



Determination of Security Money at Non-Execution Auctions by the Auction Hall in Pekanbaru City

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Abstract

Public auction or sale is a sale of goods made in front of the general public where the price of goods offered to buyers is increasing at any time. The main issues in this study are how the determination of bail in a non-execution auction by the city of Pekanbaru and how the authority of the auction hall in the city of Pekanbaru in applying the bail to the non-execution auction. This legal research uses an empirical juridical approach that is a study that uses a method of approach to the problem by looking at the legal norms that apply and then related to the legal facts contained in the field. In this study the source of data obtained from library research and field research. Data collection techniques are carried out through document studies and structured interviews. Research Results Determination of security deposits at non-execution auctions by auction halls in Pekanbaru City is that there are many problems in the case of voluntary non-execution auctions, in this case private auction centers, which often occur at auction halls regarding security deposit for the purchase of 1 (one) LOT which is Rp. 5,000 000, - (five million rupiahs) as for unlimited LOT, which is Rp. 20. 000. 000, - (twenty million rupiah), this is very detrimental to bidders and can be canceled if anyone feels disadvantaged or objected because it is clear in the Civil Code Article 1320 of the Civil Code regarding the cause Halal, agreements must be made based on objectives that do not conflict with applicable law. Agreements made based on reasons that are not true or are prohibited from making such agreements become invalid. And in accordance with Article 1868 and Article 1870 of the Civil Code, that is, the agreement must be made in accordance with the applicable provisions. And the authority of auction centers in the city of Pekanbaru in the application of bail in non-execution auctions, namely the auction hall has the right to determine the amount of the security deposit which is the policy of the auction hall company so that the tender hall participants better understand it. And when there are problems that occur regarding the auction will be resolved through mediation first if there is no common ground then it will be resolved by an alternative way of dispute resolution (arbitration) and general justice. Whereas the auction center that sets the security deposit is the seller. And in accordance with Article 1868 and Article 1870 of the Civil Code, that is, the agreement must be made in accordance with the applicable provisions. And the authority of auction centers in the city of Pekanbaru in the application of bail in non-execution auctions, namely the auction hall has the right to determine the amount of the security deposit which is the policy of the auction hall company so that the tender hall participants better understand it. And when there are problems that occur regarding the auction will be resolved through mediation first if there is no common ground then it will be resolved by an alternative way of dispute resolution (arbitration) and general justice. Whereas the auction center that sets the

security deposit is the seller. And in accordance with Article 1868 and Article 1870 of the Civil Code, that is, the agreement must be made in accordance with the applicable provisions. And the authority of auction centers in the city of Pekanbaru in applying bail in non-execution auctions, namely the auction hall has the right to determine the amount of security deposit which is the policy of the auction hall company so that the tender hall participants better understand it. And when there are problems that occur regarding the auction will be resolved through mediation first if there is no common ground then it will be resolved by an alternative way of dispute resolution (arbitration) and general justice. Whereas the auction center that sets the security deposit is the seller.

Keywords: Determination of Security Deposit; Non-Execution Auction; Auction Hall

Introduction

Auction is a method of selling goods that have been known since BC. It was first known in Greece and in the Roman empire which was used to sell war looted goods from conquered countries. The auction is also to sell goods, works of art, diamond slaves, livestock, and so on. The emergence of such a way of selling is predictable because of the need for a way to get around the human nature that often tends to be greedy, wanting to win on its own. Through competition in bidding for goods auctioned, the auction is fair, openly providing impartial means and giving equal opportunities to the whole community to be able to buy related goods. Therefore, those who dare to bid at the highest price will win the auction.¹

In Indonesia, the history of auction institutions has been known for a long time, namely the existence of auction regulations (Vendu Reglement, Staatsblad Year 1908 Number 189) which until now is still valid even though it is a clash of the Dutch East Indies government. The regulation referred to precisely began promulgation on April 1, 1908. To accommodate the needs of the community or economic development and legal development, the Government must try to make a breakthrough or deregulation in the auction field.²Such deregulation includes, among other things, the possibility of private auction halls dealing specifically with voluntary auctions to engage in auction activities; the introduction of Class II Auction Officers, as well as the opening of opportunities for creditors to conduct direct auctions without having to involve the District Court. The deregulation above provides increasingly open space and increasingly diverse options for the community. For this reason, private auction centers are present in the community, especially for businesses that make use of their services as partners in conducting voluntary auctions, which is why there is a need for special laws relating to auctions in Indonesia. While the term Auction Officer is Vendumesteer.

