



Factors Causing Buyers to be Declared in Default in Public Auctions of State/Regional Property at the Mataram State Property and Auction Service Office

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ABSTRACT

The purpose of this study is to analyze the factors that cause buyers to be declared in default in public auctions of state/regional property and to analyze the impact of buyers being declared in default on the management of state/regional property. The type of research used is empirical legal research, which uses facts obtained from human behavior during interviews or direct observation with the relevant parties. In addition, empirical research is also used to observe the results of human behavior in the form of physical remnants or archives. The results of the study show that the public auction of state/regional property held by the Mataram State Property and Auction Service Office (KPKNL) aims to analyze the factors that cause buyers to be declared in default in the auction of state/regional property and the impact of buyers being declared in default on the management of state/regional property. The factors causing buyers to be declared in default include the unavailability of funds that the auction winner is supposed to use to fulfill their obligations. Auction winners face difficulties in settling their obligations due to various issues within the payment obligation period, such as force majeure and others. The impact of buyers being declared in default is that it can disrupt the smooth process of managing state/regional property, leading to financial losses and slowing down the process of utilization and transfer of property ownership.

INTRODUCTION

An auction is a form of sale of goods conducted openly to the public, with the price offering either increasing or decreasing in order to reach the highest price, which is proposed in writing or verbally, preceded by an announcement about the upcoming auction or sale of goods. (Sudiarto, *Introduction to Indonesian Auction Law*, Kencana, Jakarta, 2021, p. 117)

State Property, hereinafter referred to as BMN, is all goods that are purchased or obtained at the expense of the State Budget (APBN) or other lawful acquisitions. (Minister of Finance Regulation No. 118 of 2023 on the Management of State Property Using the State Asset Management Information System, Article 1) Meanwhile, Regional Property (BMD) refers to all goods purchased or obtained at the expense of the Regional Budget (APBD) or other lawful acquisitions. (Minister of Home Affairs Regulation No. 19 of 2016 on the Management of Regional Property, Article 1, Paragraph 16).

The State Assets and Auction Service Office (KPKNL), as part of the Ministry of Finance of the Republic of Indonesia, plays a vital role in managing state assets, including through the auction mechanism. The State Assets and Auction Service Office (KPKNL) is a vertical agency of the Directorate General of State Assets, responsible for managing state assets. (Minister of Finance Regulation No. 154/PMK.01/2021 on the Organization and Work Procedures of the Vertical Agencies of the Directorate General of State Assets, Article 1) In the context of transparent and accountable governance, the KPKNL is responsible for managing assets seized from criminal cases, unused assets, as well as other state/regional assets (BMN/BMD) that need to be auctioned. (Surya Hadi Purnama, *Management of Seized Goods and Asset Recovery from Criminal Acts*, <https://www.djkn.kemenkeu.go.id/kpknl-palu/baca-artikel/14505/Pengelolaan-Barang-Rampasan-dan-Pemulihan-Aset-Tindak-Pidana.html>, Accessed on December 17, 2021, at 13:00 WIB).

There are three types of auctions conducted by the State Assets and Auction Service Office (KPKNL):

1. **Execution Auction**, which is held to enforce court decisions or other documents in accordance with applicable laws and regulations, aimed at assisting in the enforcement of law;
2. **Mandatory Non-Execution Auction**, which is held to sell state/regional property as referred to in Law No. 1 of 2004 on State Treasury, or property of state-owned/regional-owned enterprises (BUMN/BUMD) that must be sold through an auction as required by law;
3. **Voluntary Non-Execution Auction**, which is held to sell property owned by individuals, community groups, or private enterprises voluntarily auctioned by their owners, including state-owned enterprises and regional-owned enterprises in the form of persero. (Sudiarto, *Introduction to Indonesian Auction Law*, Kencana, Jakarta, 2021, p. 146)

One of the objects auctioned by the State Assets and Auction Service Office (KPKNL) Mataram is the mandatory non-execution auction, including official vehicles, inventory goods (tables, chairs, computers, equipment, and machines), building demolition materials, scrap, and others. These goods are no longer in use or have reached the expiration period of their utilization. The purpose of this auction is to obtain the optimal value of the goods to be auctioned while ensuring transparency, accountability, and efficiency in the management of state/regional property. This auction can also help the government manage state/regional property better, reduce waste, and facilitate the turnover of state assets. It can contribute to non-tax state revenue (PNBP) since official vehicles, inventory goods, building demolition materials, scrap, and others that are no longer in use still have economic value. This can be carried out in accordance with the applicable regulations and procedures, such as Minister of Finance Regulation No. 122 of 2023 on Auction Implementation Guidelines and Government Regulation No. 27 of 2014 on the Management of State/Regional Property.

