

The Renewal of the Indonesian Auction Regulation for Driving Economic Development in the Disruption Era: A Comparative Study of Indonesia and China

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Abstract

The objective of this study is to analyze the effectiveness of auction regulatory policies in Indonesia during the disruption era, focusing on the effectiveness of current auction regulations and the conception of auction regulation reforms to support the national economy. The main concepts and theories that underpin the research is the theory of economic analysis of law with an emphasis on the efficiency aspect of regulation. This normative legal research that focuses on exploring norms or rules within statutory regulations while considering the empirical facts related to their implementation. This descriptive-analytical research employed a statute approach, and a conceptual approach. Data collection was conducted through a literature study supported by field studies. The results were then analyzed qualitatively, and conclusions were drawn based on the deductive method. The research reveals that the effectiveness of Indonesia's auction regulations is not significant because they do not substantively meet the aspects of value, utility, and efficiency for fulfilling the community's needs related to auction transactions in the disruption era. Based on a comparison with China, the renewal of Indonesian auctions regulation in disruption era is directed to modernize and simplify the business process through digitalized auction process with large private sector involvement, so that auctions can develop more massively so that they can provide great benefits for society. This article is expected to be one of the references for regulators in formulating auction regulation in disruption era and a contribution of thought in the field of economic and business law as well as reference material for other researchers in conducting further research on auction law.

Keywords: Auction, Regulation, Disruption Era.

INTRODUCTION

Auctions are a sales instrument that has been known since the Roman Empire in 450 BC (Tista, 2013). In Indonesia, auctions began to be known since before its independence namely in the Vereenigde Oostindische Compagnie (VOC) or Dutch East India Company era,

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marked by the issuance of the Statuten van Batavia in 1642 as a guideline for VOC employee bureaucracy in organizing government affairs and social order in Batavia (Cribb, 2010). One of the parts of the regulations in the Statuten van Batavia is regarding vendumeester (auction officials) which includes, among other things, the text of the oath of appointment of auction officials (eed vor den vendumeester) (Chijs, 1885). As a sales instrument, auctions have been used in the trading practices of various commodities for diverse purposes (Krishna, 2002), and distributing very large values between buyers and sellers every day (Paseda O.A., 2021).

The main advantage of auctions lies in their open nature and the price competition among participants, which benefits the sellers. Polderman, as quoted in Soemitro, states that this advantage makes auctions the most profitable sales tool for sellers (Soemitro, 1987). According to Vickrey, auctions can encourage honest bidding because bidders have no incentive to bid higher than the true value of the auctioned item (Vickrey, 1961). Auctions are also believed to be a choice of pricing strategy that can increase efficiency, fairness, and privacy protection (J. Yu, S. Liu, Y. Zou, G. Wang and C. Hu, 2025). Milgrom also highlights that auctions are sales instruments capable of generating effective and efficient output and outcomes, thereby providing a great benefit to society (Milgrom, 2004).

Despite its advantages, auctions are inherently risky: bidders face uncertainty about their prospects of winning and payments, while sellers are unsure about revenue and chances of a successful sale (Vasserman and Watt, 2021). These risks can be minimized with proper auction design so that the auction becomes an efficient transaction with optimal results (Balcan, Prasad, & Sandholm, 2025).

Auctions play a significant role in Indonesia's economic development, serving private and public functions. The private function of auctions is to act as a market where sellers and buyers meet in auction transactions. In this context, auctions contribute to economic growth through goods distribution, facilitating sales transactions, and increasing sales transactions. Meanwhile, the auction's public function is to resolve legal issues, secure state-owned/controlled assets, and support the collection of state revenue (taxes and non-taxes). In this context, auctions provide sales services for collateral objects, confiscated/forfeited state goods, and state-owned/controlled goods, as well as increase state revenue from tax and non-tax income.

In the Indonesian economy, auctions are used as instruments for the sale of mandatory and voluntary goods. Mandatory auctions mean that goods can only be sold through an auction. According to Auction Implementation Guidelines Pub. L. No. 122 (2023), mandatory auctions include auctions to execute sales of goods based on court decisions/orders or documents with the same legal force as court decisions/orders (referred to as execution auctions) and auctions to execute sales of goods based on provisions of laws and regulations (referred to as non-execution auctions). Examples of execution auctions

include auctions of court-seized goods, state-confiscated goods, or financial institution credit collateral. Examples of non-execution auctions include auctions of state/regional government-owned goods or auctions of goods owned by *sui generis* institutions. Voluntary auctions mean that the auction is conducted with the willingness of the goods' owner even though they have no obligation to sell through auctions. Examples of voluntary auctions include auctions of the privately owned goods of individuals and legal entities.

