out community renewal.

The auction function can be seen from the use of auctions for various purposes, namely: first, the auction becomes an instrument in completing law enforcement as mandated in various laws. There are dozens of regulations at the level of law that mandate the sale of goods through auctions as one of the last efforts to resolve legal issues, this shows the important role of auctions in the national legal system. Second, the auction can free the parties from alleged fraud in the mechanism of appointing a winner in a business process. In its development, business entities, both government and private, carry out many corporate actions that are prone to being caught in the law. The auction mechanism will reduce the legal trap because it offers competition procedures that are open to the public. A credible auction system can also be used to support government efforts to prevent and eradicate money laundering, including in tender tenders that involve large amounts of money.

Third, the auction can realize transactions that are easy, effective, transparent, and accountable. Easy because there are procedures that are always updated so that Sellers and Buyers can

make requests for auction sales and submit bids according to standards that have been standardized in an integrated marketplace. Effective because in one day the auction can be done many transactions according to the market's ability to agree on prices. Transparent because efforts are made to gather interested people through auction announcements or other credible methods so that many interested people can be gathered to compete in healthy competition.

Fourth, auctions can encourage the growth of the national economy. This becomes very important when economic growth is still supported by public consumption and government spending. Auctions can be used to facilitate the movement of goods and services in the community, including in massive infrastructure development projects.

Fifth, the auction can create new markets in the sale and purchase transactions of goods and services. So far, the auction is identical to the sale of confiscated goods whose market share is limited. The Tender Act will create a guarantee of business feasibility and legal certainty which will be a driving force for the growth of private auction businesses and other supporting businesses, for example Appraiser, estimator, warehousing, consulting, auction house, insurance, credit and so on.

Sixth, the auction can be used as a medium to obtain balanced information needed by the Seller and Buyer. With this balanced information, the transaction process can run well so that fair prices will form.

Seventh, the auction has a budgetary function which is to contribute to the Non-Tax State Revenues in the form of Auction Fees, proceeds from the sale of state assets, confiscated goods to the state, gratification goods, found items, traffic raid vehicles and secure tax revenue in the form of income tax on income from income transfer of land and / or building rights, and BPHTB. That the auction system adopted in the Vendu Reglement is centralized because it relies on the State Auction Office and the Auction Officer. Along with the development of society and technology as well as the vision of reinventing governance, it is appropriate for the Auction Institution to be developed by giving a large portion to the private sector as well as an easy business process by utilizing technology including in making digital Auction Deed.

### **Sociological Foundation**

In addition to providing legal certainty and justice in conducting auctions, the Law on Auction is intended to provide livelihoods to as many citizens as possible because the spirit is privatization by giving a sufficient portion to the private sector. The presence of the state is only in certain sectors to ensure the continuity of auctions and law enforcement. In addition, this law is expected to provide inspiration for the development of the business sector supporting auctions, for example assessment / valuation, warehousing, freight forwarding services, insurance, e-marketplace, start-up, credit and so on.

On the other hand, to meet the demands of the community it is no longer sufficient for the old law which is patterned on conventional auction services, because the development of information and communication technology has affected the lives of the people, including in buying and selling goods, including the need to implement a digital auction deed therein.

Under these conditions it is necessary to make adjustments from conventional auctions to modern auctions into statutory provisions. The drafting of the Law on Auctions is very urgent to accommodate changes in the culture of the people who are more advanced and to support the development of auction transactions through information and communication technology so that they can compete with e-commerce.

However, *Vendu Reglement* does not regulate, even does not include, when the Seller only wishes to transfer the benefit / enjoy rights without giving up ownership of the assets, or only desires to share assets. Therefore in the Bidding Law it is necessary to expand the scope and definition of the auction. The Law on Auction also regulates the use of technology which is the backbone of sharing economy.

