

Analisis lelang hak menikmati barang dengan objek lelang berupa hak sewa menurut peraturan Direktur Jenderal Kekayaan Negara nomor 5/KN/2018 berdasarkan vendu reglement dan peraturan Menteri Keuangan nomor 27/PMK.06/2016 = The analysis auction of rights to utilize goods with lease rights as an auction objects according to regulation of the Director General of State Assets Management number 5/KN/2018 based on vendu reglement and Minister of Finance regulation number 27/PMK.06/2016

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Abstrak

Tesis ini membahas perkembangan lelang di Indonesia. Selama ini lelang di Indonesia identik dengan lelang penjualan putus dengan objek lelang berupa barang-barang berwujud atau bertubuh. Jadi, dalam jual beli lelang selalu terjadi peralihan kepemilikan atas objek lelang dari pihak penjual kepada pemenang lelang (pembeli). Namun demikian, perkembangan kebijakan pemerintah akhir-akhir ini menunjukkan adanya lelang tanpa peralihan kepemilikan atas objek lelang, yaitu lelang Hak Menikmati Barang. Pada akhir bulan Desember 2018, DJKN menerbitkan regulasi baru yaitu Peraturan Direktur Jenderal Kekayaan Negara Nomor 5 KN 2018 tentang Tata Cara Permohonan dan Dokumen Persyaratan Lelang dengan Objek Berupa Hak Menikmati Barang. Dengan diterbitkannya peraturan tersebut, pemerintah membuka kemungkinan pelaksanaan lelang atas Hak Menikmati Barang, seperti hak sewa. Pada pelaksanaan lelang ini tidak terjadi peralihan kepemilikan atas objek lelang. Lelang hanya digunakan untuk menentukan siapa yang akan ditunjuk sebagai penyewa. Berdasarkan uraian tersebut, permasalahan yang akan dibahas dalam tesis ini adalah bagaimana keabsahan pelaksanaan lelang Hak Menikmati Barang dengan objek lelang berupa hak sewa menurut Peraturan Direktur Jenderal Kekayaan Negara Nomor 5 KN 2018 ditinjau dari Vendu Reglement dan Peraturan Menteri Keuangan Nomor 27 PMK.06 2016 serta bagaimana penyesuaian isi Risalah Lelang pada lelang Hak Menikmati Barang dengan objek lelang berupa hak sewa. Penelitian ini merupakan penelitian yuridis normatif (normative law research) dengan metode analisis data kualitatif. Tipologi penelitian yang digunakan dalam penelitian ini adalah penelitian deskriptif. Dalam tesis ini penulis menemukan bahwa lelang Hak Menikmati Barang dengan objek lelang berupa hak sewa lebih sesuai dengan perjanjian sewa menyewa daripada perjanjian jual beli karena kepemilikan atas objek lelang tidak beralih. Lelang ini hanya mengalihkan hak untuk menikmati (menyewa) objek lelang untuk waktu tertentu. Penulis menyarankan agar Direktorat Lelang melakukan beberapa penyesuaian terhadap isi Risalah Lelang Hak Menikmati Barang antara lain di kutipan Risalah Lelang Hak Menikmati Barang dituliskan kalimat Diberikan Kutipan kepada Pemenang Lelang Hak Menikmati Barang sebagai Akta Hak Menikmati. Dikarenakan lelang Hak Menikmati Barang dengan objek lelang berupa hak sewa lebih mirip dengan esensi sewa menyewa maka adanya perjanjian sewa menyewa bukan merupakan keharusan namun hanya merupakan pilihan dari para pihak saja jika diperlukan.

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This thesis discusses the development of auctions in Indonesia. Until recently auctions were perceived as the sale of tangible objects. Thus, in auctions, there always be transfers of ownership of auctions objects from

sellers to purchasers. However, recent development of government policy shows the possibility of conducting auctions without transferring ownership of auction objects, namely auctions of the Right to Utilize Goods. At the end of December 2018, DJKN issued a new regulation, namely the Director General of State Assets Management Regulation Number 5 KN 2018 on the Request Procedure and Required Documents for Auction of the Right to Utilize Goods. With the enactment of this regulation, the government has opened the possibility of auctioning the rights to utilize goods, among others lease rights. In these auctions, there are no transfers of ownership of auction objects. Auctions are merely used to determine who the winners of the rights to utilize goods will be. Based on the aforementioned explanation, this thesis will analyze the legality of auctions of the rights to utilize goods, particularly the lease rights, governed by the Director General of State Assets Management Regulation Number 5 KN 2018 in the light of Auction Law (Vendu Reglement) and the Minister of Finance Regulation Number 27 PMK.06 2016 and the adjustment of the Auction Deed (Risalah Lelang) of auctions of the rights to utilize goods, particularly the lease rights. This research is a normative law research with qualitative data analysis methods. The typology used in this research is descriptive research. In this thesis the author found that the auction of the rights to utilize goods with lease rights as an auction objects is more likely a lease agreement than a sale purchase agreement because there is no transfer of ownership of auction objects. Auctions only transfer the rights to utilize (lease) auction objects for a certain time. The author suggested that the Directorate of Auctions make several adjustments to the contents of the Auction Deed for the rights to utilize goods, among others the addition of a phrase Given as an Excerpt of Auction Deed to the Highest Winning Bidder of the Rights to Utilize Goods as a Deed of Utilize Rights. Because the auction of the rights to utilize goods with lease rights as auction objects is similar to the essence of leasing, then the existence of a lease agreement is not a requirement but is only a choice of the parties if needed.