In positive Indonesian law, the highest regulation governing auctions is found in the *Vendu Reglement Staatsblad* 1908 Number 189. According to Usman (2015), "the concept of auction transactions in the *Vendu Reglement* is that of physical transactions." At the practical level, there must be a physical presence of sellers, buyers, and auction officials in the auction process, as are the documents related to the auction transaction. Meanwhile, in the current disruption era, sales and purchase transaction patterns have shifted to electronic transactions conducted without face-to-face interaction (faceless trading) due to the support of internet-based digital technology. Keraf (2005) states that such transactions are commonly known as electronic contracts or electronic commerce (e-commerce) (Keraf, 2005). Electronic transactions are characterized by their cost-efficiency and ability to be conducted without demographic boundaries (borderless). These benefits shorten the distribution chain, making transactions easier to make. The biggest advantage from the consumer viewpoint is that it improves dramatically and saves lots of time and convenient to access from everywhere in the world (Jain, Malviya, & Arya, 2021).

Auction transactions' limitation to physical transaction patterns contributes to its slow development, as seen from the relatively small annual increase in auction transaction values compared to the potential of aggregate transactions. Based on the 2024 DJKN Annual Report, the total principal value of auction transactions was Rp 48 trillion. Meanwhile, in 2019, it was recorded at Rp 27 trillion. Thus, the aggregate increase over five years was Rp 21 trillion, or an average of Rp 4 trillion per year. Conversely, sales and purchase transactions using electronic transaction methods have rapidly developed. According to the 2020 Bank Indonesia data, electronic trade transactions in 2017 were recorded at Rp 42.2 trillion and were recorded at Rp 266.3 trillion in 2020, representing an increase of more than 500% in five years. The Indonesian Ministry of Trade (2020) predicts that the value of electronic trade transactions (e-commerce) in Indonesia could reach Rp 1,098 trillion by 2030.

Data on the development of auction transactions conducted by physical transactions and sales and purchase transactions conducted through electronic transactions indicate a gap between the two. When linked to the role of auctions in the national economy, this condition raises issues regarding the less-than-optimal contribution of auctions to the national economy and the existence of auctions as a sales and purchase instrument, given the disruptive nature of electronic

transactions compared to physical transactions in the disruption era. Therefore, this research explores the central theme of Indonesian auction regulatory policies in supporting national economic development in the disruption era with a comparative study of China. In this regard, it is necessary to find answers to the following problems: firstly, the effectiveness of current Indonesian auction regulations in supporting the national economy, secondly, auctions in China's national economic activities, and thirdly, the conception of auction regulation reforms to support the national economy in the disruption era.

THEORETICAL FRAMEWORK

Auctions in Indonesian Positive Law

In the Legal Dictionary, an auction is defined as a public sale with competitive bidding led by an Auctioneer (Hamzah, 1986). A similar definition is found in Black's Law Dictionary, which defines an auction as a public sale of property to the highest bidder by a person licensed or authorized for that purpose (Black, 1990).

In addition to dictionary definitions, there are several definitions of auctions by experts, as follows: a) Polderman, as quoted by Dhaniarto, states that auctions are a tool for creating the most profitable agreements or contracts for the seller by gathering interested parties (Dhaniarto, 2021); b) Roell, as quoted by Soemitro, defines auctions as a series of events that occur from the moment someone intends to sell one or more goods, either personally or through their representative, to the moment the opportunity for those present to bid on the offered goods until the opportunity ceases (Soemitro, 1987); c) Soemitro defines auctions as the public sale of goods preceded by an announcement, whether due to voluntary desire or a court decision, and conducted at a specific time and place through a special bidding process, where the auction is led or witnessed by an auctioneer, and the highest bidder is considered the buyer (Soemitro, 1987); d) Sianturi defines auctions as the public sale of goods preceded by efforts to gather interested parties through announcements made by and/or in the presence of an auction official, achieving an optimal price through oral or written bidding, done in either ascending or descending order (Sianturi, 2013); d) Dhaniarto defines auctions as a tool to create agreements using a price competition mechanism as the primary criterion for determining the auction winner, preceded by efforts to gather interested parties/auction participants (Dhaniarto, 2021); e) McAfee and McMillan describe auctions as a market institution with a set of explicit bidding rules that determine the allocation of resources and prices based on bids from market participants (McAfee and McMillan, 1987); f) Krishna defines an auction as a process of buying and selling goods or services with increasing bids, taking offers, and then selling the goods to the highest bidder (Krishna, 2002); and g) Milgrom states that an auction is a market (market of auction) that describes the reaction of bidders/buyers (bidder/buyer-multiple bids) to

the offering of auction objects from sellers (seller-multiple offers), with distinctive characteristics in creating the highest selling value (Milgrom, 2004).