### III. JURIDICAL BASIC

*Vendu Reglement* and *Vendu Instructie* formed since 1908, are now considered obsolete both in terms of philosophical and technical rules, because they cannot accommodate the development of applicable law. *Vendu Reglement* consists of 49 Articles with details: 9 Articles have been revoked, 19 Articles have been inactive and 21 articles are still active with various adjustments. On the one hand there are other regulations governing auction sales but they are not in line with auction regulations, leading to violations of the law and existing sanctions which are not effective to apply.

That the Law on auctions which is an umbrella for all types of auctions does not yet exist, so this is a real effort to fill the legal vacuum while strengthening the function of the auction.

Furthermore, from an economic juridical aspect, auctions play a role in:

1. Act as an instrument in the completion of law enforcement as mandated in various laws;
2. Mobilizing public funds in the form of returning receivables from the auction results.
3. Supporting asset / property trading.
4. As a medium for the parties to avoid allegations of fraud in the mechanism of appointing a winner in a business process. A credible auction system can also be used to support the government's efforts to prevent and eradicate money laundering.
5. realize transactions that are easy, effective, transparent, and accountable.
6. encourage the growth of the national economy. This becomes very important when economic growth is still supported by public consumption and government spending. Auctions can be used to facilitate the movement of goods and services in the community, including in massive infrastructure development projects.
7. creating new markets in the sale and purchase of goods and services, driving the growth of private auction businesses and other supporting businesses, for example Appraiser, estimator, warehousing, consulting, auction houses, insurance, credit and so on.

8. Strengthening the budgetary function, namely contributing to Non-Tax State Revenues in the form of Auction Fees, proceeds from the sale of state assets, confiscated goods to the state, gratification goods, found items, traffic raid vehicles and securing tax revenue in the form of income tax on income from diversion land and / or building rights, and BPHTB.

### IV. CLOSING

Strengthening the budgetary function, namely contributing to Non-Tax State Revenues in the form of Auction Fees, proceeds from the sale of state assets, confiscated goods to the state, gratification goods, found items, traffic raid vehicles and securing tax revenue in the form of income tax on income from diversion land and / or building rights, and BPHTB.

### REFERENCES

- [1] A. Engelbrecht, *De Wetboeken Wetten En Verordeningen Benevens De Grondwet Van 1945 Van De Republiek Indonesie*. (Jakarta: PT Gunung Agung).
- [2] Ade Maman Suherma, *Pengantar Perbandingan Sistem, Civil Law, Common Law, Hukum Islam, Cet 2*, Raja Grafindo Persada, 2006, h. 37W. Friedman, *Teori-teori Filsafat Hukum*, Kanisius, Yogyakarta, 1998.
- [3] C.S.T, Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, (Jakarta : Balai Pustaka, 1986).
- [4] Carl Joachim Friedrich, *Filsafah Hukum Persefektif Histori*, alih bahasa Raisul Muttaqin, Bandung: Nusa Media. cet. ke-III, 2010.
- [5] DHM, Meuwissen, *Ilmu Hukum*, penerjemah B. Aried Sidarta, dalam Pro Yustitita, Tahun XII No.4 Oktober 1994, Universitas Katolik Parahyangan, Bandung, h.26 46 Jhoni Ibrahim, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2006.
- [6] Hermansyah, *Pokok-Pokok Hukum Persaingan Usaha Di Indonesia*, Kencana Prenada Media Group, Jakarta, 2008.
- [7] Ibrahim Johnny. 2005. *Teori dan Metode Penelitian Hukum Normatif*. Cetakan Pertama. Malang. Bayumedia Publishing
- [8] Indroharto, *Usaha memahami Undang-Undang tentang Peradilan Tata Usaha Negara*, Pustaka Harapan, 1993, Jakarta.
- [9] Ismail Saleh, *Hukum dan Ekonomi*, PT. Gramedia Pustaka Utama, Jakarta, 1990.
- [10] Jhoni Ibrahim, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2006.
- [11] Muh. Erwin, *Filsafat Hukum; Refleksi Kritis Terhadap Hukum*, Jakarta : Rajawali Press, 2011.
- [12] Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2006.
- [13] Prajudi Atmosudirdjo, *Hukum Administrasi Negara*, Ghalia Indonesia, Jakarta, 1981.

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