Article 1 paragraph 1 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Regarding the Bidding Implementation Guidelines states that Auction is the sale of goods open to the public with a written and / or oral price offering that is increasing or decreasing to reach the highest price, which is preceded by Auction Announcement.³Then every auction must be carried out by and / or in front of the auction official, meaning that if the auction is conducted without the auction official, then this is included in the violation of the provisions of the auction rules. Whereas in Article 1 paragraph 1 of the Regulation of the Minister of Finance Number 113 / PMK.06 / 2019 concerning the Auction Hall it is stated that the Auction Hall is an Indonesian Legal Entity in the form of a Limited Liability Company specifically established to carry out business activities in the auction

¹Salim HS, Contract Law Theory & Technique of Contract Compilation, Sinar Grafika, Jakarta, 2003, p. 32

²*Ibid.*, p. 33.

³Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Regarding Directions for Bid Implementation, Article 1 paragraph 1.

field.⁴The auction regulations in Indonesia still use the Dutch auction rules, namely the *Vendu Reglement Ordinance* dated April 1, 1908 No. 189 jo modified *Staatsblad* 1941 No. 3 and *Vendu Instructie Staatsblad* No. 190.

The authority of the Auction Hall is to give, freeze or revoke the operating license of the auction house, and to determine the formation of the place of the auction hall. This authority can be delegated as a mandate to the Director General of State Assets as the echelon I unit in charge. Meanwhile, the authority to grant permission to open a representative office of the auction hall, as well as permission to move addresses can be delegated as a mandate to the Director of Auction. Furthermore, in the old regulation, auction houses may be established if the company has a paid up capital of at least Rp. 5 billion. Now, the minimum paid up capital for the establishment of the auction hall is divided into three categories. The first category, a minimum paid up capital of ten billion rupiahs for the establishment of auction centers in the Greater Jakarta area. Second category, a minimum paid up capital of five billion rupiah for the establishment of auction centers in provinces, cities and regencies on Madura Island and on Java Island outside zone I or hereinafter referred to as zone II. The third category, a minimum paid up capital of three billion rupiah is for provinces, cities and regencies outside zone I and zone II or hereinafter referred to as zone III.

The type or form of auction referred to in Article 200 paragraph (1) *Herzien Inlandsch Reglement* that is :⁵

- a. Public sale of the property of the defendant (executed) which was confiscated by the District Court;
- b. The sale is made by the District Court through the intermediary of the Auction Office.

So, specifically the auction of confiscated goods based on court decisions, is called the "auction execution". It also includes documents that are equated with a court decision with permanent legal force, such as a Certificate of Mortgage and Fiduciary Security. Anyway, every general sale made by the District Court, is called an execution auction. The basic conditions attached to the execution auction are based on Article 200 paragraph (1) of the HIR / RBG, execution is preceded by seizure of execution (*executoriale beslag*, *executory seizure*). Accordingly, the sale was carried out on the defendant's goods which had been placed under confiscation.

Non-execution auction constitutes general sales outside the implementation of a court decision or decision which consists of:⁶

1. Auction of goods owned / controlled by the state;
2. Voluntary auction of private property.

According to the authors, the basic difference between an auction auction and a non-auction auction is the purpose of the auction. An execution auction is a public auction or sale to carry out or execute a court decision or determination or a document which is the same as a court decision, while a non-execution auction is a general sale outside the court decision or decision.