Indonesian positive law adopts the concept of auctions as legal acts of selling goods, as stipulated in Article 1 of the *Vendu Reglement*. The recognition of auctions as a legal act is also adopted in land registration regulations under Government Regulation Number 24 of 1997 concerning Land Registration, as amended by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Condominium Units, and Land Registration. Based on that regulation, auctions are equated with sales, exchanges, grants, contributions (*inbrenng*), and other legal acts of transferring land rights.

Based on the above definitions, auctions have the following limitations: a) An auction is a legal act related to the sale of goods. Thus, it is materially governed by the sales law regulated in Article 1457 of the Indonesian Civil Code (KUH Perdata); b) It is open to the public, meaning that anyone can participate in the auction if they meet the specified requirements and are not prohibited by statutory regulations; c) It has a unique price formation mechanism through competitive bidding as the basis for forming a price agreement; and d) There is a pre-auction publication as an effort to gather interested parties.

When related to the provisions of sales in the Indonesian Civil Code, auctions have the following characteristics: a) It is a reciprocal agreement in which one party (the seller) promises to transfer ownership of an item, while the other party (the buyer) promises to pay a price consisting of a sum of money as consideration for acquiring that ownership (Subekti, 2014); b) The sales agreement occurs when the highest bidder is declared the auction winner, at which point the agreement is also born (the consensual nature of the sale based on the provisions of Article 1320 in conjunction with Article 1338 paragraph (1) of the Indonesian Civil Code); c) It is an obligatory agreement, meaning that the agreement in the auction only establishes reciprocal rights and obligations between the two parties (Subekti, 2014); d) There are two parties in the auction, namely the seller who transfers ownership of the goods and the buyer who pays the price of the goods (Muhammad, 2000); and e) Goods and a price are the essential elements of an auction.

The Auction Business Process and Its Development

An auction process can be broadly described in the following stages the initiation of an auction process begins with a formal request submitted by the seller to the auctioneer. This requirement is stipulated in Article 5 paragraph (1) of the **Vendu Reglement**, which establishes that the intention to carry out the legal act of selling through a public auction must originate from the seller. In accordance with advancements in digital technology, such requests may now be submitted electronically through an auction application, wherein the required documents can be uploaded online. Nevertheless, the seller is

still obligated to provide the physical copies of all required auction documents to the auctioneer. This procedure indicates that, despite technological integration, the legal foundation of the auction request process remains dependent on physical documentation, highlighting the enduring relevance of traditional legal formalities in auction administration.

Once the auction request has been approved, the auctioneer proceeds with conducting the auction at a designated time. During the auction, both the seller and the auction participants are expected to be physically present at the auction venue before the auctioneer. The auctioneer supervises the bidding process and formally declares the highest bidder as the purchaser of the goods. However, in response to technological progress, participants may now place their bids remotely via an online auction application, which allows them to participate without being physically present. Despite this innovation, the presence of both the auctioneer and the seller at the auction venue remains mandatory. This reflects a hybrid approach that combines digital convenience with procedural compliance in maintaining the auction's legal integrity.

Following the completion of the auction, the auctioneer is responsible for preparing the auction minutes, which serve as an official record of the auction proceedings. These minutes constitute an authentic deed with full evidentiary value, as prescribed in Article 35 and Articles 37 to 43 of the **Vendu Reglement**. The preparation and recording of these minutes continue to rely on physical documentation, reinforcing the legal significance of tangible records in ensuring the authenticity and formal validity of the auction. Thus, while digital tools facilitate certain aspects of the auction process, the documentation of its legal outcome remains rooted in conventional methods that uphold evidentiary standards.

