



The Evidentiary Legal Force of Auction Minutes Prepared By Class II Auction Officials in Disputes Over Voluntary Auction Objects

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ABSTRACT

This study examines the evidentiary legal force of the auction minutes (risalah lelang) prepared by Class II Auction Officials in voluntary auctions and the role of such minutes in legal disputes involving auction objects. The auction minutes constitute an official document that records the entire course and outcome of an auction and are therefore frequently invoked as evidence in auction-related disputes. The principal aim of this research is to assess whether the auction minutes can be relied upon as valid and authoritative evidence when challenged through litigation, particularly when a party claims to have been disadvantaged by the auction outcome. The research employs a normative juridical method, combining a statutory approach with case analysis. The findings indicate that auction minutes prepared by Class II Auction Officials possess significant legal force provided that the auction process complies with the applicable regulations. In practice, however, challenges arise, especially when third parties contest the procedure or outcome of the auction. The study recommends stricter supervision and clearer regulatory standards to ensure that the auction process is conducted in a fair and transparent manner.



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INTRODUCTION

In contemporary social life, authentic deeds (akta autentik) occupy a critical position because they function as evidentiary instruments whose probative force is, in principle, irrefutable. This is consistent with Article 1870 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata, KUHPerdata), which provides that an authentic deed furnishes complete and binding proof for the parties, their heirs, and those who derive rights from them with respect to the matters contained therein.

Auction practice in Indonesia is principally regulated by Minister of Finance Regulation No. 122 of 2023 on Guidelines for the Implementation of Auctions (Minister of Finance Regulation No. 122 of 2023). The auction minutes play a central role in the auction process, whether it concerns movable or immovable property (Susilawati et al., 2025). The evidentiary materials relied upon comprise physical evidence, procedural evidence, and substantive evidence, in accordance with Article 1868 of the Civil Code (Maruf et al., 2023). This raises the question of whether the auction minutes may properly be classified as an authentic document (Purnama Tioria Sianturi, 2008).

Under Article 1868 of the Civil Code, an authentic deed is a document drawn up in the form prescribed by law, made by or before a public official authorised for that purpose at the place where the deed is executed (Farizy et al., 2024).

Article 165 of the amended *Herziene Indonesisch Reglement* (HIR) similarly defines an authentic deed as a document made by or before an official authorised for that purpose, which constitutes complete proof between the parties and their successors and those deriving rights from them as to the matters set forth therein, including any incidental statements.

As emphasised by M. Yahya Harahap, the formal requirements of an authentic deed are cumulative rather than alternative. If any one of those requirements is not satisfied, the deed loses its character as an authentic deed and possesses no evidentiary force to prove the matter in dispute (M. Yahya.H. 2017).

Where an instrument qualifies as an authentic deed, it performs three functions vis-à-vis its makers: first, it serves as evidence that the parties have entered into a particular agreement; second, it serves as evidence between the parties that the content of the written instrument reflects their intention and purpose; and third, it serves as evidence vis-à-vis third parties that, on a particular date and unless otherwise determined, the parties entered into the agreement and that its content corresponds to their will (Daniel Alusinsing. Et all. 2019).

According to the Kamus Besar Bahasa Indonesia (KBBI), the term *otentik* denotes that which is trustworthy, original, genuine, and valid. The term is commonly used in the sense of an assessment, measurement, or evaluation (KBBI. 2019). Accordingly, an auction minutes must satisfy the elements of an authentic deed as set forth in Articles 1868 and 1870 of the Civil Code. The auction minutes are drawn up to record the agreement between the seller and the buyer at the *obligatoir* stage of the contract. The Class II Auction Official is therefore responsible for the authenticity of the auction minutes that he or she prepares (Tobing. 2014). Consequently, the auction minutes possess the same three forms of evidentiary force as any other authentic deed, namely: (Sianturi. 2008)

- external evidentiary force (*uitwendige bewijskracht*);
- formal evidentiary force (*formele bewijskracht*); and
- material evidentiary force (*materiele bewijskracht*).

A common practice in contemporary banking is for the bank to sell its receivables (rights of claim) against its debtor to a third party through a “sale and purchase of receivables agreement” (Anwari et al., 2025). Once such an agreement is concluded, the assignment of the receivables, commonly referred to as *cessie*, is effectuated through a separate “deed of assignment of receivables.”