However, in practice, there are instances where buyers do not fulfill their obligations after winning an auction, such as failing to make payment in accordance with the agreed terms. This can hinder and harm the state, as goods that have already been auctioned cannot be handed over to the rightful buyer, and the seller suffers losses because they must repeat the auction process, which takes time and incurs additional costs. This situation may lead to a breach of contract. The phenomenon of default in fulfilling obligations among auction buyers of state/regional property still frequently occurs, resulting in losses for the state/region, such as:

1. Loss of potential income;
2. Delay in the management process of goods;
3. Damage to goods due to neglect;
4. Increased operational costs.

Article 1, Paragraph 23 of Government Regulation No. 27 of 2014 on the Management of State/Regional Property explains that the Disposal of State/Regional Property refers to the activity of clearing state/regional property from the property list to release the administrative and physical responsibility of the property manager/user/authorized user. The process of disposal of State/Regional Property is an effort to prevent various state losses. Such losses include exceeding the available storage capacity, hindering employee performance, and incurring costs for maintaining scrap.

The sale of official vehicles, inventory items (such as tables, chairs, computers, equipment, and machines), building demolition materials, scrap, and others in the conditions described above can decrease the selling value and harm the state, making it difficult for buyers trying to acquire usable state/regional property. This could damage public trust in the auction process, and inefficient auction management could hinder the increase in the value of the auctioned goods.

Additionally, existing regulations are sometimes inadequate to support the optimal implementation of auctions, and the social impact of certain auctions could create problems in the future.

Based on the explanation above, it is expected that the State Assets and Auction Service Office (KPKNL) Mataram will formulate strategic steps, particularly in the execution of auctions for state/regional property such as official vehicles, inventory items (tables, chairs, computers, equipment, and machines), building demolition materials, scrap, and others to support the government's goal of creating better state asset management.

Based on the background description, the author formulates two main problems: What factors cause buyers to be declared in breach of contract in the auction of state/regional property? And what is the impact of buyers being declared in breach of contract on the management of state/regional property?

RESEARCH METHOD

The type of research conducted to analyze this issue is Empirical Legal Research. The research approach used in this study includes the Statutory Approach, which involves reviewing several laws or regulations related to the issues at hand (Peter Mahmud Marzuki, 2005, p. 93). The Conceptual Approach is used when the researcher does not simply rely on existing legal rules but must first look at the doctrines or opinions of experts in the field of law. The Sociological Approach is used to analyze the issues in this thesis through a sociological perspective.

Data collection techniques include primary data collection, which is done through interviews. The interviews are conducted to directly ask questions between the researcher and the Head of the Legal and Information Division, Auction Officials, and auction participants. Secondary data collection involves gathering and documenting data and information through literature reading or written sources such as books, previous research, journals, and theses.

The data in this study is analyzed descriptively. Descriptive analysis involves analyzing data from primary and secondary legal materials, which are then processed and organized systematically and explained to provide a clear and comprehensive understanding of the research object, leading to an in-depth analysis of the problem.

This descriptive analysis differs from normative research, which addresses whether events are right or wrong based on the law. It will only present the facts empirically, allowing for analysis through two approaches: qualitative, which is based on statistical numbers or other calculations used as proof of the truth, and quantitative, which provides a deep understanding of facts based on scientific characteristics of individuals or groups to uncover and comprehend what lies behind the phenomenon.

1. Factors Causing Buyers to Be Declared in Breach of Contract in the Auction of State/Regional Property

Non-executory auctions of state/regional property refer to auctions conducted to sell state/regional property that, according to regulations, must be sold through an auction process. The types of state/regional property sold through auctions include official vehicles, inventory items (tables, chairs, computers, equipment, and machines), building demolition materials, scrap, and more.

The auction of non-executory state/regional property must be preceded by an auction announcement, which is made by the seller with at least one announcement five (5) calendar days before the auction. However, for perishable or expiring goods, the auction can be held with less than five (5) calendar days' notice. The auction outcome can be classified as: successful, unsuccessful, or canceled.