Upon the conclusion of the auction and the issuance of the auction minutes, the buyer is obligated to complete full payment of the auction price. According to the prevailing regulations, the buyer is granted a maximum of five working days from the date of the auction to make the payment in full. However, under certain specified conditions, this period may be extended. The payment stage represents the final phase in the auction process, signifying the completion of the transaction between the buyer and the seller. This phase underscores the role of structured timelines and legal certainty in ensuring that the auction process concludes in a timely and orderly manner, consistent with the principles of legal certainty and enforceability within the auction framework.

Electronic Transactions as a Sales Transaction Pattern in the Disruption Era

As previously described, buying and selling have evolved from physical transactions to electronic transactions. This evolution is triggered by information and communication technology which is able

to change business models and entrepreneurial ecosystems of various economic activities (Song, *et al.*, 2022). Electronic transactions began to be widely used in the 2000s with the rise of e-commerce. When linked with the industrial revolution, the year 2000 marks the industry 4.0 era, also known as the digital and internet era. According to Dara Sawitri (2019), the industry 4.0 Era focuses on developing the digital world and the Internet (Internet of Things/IoT), Big Data, Enterprise Resource Planning (ERP), Cyber-Physical Systems, Artificial Intelligence, and cloud computing. Quoted from Herwantono *et al* (2023), Industry 4.0 has a very significant impact on various fields such as maritime critical infrastructure (Igielski, 2022), food industry (Hassoun, *et al* 2023), production (Zafer & Vardarlier, 2021), sustainable manufacturing (González, *et al.*, 2022), and warehousing (Ali & Phan, 2022). Ramli and Ramli (2022) also stated that the industry 4.0 Era represents an extraordinary leap from previous industrial revolutions with the discovery of advanced telecommunications technology, which fostered the birth of cyber-physical life (Ramli and Ramli, 2022).

Furthermore, Ramli and Ramli (2022) stated that we are currently transitioning from the industry 4.0 Era to the Industry 5.0 Era with the concept of Society 5.0, which was pioneered by Japan in 2019 (Ramli and Ramli). Jardine (2020) stated that Industry 5.0 refers to people working collaboratively with robots and smart machines that can help humans work better and faster by utilizing advanced technologies, such as the Internet of Things (IoT) and big data. This fact indicates the role of humans in the automation and efficiency pillars of Industry 4.0. Meanwhile, society 5.0 is a concept that allows humanity to use modern technology-based science, such as AI and robots, to fulfill needs and simplify life. It is not significantly different from the previous concept. The only difference lies in the focus of development, as Industry 4.0 focused on technological aspects and Society 5.0 focuses on the human aspect.

Additionally, the discovery of telecommunications technology in the industry 4.0 Era, which continued to develop in the industry 5.0 Era, accelerated the development of 4G technology, supporting a massive digital economic ecosystem and giving rise to various economic, social, and cultural activities never predicted. This phenomenon was unprecedented because the highly advanced innovations and developments in digital technology have fundamentally changed people's views and behaviors towards markets, industries, cultures, and the various processes within them. Pavaloaia and Necula stated that the disruptive effects of digital technology have changed the way people interact in the corporate, consumer and professional sectors (Pāvāloaia & Necula, 2023). Such changes were triggered by the internet, as it increased accessibility, making the world seem borderless.

Christensen, as quoted by Ohoitmur (2018), describes this condition as disruption. However, this disruptive innovation is beneficial because it can simplify a previously complex and expensive product into a high-quality, attractive, and affordable product. Kasali

also describes disruption as an opportunity for innovation and states that disruption has replaced old technologies that require full physical involvement with internet-based digital technology, resulting in something entirely new, more efficient, and more beneficial (Kasali, 2017). Examples of disruption in everyday life include voice call and video call services on the WhatsApp messaging application. Applications like Whatsapp have disrupted voice and SMS services from telecommunications operators. Another example of disruption in the field of buying and selling is the electronic purchase of goods through e-commerce, which disrupted physical purchases in stores/malls.

Based on the opinions of Christensen and Kasali, the disruption era is a period where technological developments drive massive and rapid innovations and changes by transforming various systems and structures into new, more efficient, and productive ways. This era began with the industry 4.0 Era and continues into the current Industry 5.0 Era. In the disruption era, most buying and selling transactions are conducted electronically through the internet (IoT) and artificial intelligence (AI), which creates ease, efficiency, and high transaction productivity.

Economic Analysis of the Law Theory as the Basis for Auction Regulation Policy Analysis

Atmasasmita, quoting Kusumaatmadja, mentions the inevitability of change in developing societies (Atmasasmita, 2019). Therefore, it is the function of law to ensure this change occurs in an orderly manner. Moreover, good laws align with the values prevailing in society (the living law). Thus, good laws are laws that effectively fulfill societal needs.