Auction has a big enough role in order to meet the needs of the community, with the principle of openness, the principle of competition, the principle of justice, the principle of legal certainty, the principle of efficiency, and the principle of accountability.⁷

⁴Regulation of the Minister of Finance Number 113 / PMK.06 / 2019 Regarding the Auction Center, Article 1 paragraph 1

⁵*Ibid.*, p. 116

⁶*Ibid.*, p. 117

⁷Rachmadi Usman, *Auction Law*, Sinar Grafika, Jakarta, 2016, p. 25

Article 1 paragraph 15 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Regarding the Bidding Implementation Guidelines states that Class I Auction Officers are Bidding Officers of the Directorate General of State Wealth Officers who are authorized to carry out Execution Auctions, Mandatory Non-Execution Auctions, and Voluntary Non-Execution Auctions.⁸ While Article 1 paragraph 16 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Regarding the Bidding Implementation Guidelines states that Class II Auction Officers are private Auction Officers who are authorized to carry out Voluntary Non-Execution Auctions.⁹

The authority of auction officials is explained in Article 9 paragraph 2 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Regarding the Bidding Implementation Guidelines, it is stated that the Class I Auction Officer has the authority to conduct auctions for all types of auctions at the request of the Seller.¹⁰ And Article 9 paragraph 3 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Regarding the Bidding Implementation Guidelines states that Class II Auction Officers are authorized to carry out Voluntary Non-Execution auctions at the request of the Auction Office or Seller.¹¹

When the auction takes place, the auction activity is the responsibility of the Auctioneer, hereinafter referred to as the Bidding Officer. Sales made through an auction must be preceded by Announcement of Auctions made by the Seller through newspapers published at the place of the goods to be auctioned. Then the seller who intends to sell through the auction shall submit a written request for auctions addressed to the Head of the State Receivables and Auction Management Office or the Head of the Auction Hall and accompanied by the tender requirements document. Meanwhile, if you want to become an auction participant,¹²The auction conducted by the Office of State Assets Service (KPKNL) of Pekanbaru City in 2019 especially four-wheeled motor vehicles, namely 46 (forty-six) Vehicle units of the Riau Provincial Government Office.

As for the determination of security deposits at non-execution auctions by auction centers in Pekanbaru City, there are many problems in the case of voluntary non-execution auctions, in this case, private auction centers, which often occur at auction centers regarding security deposits for the purchase of 1 (one) LOT i.e. Rp. 5,000,000 (five million rupiahs) for unlimited LOT, which is Rp. 20,000,000 (twenty million rupiah), this is very detrimental to bidders and can be canceled if anyone feels disadvantaged or objected because it is clear in the Civil Code Article 1320 of the Civil Code regarding legal reasons, agreements must be made based on objectives that do not conflict with applicable law. Agreements made based on reasons that are not true or are prohibited from making such agreements become invalid.

While the authority of auction centers in the city of Pekanbaru in applying bail in non-execution auctions, namely the auction hall has the right to determine the amount of the security deposit which is the policy of the auction hall company so that the tender hall participants understand it better. Every month the auction hall submits the report on auction results to the Regional Office of the Directorate General of State Assets. If it is not in accordance with established procedures, the Regional Office of the Directorate General of National Assets can cast a reprimand and if the security deposit does not comply

⁸Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Concerning Implementation Guidelines for Article 1 paragraph 15 Auction

⁹*Ibid*, Article 1 paragraph 16

¹⁰*Ibid*, Article 9 paragraph 2

¹¹*Ibid*, Article 9 paragraph 3

¹²Journal of Legal Studies Vol. 6 No. 1, 2016, Ria Desmawati Rianto, et al, Juridical Study of Cancellation of Auction Execution Due to Low Limit Value, Malang, Postgraduate Notary Master's Study Program, Faculty of Law, Universitas Brawijaya, p. 4

with the Minister of Finance Regulation, the auction hall may be subject to a warning first, second, third and even the toughest sanctions are revocation of permits.¹³