Recently, there has been a phenomenon where auctions result in unusually high bids, but the auction officer cancels the buyer's approval or declares the buyer in breach of contract, particularly in non-executory auctions of state/regional property. This causes several issues:

a. Based on Regulation of the Minister of Finance No. 213/PMK.06/2020 on Auction Implementation Guidelines:

According to Article 42 of the Regulation of the Minister of Finance No. 213/PMK.06/2020, if the buyer fails to make payment no later than five (5) working days after the auction, the auction officer must cancel the buyer's approval and declare them in breach of contract. In this case, the seller must resubmit the auction request to the State Assets and Auction Service Office (KPKNL), which will then reschedule the auction and issue a new announcement.

b. For the State Assets and Auction Service Office (KPKNL) Mataram:

For KPKNL, the performance target, which is the percentage of auctions that must be successful within one year, is a Key Performance Indicator (KPI) for the office. However, the phenomenon of buyers being in breach of contract is an obstacle to meeting these targets. Commonly, clerical errors made by auction participants when submitting bids on the auction application are a frequent cause of breach of contract. These errors can cause confusion about the quantity or type of goods being bid on, or even result in the buyer's inability to fulfill payment obligations. This hinders the success of the auction and negatively impacts the achievement of KPKNL's performance targets. However, clerical errors are no longer the primary cause of buyers being declared in breach of contract.

c. For the Seller:

From the seller's perspective, a buyer in breach of contract disrupts the achievement of goals and performance. A buyer's failure to fulfill obligations after winning an auction causes both financial and operational harm to the seller. In the context of KPKNL's auctions, when the buyer does not meet their obligations, it delays the asset transfer process that should have been completed promptly. This delay creates uncertainty for financial planning and asset management by the responsible parties, such as the government or the involved state institutions.

Moreover, a breach of contract may reduce trust in the auction process. When an auction fails to be completed as scheduled or desired, it negatively affects the reputation of the auction organizer, in this case, KPKNL. This can result in reduced trust and participation from future bidders, ultimately impacting the achievement of performance targets.

Furthermore, the failure to fulfill a contract by the buyer increases operational costs, as the organizer needs to find a replacement buyer or repeat the auction. This results in inefficiencies and reduces the effectiveness of the auction process, affecting KPKNL's performance targets such as the percentage of successful auctions and the revenue generated.

d. Factors Leading to a Buyer Being Declared in Breach of Contract:

1. **Insufficient funds:** The winning bidder may face difficulties in paying due to unforeseen circumstances such as force majeure.
2. **Buyer behaviors:**
 - **Irrational behaviors:** Some buyers may act irrationally, driven by the desire for attention or to win a competition, without considering their actual needs. For example, a bidder may win an auction for the demolition of a building just to disrupt a tender for new construction. Even if the bidder loses their auction deposit, they are satisfied with the outcome, which was to sabotage the tender.
 - **Failure to attend the auction briefing (aanwijzing/open house):** Some bidders do not attend the auction briefings, which negatively impacts their understanding of the items they bid on, leading to unrealistic bids and a subsequent inability to fulfill payment obligations.
 - **Short notice:** The short time between the auction announcement and the auction itself can make it difficult for participants to attend the briefing, leading to uninformed bidding.
 - **Low auction deposit:** When the auction deposit is small, bidders may take a speculative approach, bidding aggressively without fully understanding the consequences, as they feel the potential loss is minimal.

e. Auction Announcement Delays:

Delays in announcing auction details on platforms like the lelang.go.id portal can affect the auction's success. For instance, if an auction is scheduled for a Monday but the announcement is only made on Thursday or Friday, potential participants might have very little time to prepare. This delay also limits their opportunity to attend the auction briefing, resulting in uninformed and often unrealistic bids. These factors increase the likelihood of buyers being declared in breach of contract.

Overall, these factors contribute to the occurrence of buyers being in breach of contract, which has significant implications for both the auction process and the management of state/regional assets. These issues highlight the need for better planning, clearer regulations, and more efficient auction management to ensure the success of auctions and the achievement of KPKNL's targets.

The provided text outlines the consequences of a defaulting buyer in a public asset auction process and the impacts it has on various parties involved, including the management of state or regional assets. Here is a breakdown of the points mentioned:

1. Impact on the Management of State or Regional Assets:

- **Failure to Meet Payment Obligations:** If a buyer does not fulfill payment obligations, it leads to delays in asset transfer, affecting financial reporting and performance targets. This undermines the achievement of goals set for the sale of state-owned assets (BMN/BMD).
- **Financial Losses for Sellers:** Sellers, like KPKNL, must restart the auction process, incurring additional time and costs. Also, expired documentation may require reprocessing.
- **Devaluation of Goods:** If goods are not transferred promptly, they may deteriorate, particularly perishable goods, resulting in a reduced selling price and additional storage costs.
- **Operational Disruptions:** Non-completion of transactions hampers the overall asset management process, delaying the transfer and potential utilization of the assets, which impacts public revenue and budget efficiency.
- **Damage to Trust in the Auction System:** Repeated occurrences of buyer default may erode public trust in the auction system, reducing future participation and potentially impacting auction outcomes.