Notwithstanding that an auction may have been conducted in accordance with proper procedure, lawsuits before the courts remain a real possibility, particularly in the case of execution auctions of *Hak Tanggungan* (mortgage rights) conducted by the Office for the Servicing of State Receivables and Auctions (KPKNL) (Salas et al., 2025). Such suits are typically filed by the debtor or another party who feels disadvantaged, either before or after the auction (Rusmana et al., 2025). Nevertheless, not every claim results in immediate annulment of the auction; only claims by third parties relating to the collateral may suspend the auction (Meutia et al., 2025). Cancellation of the auction may take place only at the request of the seller or pursuant to a court decision (Budiman et al., 2025).

Lawsuits often involve debtors who object to a low auction price, the conduct of the auction before maturity of the debt, or procedural irregularities (Maskanah, 2024). In addition, third parties acting as guarantors or owners of the collateral may file similar claims. In one such case, a debtor brought suit challenging a voluntary auction conducted by a third party who claimed to be authorised but had not been notified of an assignment of receivables (*cessie*). In mediation, the Class II Auction Official was subjected to a six-month sanction; the auction minutes, however, were upheld as valid evidence (Melinda Lorenza et al., 2024).

RESEARCH METHODS

This study adopts a descriptive-analytical specification, which systematically and factually describes and analyses the data collected. The data are processed by classifying, correlating, and analysing patterns as well as causal relationships. The data sources consist of secondary data comprising primary legal materials (relevant statutory regulations), secondary legal materials (books, journal articles, and legal commentary), and tertiary legal materials (including interviews with notaries and Class II Auction Officials).

Data collection was carried out through a literature review for primary, secondary, and tertiary materials, supplemented by field data obtained from interviews with relevant notaries. The data were analysed qualitatively using a deductive approach, examining the materials systematically from general

to specific, and applying relevant legal concepts, principles, and rules to draw the conclusions of the study.

RESULTS AND DISCUSSION

A. The Evidentiary Force of Authentic Deeds in Civil Law

The perfect and binding evidentiary force inherent in an authentic deed is a combination of several distinct evidentiary forces. If any one of those forces is defective, the authentic deed loses its perfect and binding evidentiary value (R. Subekti et.al 2014).

The evidentiary force of an authentic deed is threefold. First, **formal evidentiary force** proves between the parties that they have indeed stated what is set out in the deed. Second, **material evidentiary force** proves between the parties that the event described in the deed has actually taken place as recorded. Third, **external evidentiary force** proves not only between the parties but also against third parties that, on the date stated, the parties appeared before the competent public official and stated what is written in the deed (Mertokusumo. 2013).

An instrument presented as an authentic deed must be regarded and treated as such unless and until the contrary is proved. So long as no contrary proof is adduced, the deed retains its external evidentiary force, meaning that its truth must be accepted as that of an authentic deed. Where falsity is established, the external evidentiary force lapses, and the document may no longer be accepted and valued as an authentic deed. Pursuant to the principle of external evidentiary force, both the judge and the litigants are bound to treat the deed as authentic until the opposing party can prove that it is not. In this respect, the opposing party may demonstrate the existence of: (M. Yahya H. 2017)

- a legal defect, in that the official who prepared the deed lacked authority;
- forgery of the signature of the official appearing on the deed; or
- alteration of the content of the deed, whether by way of omission or addition.

In the current era, legal disputes surrounding auctions have increased in both pre-auction and post-auction phases, particularly in execution auctions. Disputes also arise, however, in non-execution auctions. Among the various legal risks, the highest exposure for an Auction Official lies in criminal complaints. In responding to such risks, whether civil, administrative, or criminal in nature, an Auction Official must possess risk-mitigation capability, that is, the capacity to analyse, weigh, and measure the risks of legal problems arising from an auction. The objective is to minimise the emergence of legal disputes. Practical measures include the careful examination of all auction documents and the preparation of a formal legality analysis of the subjects and objects of the auction. Precision and accuracy in scrutinising auction documentation are the principal means by which an Auction Official may avoid legal exposure (Huijbers. 1990).