Posner suggests that economic science can expand the scope of the law by analyzing its effectiveness in fulfilling societal needs (Posner, 2011). This statement is based on the idea that humans are economic beings (*homo economicus*), meaning that in taking action to fulfill their needs, they consistently prioritize economic value. Economic reasoning and considerations are always used to determine rational choices to obtain economic satisfaction and increase prosperity (wealth maximization). Based on this idea, Sugianto (2013) said that people are rational beings who employ rationality to increase their living quality (rational maximizers).

Based on this rationality, people will choose the best option that they believe will provide results that satisfy their needs or obtain more than their needs. In addition to choosing the best option, humans always seek the next best alternative, which is also limited. The concept of rational choice cannot be separated from the concept of scarcity. Scarcity forces individuals to make the best choices that can satisfy their needs. According to Domminick (2003), this concept is consistent with classical economic theory, which states that everyone desires more than what is available to satisfy themselves.

Therefore, Posner introduced the Economic Analysis of Law Theory to analyze how law functions and understand the satisfaction and maximization of happiness resulting from the existence of law. According to Sugianto, Posner's theory is based on Bentham's Utilitarianism Theory, as expressed in the axiom 'the greatest happiness principle,' which essentially states, 'It is the greatest happiness of the greatest number that is the measure of right and wrong.' (Sugianto, 2013). Quoting Atmasasmita, Posner's theory is the extension of Roscoe Pound's theory, which emphasizes a sociological view of law with the concept of 'law as social engineering' (Atmasasmita, 2019). Both Bentham and Pound were proponents of the sociological jurisprudence school, a shift from the legal positivism school.

Posner's theory is constructed using economic considerations and includes the element of justice so that it can be approached with economic standards based on three fundamental elements:

1. Value Aspect

According to Posner, value can be defined as something significant. It is a desire or aspiration towards something, which can be monetary or non-monetary. Thus, an inherent characteristic of value is people's self-interest to achieve satisfaction. The economic value of something can be seen from people's desire for it and the effort humans make to obtain it, whether through money, actions, or other contributions (Sugianto, 2013).

When deciding on a value, people always look for strategies to maximize their wealth and boost their prosperity. According to economic theory, a person's wealth is the sum of their assets, skills, and abilities. Posner defines wealth as all goods (tangible and intangible) and services, measured by two types of value: offer value (what people want to obtain for goods they do not yet possess) and demand value (what people demand to relinquish goods they do not yet have). Meanwhile, maximization is choosing the best alternative from limited choices.

2. Efficiency Aspect

The concept of efficiency is always associated with savings related to the economic value of a good and/or service. The theory associated with efficiency emphasizes utility, referring to the relationship between the overall benefits of a situation and the overall expenditures of that situation (Polinsky, 1989). According to Cooter and Ullen, a product is considered efficient if its quality, capacity, or ability to produce the desired results consistently has utility and is targeted appropriately (Cooter and Ullen, 2004).

Sugianto states that the concept of efficiency in the Economic Analysis of Law generally adopts Pareto Efficiency and Kaldor-Hicks Efficiency (Sugianto, 2013). Pareto Efficiency is Vilfredo Pareto's concept of efficiency, which focuses on achieving individual satisfaction, meaning that an event can generate efficiency if it makes all parties involved better off or, at the very

least, does not make any party worse off. According to Pareto, there are two concepts of efficiency: Pareto Superiority and Pareto Optimality. Pareto Superiority refers to an economic situation where an exchange will benefit someone and disadvantage no one (Cooter and Ullen, 2004). Meanwhile, Pareto Optimality is the economic situation in which no person can be made better off without making someone else worse off (Garner, 2004). Kaldor-Hicks Efficiency states that a situation is considered efficient if it results from an exchange of resource allocation that benefits the winner. A winner is a person who gains more by obtaining benefits from the exchange, not by exploiting or harming other parties (Sugianto, 2013). The implementation of the efficiency concept in the Economic Analysis of Law is based on the principle of serving the greatest number of interests with the least possible sacrifice of others' interests.

3. Utility Aspect

According to Posner, utility can be assessed by its capacity to generate beneficial and meritorious advantages (Posner, 2011). Cooter and Ulen posit that utility represents the benefits derived from decision-making among alternative uses (Cooter and Ullen, 2004, p.17).