The author's interest in raising this title is due to the determination of the auction bid deposit limit determined by the seller at least 20% (twenty percent) of the limit value and at most 50% (fifty percent) of the limit value. This is in accordance with the provisions of Article 38 of the Minister of Finance Regulation No. 27 / PMK.06 / 2016 concerning Bidding Implementation Guidelines. But in reality there are X, Y, Z auction centers in Pekanbaru City conducting auctions with the same guarantee value of Rp. 5,000,000 (five million rupiah) per lot with varying limit values and limit values must be determined from the dealer. This is not in accordance with the provisions of Article 38 of the Minister of Finance Regulation Number 27 / PMK.06 / 2016 concerning Bidding Implementation Guidelines. Whereas the auction hall which stipulates the security deposit is a seller unlike the pre-auction event organizer and regarding the issue of security deposit is a problem that has been occurring for quite a long time in the case of a voluntary non-execution auction. From this description the authors are interested in researching with the title "Determination of Security Money in Non-Execution Auctions By Auction Hall in Pekanbaru City".

Result and Discussion

1. Determination of Security Money in Non-Execution Auctions By Auction Hall in Pekanbaru City

The establishment of auction law in Indonesia was made because it was related to the interests of each party directly involved in the auction process. This interest is interpreted as an individual or group demand that is expected to be fulfilled and accommodated in a legal regulation because the main function of law is to protect the interests that exist in society.

In the auction process that uses a Limit Price, the Auction Officer has the authority to authorize the highest bidder as a Buyer if the bidding has reached or exceeds the specified Limit Price. Every auction held shall be subject to Auction Fees in accordance with Government Regulation Number 2 of 2020 concerning Types and Rates of Non-Tax State Revenues. In unlawful acts regarding low prices, auction officials do not do direct actions resulting in low auction prices, because prices come from the seller / owner of the goods in. For that we need a definite legal norm, the size in determining the limit value by the seller.

Based on the results of interviews representing the Auction Hall, namely the JBA Auction Hall with Ms. Nurul Hayati, about how the determination of security deposits at non-execution auctions by auction halls in the City of Pekanbaru, there are many problems in the case of voluntary non-execution auctions, in this case private auction centers, the thing that often happens at auction halls regarding security deposit for the purchase of 1 (one) LOT, that is Rp. 5,000,000 (five million rupiahs) for unlimited LOT, which is Rp. 20,000,000 (twenty million rupiahs), there is a power of attorney to sell between the auction house and the seller,¹⁴

Based on the results of interviews conducted with the Regional Office of the Directorate General of State Assets of Riau, West Sumatra and Riau Islands, namely Mr Marlais, regarding how the determination of security deposits at non-execution auctions by auction halls in the city of Pekanbaru, namely the issue of security deposits is a problem that is not new. occurs at non-voluntary execution

¹³The results of an interview with those representing the Auction Hall, namely the JBA Auction Hall (Mrs. Nurul Hayati), on February 7, 2019, at 15.15 West Indonesia Time

¹⁴The results of an interview with those representing the Auction Hall, namely the JBA Auction Hall (Mrs. Nurul Hayati), on February 7, 2019, at 15.15 West Indonesia Time

auctions often occur at private auction halls. Regarding the issue of bail money has been discussed up to the center and Regional Office of the Directorate General of State Assets of Riau, West Sumatra and Riau Islands do not know there is a term Unlimited LOT. Whereas the security deposit includes material conditions and the theory of legal certainty guarantees something about the auction,¹⁵

Based on the results of interviews conducted with the Office of State Assets and Auction Services in Pekanbaru City, Mr. Lamrahman, about how the determination of security deposits at non-execution auctions by auction halls in Pekanbaru City is a problem that often occurs regarding security deposits at voluntary non-execution auctions, namely at the hall private auction. In the Regulation of the Minister of Finance there are exceptions to the voluntary non-execution auction related to security deposits, and the auction hall has the right to determine the amount of the security deposit while paying the auction price and the auction fee no later than 5 (five) working days after the auction in accordance with Article 79 of the Ministerial Regulation Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 concerning Bidding Implementation Guidelines.¹⁶