Based on an interview with a Class II Auction Official at the DJKN Regional Office in Bandung, an illustrative case concerned the assignment (*cessie*) of receivables by PT Bank XX to a transferee designated as R, in relation to a non-performing loan of a debtor designated as S. After R acquired the right of claim through a notarial deed, the mortgage right over the land owned by S transferred to R pursuant to Article 613 of the Civil Code and the Law on *Hak Tanggungan* (DJKN. 2024). R, however, applied to the National Land Agency (BPN) to have the title to the collateral land transferred into its own name or that of another person, even though the *cessie* assigns only the receivables and not the ownership of the land (Sari. 2010). The application for a change of registered ownership was therefore unlawful. A deed of *cessie* may serve only as proof of the assignment of receivables; it cannot be used to effect a transfer of ownership at the BPN.

If a debtor has been declared in default and is unable to settle the debt, the holder of the *Hak Tanggungan* is entitled to sell the object of the mortgage on its own authority through a public auction and to recover its claim from the proceeds of that sale (Indonesia, Law No. 4 of 1996). This right of sale is founded upon the undertaking given by the mortgagor that, in the event of default by the debtor, the mortgagee may sell the mortgaged object through public auction without requiring the further consent of the mortgagor, and may thereafter satisfy its claim from the proceeds of sale in priority over

other creditors. Any surplus from the proceeds remains the right of the mortgagor (Elucidation of Article 6 of Law No. 4 of 1996).

From the foregoing it follows that the authority to prepare auction minutes rests with the Auction Official. In the context of the assignment of receivables from PT Bank XX to R, an auction minutes prepared by a Class II Auction Official is valid as evidence of a voluntary auction, but it cannot legitimise a transfer of ownership of the collateral, which would require an execution auction.

Under Article 613(1) of the Civil Code, the assignment of the right of claim through *cessie* from PT Bank XX to R is valid, so that R now holds the right to demand payment from S. The *Hak Tanggungan* over the land of S likewise passes to R; the request by R for a change of registered title, however, is invalid because the *cessie* transfers only the right of claim, not the ownership of the land.

A notarial deed may be downgraded to the status of a private deed and may give rise to a claim for damages where it suffers a legal defect. A party prejudiced by such a deed may bring a civil action. One ground on which the auction minutes may be considered legally defective is unlawful conduct (*perbuatan melawan hukum*), which is governed by Article 1365 of the Civil Code. Where a notary violates the regulations in the preparation of an auction minutes, the document is deemed legally defective and the notary may be held accountable.

B. Legal Settlement of Claims Against Auction Minutes Prepared by a Notary Acting as a Class II Auction Official

One of the principal grounds on which an auction minutes prepared by a notary may be deemed defective and void is unlawful conduct. Unlawful conduct denotes an act that causes loss to another and is, in normative terms, governed by Article 1365 of the *Burgerlijk Wetboek* (Sjaifurrachman and Habib Adjie. 2011), which provides that “every unlawful act which causes damage to another obliges the person at fault to compensate that damage (Civil Code), Article 1365).

Where an auction minutes is drawn up by a notary who lacks the necessary authority, the document is not legally valid in accordance with Article 15(2) of the Law on the Position of Notary, which stipulates that a notary has no authority over auction activities (Indonesia, Law No. 2 of 2014). As a result, such auction minutes do not enjoy the same legal force as one prepared by a Class II Auction Official, and may give rise to legal disputes. A party prejudiced by such a document may institute proceedings to have the auction minutes declared invalid (KPKNL. 2024).

The role of the Class II Auction Official is most clearly reflected in the preparation of the auction minutes, the drafting of which must conform strictly to the standard requirements of an authentic deed. Legal certainty can be attained only where the Class II Auction Official discharges his or her duties with high moral standards and dignity. A sound mastery of the statutory regulations governing auctions, moreover, enhances fairness for all parties involved in the auction process. Although a Class II Auction Official is not, strictly speaking, juridically involved in recording the auction minutes in bankruptcy proceedings, his or her integrity is tested by mastery of the law of contract and auction. It is upon this foundation that the enforcement of auction law in Indonesia may be strengthened.

Unlawful conduct by a notary also includes violations of other regulatory provisions. If a notary draws up an auction minutes, he or she contravenes the Law on the Position of Notary and the auction regulations; the deed is legally defective and the matter must be resolved through legal channels (Widiasih and Sarjana. 2016).

If an auction minutes is prepared by a notary rather than by the authorised auction official, the document is not legally valid as an auction minutes. Article 15(2) of the Law on the Position of Notary delineates the limits of notarial authority and provides that a notary has no authority to perform acts related to auction activities, which fall within the competence of the Auction Official. Consequently, a document so prepared does not carry the same legal force as an auction minutes prepared by a Class II Auction Official (Tripiawan, W., & Rachmawati, I. 2025). Preparation of an auction minutes by an unauthorised party may give rise to legal disputes, and an aggrieved party may bring an action to have the document declared invalid.