2. Impact on KPKNL Mataram:

- **Loss of Buyer Rights:** A defaulting buyer loses their rights to the auctioned goods, and any deposit (guarantee) paid is forfeited, contributing to state revenues as non-tax state income (PNBP).

- **Impact on Performance Targets:** While the forfeited guarantee boosts state income, the failure to successfully transfer assets reduces the effectiveness of the auction process and impedes KPKNL Mataram's ability to meet its asset transfer targets.

These impacts highlight the complexities and challenges of managing public assets effectively in the context of auctions, particularly when dealing with defaulting buyers. The need for robust systems to mitigate these risks is essential to maintaining the efficiency and credibility of the auction process. The provided text continues by discussing the impact of a defaulting buyer (*wanprestasi*) on auction officials (*Pejabat Lelang*) and participants (*Peserta Lelang*) in the auction process. Here's a summary of the key points:

a. Impact on Auction Officials (Pejabat Lelang):

- **Repetition of the Auction:** When a buyer defaults, the auction officer must restart the auction process after receiving a request from the seller or work unit. This requires additional time and resources, which delays the management of state or regional assets.
- **Increased Administrative Work:** Auction officials must repeat all administrative tasks such as announcing the auction, verifying new participants, and ensuring that new buyers meet the necessary criteria to avoid further defaults. This adds to the administrative burden and reduces efficiency.
- **Additional Costs and Potential Devaluation of Goods:** The need to re-auction can lead to additional operational costs, especially when the goods are perishable. This further devalues the goods and reduces the potential success of the next auction.

b. Impact on Auction Participants (Peserta Lelang):

- **Loss of Opportunity to Win the Auction:** Participants lose the chance to secure the desired goods if a buyer defaults. In some cases, the defaulting buyer is banned from future participation, and this reduces the chances for other participants to win in the next auction.
- **Loss of Time and Resources:** Participants who invested time, effort, and resources in preparing for the auction will face setbacks, especially if the auction is delayed or repeated. Resources such as travel, consultation, or labor costs may be wasted if the auction does not proceed as planned.
- **Non-Refundable Administrative Costs:** Participants typically pay administrative fees to join the auction, and these fees are not refunded, even if the auction ends in a default. This results in a financial loss for the participants.
- **Decreased Confidence in the Auction System:** Repeated defaults may erode participants' trust in the auction system, leading to skepticism about the fairness and transparency of the process. This can reduce future

participation, impacting the overall success and effectiveness of the auction system.

In summary, both auction officials and participants suffer from the defaulting buyer issue, which not only disrupts the immediate process but also has longer-term effects on the credibility and efficiency of the entire auction system.

CONCLUSION

The factors causing a buyer to be declared in default in a state/region-owned asset auction include failure to fulfill the agreed obligations, such as not paying the auction price by the specified deadline, the discrepancy between the agreed price and the buyer's financial capacity, administrative errors in the auction process, or the buyer's bad intentions to avoid their obligations. In addition, a lack of understanding of the auction terms and conditions or failure to make timely payments can also result in the buyer being declared in default. According to Article 42 of Minister of Finance Regulation No. 213/PMK.06/2020 on Auction Implementation Guidelines, if the buyer fails to settle the auction payment no later than 5 (five) business days after the auction, the Auction Official must cancel their approval as the buyer by issuing a Cancellation Statement, which means the buyer is declared in default.

The impact of a buyer being declared in default is that the seller incurs losses, as they must repeat the auction process, which requires additional time and costs. The seller must also ensure the validity of the auction documents, such as the valuation report, land certificate (if it is land), and approval letter for the removal of the asset from the User/Manager of State/Regional Assets. The seller must renew these documents if they have expired. Furthermore, a defaulting buyer refers to the party who wins the auction but fails to meet payment obligations or other agreed terms. This phenomenon can occur for various reasons, such as financial inability, negligence, or intentional non-fulfillment of obligations. A defaulting buyer not only harms the auction organizers (such as KPKNL) but can also affect the smoothness and overall effectiveness of the auction process.

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