While the results of interviews conducted with Class II Auction Officers in Pekanbaru City, Mr. Khalidin, regarding how the determination of security deposits at non-execution auctions by auction halls in Pekanbaru City is a problem that often occurs in the case of voluntary non-execution auctions, namely at private auction centers. Therefore, the auction house regarding security deposit for the purchase of 1 (one) LOT is Rp. 5,000,000 (five million rupiah) is the policy of the auction house company so that the tender participants are more pleased.¹⁷

According to the author, security deposit is a material requirement. Because according to the provisions of material law is the source of law in terms of its contents, namely the contents of an agreement, a relationship or an act, while formal law shows how to defend in disputes. In the case of the issue of setting a security deposit at a non-execution auction by the auction hall in Pekanbaru, the reality is the same, the problem that arises in the case of a voluntary non-execution auction, namely at the private auction hall and the auction hall has the right to determine how much different security deposit and implementation rules does not mean that each type of auction must be regulated in a separate Act or regulation at the Government Regulation level. It could be that the Act or Government Regulation is the same because it only regulates matters related to the auction in general while the difference between the auction execution and the voluntary auction is set at the level of Ministerial regulations or even Director General regulations. The factors that cause not to do what is determined by the Minister of Finance Regulation that has been released is influenced by legal cultural factors in the legal system theory. This is because if at the time the Minister of Finance Regulation comes into effect, there is an auction request that has been set for the auction schedule, then the auction will be conducted according to the provisions of the old legislation. Therefore, this legal culture is also interpreted as an atmosphere of social thought and social power that determines how the law is used, avoided, or misused.

Article 1 paragraph 1 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Regarding the Bidding Implementation Guidelines states that Auction is the sale of goods open to the public with a written and / or oral price offering that is increasing or decreasing to reach the highest price, which is preceded by Auction Announcement.¹⁸ Then every auction must be carried out by and / or in front of the auction official, meaning that if the auction is conducted without the presence of the auction official, this is included in the violation of the provisions of the auction rules.

¹⁵Results of an Interview with the Regional Office of the Directorate General of State Assets of Riau, West Sumatra and the Riau Islands namely Mr. Marlais, on 7 February 2019, at 2:00 PM

¹⁶Results of an Interview with the Office of State Assets and Auction Services in Pekanbaru City, namely Mr Lamrahman, on 7 February 2019, 11.00 AM

¹⁷Results of Interviews with Class II Auction Officers in Pekanbaru City, Mr. Khalidin, On 7 February 2019, 3:00 PM

¹⁸Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Regarding Directions for Bid Implementation, Article 1 paragraph 1

Whereas in Article 1 paragraph 1 of the Regulation of the Minister of Finance Number 113 / PMK.06 / 2019 concerning the Auction Hall it is stated that the Auction Hall is an Indonesian Legal Entity in the form of a Limited Liability Company (PT) specifically established to carry out business activities in the auction field.¹⁹The auction regulations in Indonesia still use the Dutch auction rules, namely the *Vendu Reglement Ordinance* dated April 1, 1908 No. 189 jo modified *Staatsblad* 1941 No. 3 and *Vendu Instructie Staatsblad* No. 190.

Keep in mind that auctions are different from the procurement of goods and services, or what is commonly called a tender. This can be seen from the definition of the auction auction of the State Auction Unit that the meaning of the auction is only for the sale of goods in public, while the auction for procurement of goods / services contracting projects / work that we are familiar with tenders is not included in the auction category.

In Article 79 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Concerning the Bidding Implementation Guidelines, it is stated that the payment of Auction Price and Auction Fee must be made in cash or cash or demand deposit no later than 5 (five) working days after the auction.²⁰ Whereas Article 80 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Concerning the Bidding Implementation Guidelines is stated:²¹

- (1) Repayment of Auction Payments by the Buyer is made through the KPKNL account or the Auction Hall or a special account in the name of the Class II Auction Officer or directly to the Treasurer of the KPKNL Acceptance / Class I Auction Officer / Auction Hall / Class II Auction Officer.
- (2) In the event that Repayment of Auction Payments by the Buyer is made by eek or demand deposit, the payment must have been received effectively at the KPKNL account or the Auction Hall or a special account in the name of the Class II Auction Officer position no later than 5 (five) working days after the auction.
- (3) Every Payment for Auction Payment by Buyer must be made a receipt or proof of payment by Treasurer of KPKNL Reception / Class I Auction Officer / Auction Hall / Class II Auction Officer.