The role of the Class II Auction Official is therefore critical in the preparation of auction minutes that must comply with the requirements of an authentic deed. Legal certainty can be achieved only where the Auction Official acts with high moral standards and dignity (Safriani, V. N., & Maruf, I. R. (2026). Mastery of the auction regulations is similarly essential to ensure fairness for all parties.

Although the Auction Official does not directly record auction minutes in bankruptcy proceedings, his or her integrity is measured by an understanding of the law of contract and auction (Safa'at. 2011). A notary acting as an Auction Official must likewise observe the principles of honesty and impartiality.

The settlement of business disputes is generally pursued through litigation, that is, judicial proceedings. Non-litigation mechanisms such as arbitration and mediation, however, offer alternative means of resolving conflicts. Mediation, for example, provides a more peaceful and flexible avenue for reaching mutually beneficial settlements without strict reliance on legal rules alone (Fuady. 2000).

Mediation may be conducted outside the court or integrated with judicial proceedings. The process has distinct strengths, including flexibility, confidentiality, and the opportunity for the parties to participate directly. It also has limitations, however, including its dependence on the good faith of the parties and its unsuitability for certain categories of dispute.

Although mediation is not regulated in detail by statute, this very absence of detailed regulation provides a flexibility that can be advantageous. Mediation tends to be cheaper and faster than litigation, and its outcomes may be accepted by all parties without any party feeling defeated. Comparative studies indicate that mediation is an effective option for the settlement of disputes.

Even where an auction minutes carries strong legal force, an aggrieved party may bring an action for its annulment if there has been a breach of the auction process, such as fraud or non-compliance with procedure. The claimant bears the burden of proving such a breach pursuant to Article 140 HIR or Article 163 *Rechtsreglement Buitengewesten* (RBg). If the breach is established, the court may annul the auction minutes. In the absence of such proof, the auction minutes remain valid and continue to function as authentic evidence in civil disputes.

Where an error occurs in the preparation of a voluntary auction minutes by a notary acting as a Class II Auction Official, the matter may be addressed administratively at the Regional Office (Kantor Wilayah, Kanwil) of the Directorate General of State Assets (DJKN) in accordance with the relevant Minister of Finance Regulation. The DJKN Regional Office is empowered to examine procedural violations and documentary errors and may impose sanctions ranging from a written reprimand to revocation of the notary's licence to act as a Class II Auction Official.

In addition to administrative sanctions, errors in the auction minutes may also strip the document of its legal force as an authentic deed. If the matter is brought before the courts, the aggrieved party may seek annulment of the auction minutes. The claimant must prove the error or procedural violation, and any decision to annul rests with the court. Resolution of disputes concerning auction minutes may therefore proceed along two parallel tracks: administrative oversight and civil litigation.

CONCLUSION

Auction minutes possess very strong evidentiary force in civil law because they constitute an authentic deed issued by an authorised public official, namely a State Auction Official. Pursuant to Article 1868 of the Indonesian Civil Code, such an authentic deed is regarded as perfect evidence so long as it is prepared in accordance with the applicable rules. The auction minutes prove that the auction has been conducted in accordance with proper procedure and bind all parties involved, including the seller, the buyer, and any other auction participants.

Nevertheless, where the auction process has been tainted by procedural violations or fraud, an aggrieved party may bring proceedings to have the auction minutes annulled. The claimant must demonstrate the violation in accordance with Article 140 HIR or Article 163 RBg; in the absence of such evidence, the auction minutes remain valid and continue to serve as authentic evidence.

Where a notary acting as a Class II Auction Official commits an error in preparing a voluntary auction minute, two avenues of redress are available. First, administrative resolution may be pursued through the DJKN Regional Office pursuant to the Minister of Finance Regulation, which may impose sanctions ranging from a reprimand to revocation of the notary's auction licence. Second, civil judicial proceedings may be initiated by the aggrieved party to seek annulment of the auction minutes; if the alleged violation is proved, the court may declare the auction minutes void. These two tracks ensure that breaches in the preparation of auction minutes can be addressed in a manner that is both administratively responsive and judicially principled.

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