2. Authority of Auction Centers in Pekanbaru City in the Application of Security Money in Non-Execution Auctions

The authority of auction centers in Pekanbaru City in applying bail in non-execution auctions, that is, the auction hall has the right to determine the amount of the security deposit which is the policy of the auction company company so that the tender hall participants understand it better. Every month the auction hall submits a report on the results of the auction to the Regional Office of the Directorate General of State Assets if it is not in accordance with established procedures, the Regional Office of the Directorate General of State Assets can cast a reprimand and if the security deposit does not comply with the Minister of Finance Regulation, the auction hall may be subject to the first warning, second, third and even the toughest sanctions are revocation of permits. And when there are problems that occur regarding the auction will be resolved through mediation first if there is no common ground then it will be resolved

¹⁹Regulation of the Minister of Finance Number 113 / PMK.06 / 2019 Regarding the Auction Center, Article 1 paragraph 1

²⁰Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Concerning Implementation Guidelines for Article Auction 79

²¹*Ibid.*, Article 80

by an alternative way of dispute resolution (arbitration) and general justice. Whereas the auction center that sets the security deposit is the seller.²²

According to the authors, the Auction Hall is an Indonesian legal entity in the form of a limited liability company (PT) specifically established to carry out business activities in the auction field. Its authority is to grant, freeze, or revoke operating licenses of auction centers, as well as to determine the formation of place of auction hall. This authority can be delegated as a mandate to the Director General (Dirjen) of the State Assets as the echelon I unit in charge. Meanwhile, the authority to grant permission to open a representative office of the auction hall, as well as permission to move addresses can be delegated as a mandate to the Director of Auction.

The theory of authority is used as the basis or basis of the authority of the auction hall in the application of security deposits in non-execution auctions, because the auction hall in carrying out its duties has the right to determine the security deposit as the seller. Therefore, the auction hall in carrying out its duties cannot be separated from the theory of authority, which contains rules regarding setting bail. Types of authority include bound and free authority. Whereas sources of authority include attribution, delegation and mandate.

Authority consists of at least three components, namely influence, legal basis, and legal conformity. The component of influence is intended, that the use of authority aims to control the behavior of legal subjects; the basic component of law is intended, that the authority must be based on clear law and the component of legal conformity requires that the authority must have clear standards (for general authority), and special standards (for certain types of authority).

Conclusion

Based on the description above, the conclusion drawn is as follows:

1. Determination of security deposits at non-execution auctions by auction centers in Pekanbaru, namely, there are many problems in the case of voluntary non-execution auctions, in this case, private auction centers, which often occur at auction centers regarding security deposit for the purchase of 1 (one) LOT, namely Rp. 5,000 000, - (five million rupiahs) as for unlimited LOT, which is Rp. 20. 000. 000, - (twenty million rupiah), this is very detrimental to bidders and can be canceled if anyone feels disadvantaged or objected because it is clear in the Civil Code Article 1320 of the Civil Code regarding the cause Halal, agreements must be made based on objectives that do not conflict with applicable law. Agreements made based on reasons that are not true or are prohibited from making such agreements become invalid.
2. And when there are problems that occur regarding the auction will be resolved through mediation first if there is no common ground then it will be resolved by an alternative way of dispute resolution (arbitration) and general justice. Whereas the auction center that sets the security deposit is the seller.

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Salim HS, Contract Law Theory & Technique of Contract Compilation, Sinar Grafika, Jakarta, 2003.

Rachmadi Usman, Auction Law, Sinar Grafika, Jakarta, 2016.

²²The results of an interview with those representing the Auction Hall, namely the JBA Auction Hall (Mrs. Nurul Hayati), on February 7, 2019, at 15.15 West Indonesia Time

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Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Regarding the Bidding Implementation Guidelines.

Regulation of the Minister of Finance Number 113 / PMK.06 / 2019 Regarding the Auction Hall.

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