Among these three fundamental elements, Posner's primary focus lies on efficiency in explaining the law. He defines efficiency as the exploitation of economic resources to maximize human satisfaction, measured by aggregate consumer willingness to pay for goods and services (“...*exploiting economic resources in such a way than human satisfaction as measured by aggregate consumer willingness to pay for goods and services is maximized*”). This pursuit of efficiency is considered an endeavor to enhance wealth maximization (Sugianto, 2013).

Beyond analyzing the effectiveness of law in serving societal needs, Posner's theory can also be employed to formulate new regulatory principles.

METHOD

This study is normative legal research that examines and analyzes the legal norms established by authorized officials (Salim and Nurbani, 2013). This research aims to analyze the law based on questions arising from the facts of a case (Putman, 2004). This descriptive-analytical study employed methods such as the statute approach and the conceptual approach (Marzuki, 2009). The statutory approach is carried out by examining the *Vendu Reglement* as the basic regulation of Indonesian auctions, while the conceptual approach refers to the concept of transactions in disruption era. Data collection was conducted through a literature study and field studies. The results were then analyzed qualitatively, and the conclusions were drawn based on the deductive method (Sudarmayanti and Hidayat, 2002). After the data were collected, selected, classified, and arranged in a narrative form, the

processed data were then compiled into a scientific work (Soekanto, 2008).

RESULTS AND DISCUSSION

The Effectiveness of The Enactment of Auction Regulation Norms

The effectiveness of the *Vendu Regulation's* standards in addressing several societal problems associated with auction transactions in the disruption era is examined from the following aspects to obtain a general idea of the regulatory efficacy of auctions in Indonesia:

1. Value Aspect

The *Vendu Reglement* is a legacy law from the Dutch colonial government intended to complement various statutory regulations of the Dutch East Indies, such as the *Burgerlijk Wetboek voor Indonesie* (Civil Code for Indonesia) Stb. 1847 Number 23, *Failissement Verordening* (Bankruptcy Regulation) Stb. 1905 Number 127 Juncto Stb. 1906 Number 348, *Het Hirziene Indonesisch Reglement* (Revised Indonesian Regulation) Stb. 1926 Number 559 Juncto Stb. 1941 Number 44, *Reglement tot regeling van het Rechtswezen in de Gewesten Buiten Java en Madura* (Procedural Law Regulation for Regions Outside Java and Madura) Stb. 1927 Number 227. After Indonesia's independence, the *Vendu Reglement* remained enforced based on the concordance principle stated in the provisions of Article I of the Transitional Rules of the 1945 Constitution (Fourth Amendment of 2002).

After independence, there were also various statutory regulations mandating sales through auctions, such as the sale of tax-seized goods in Article 25 of Law Number 19 of 1997 concerning Tax Collection with Compulsory Letters, the sale of PUPN-seized goods in Article 11 of Law Number 49 Prp of 1960 concerning the State Receivables Management Committee (PUPN), the sale of confiscated goods in Article 273 paragraph (3) of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), the sale of mortgage objects in Article 20 of Law Number 4 of 1996 concerning Mortgage Rights, the sale of fiduciary guarantee objects in Article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantees, and the sale of bankruptcy assets in Article 185 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

The *Vendu Reglement* was created based on Western legal values adopted by the Dutch colonial government to complement statutory regulations established by the Dutch colonial government and the societal development needs at that time. However, the Western legal values used as a reference and basis for auction regulation in the *Vendu Reglement* are not aligned with Indonesia's national legal values based on the Pancasila philosophy. Similarly, the socio-community values at the time of the *Vendu Reglement's* promulgation are no longer in line with current societal and technological developments.

Based on the rationality concept, people will obey the law if they estimate they can obtain greater benefits following it than violating it, and vice versa. This is because, rationally, humans will determine their choices towards more advantageous, monetary, and non-monetary alternatives that can satisfy their needs. The auction regulation in the *Vendu Reglement*, which no longer aligns with the values developing in society today, causes people to abandon it or even violate it because its norms cannot function optimally in addressing the development of societal needs to improve their welfare. Therefore, the auction regulation in the *Vendu Reglement* no longer has significant value in efforts to increase personal satisfaction or community prosperity (wealth maximization).

2. Utility Aspect

The legal policy of auction regulation in the *Vendu Reglement* focuses on the sale of goods based on court decisions (judicial auction). This is evident in Article 5 Paragraph (3) of the *Vendu Reglement*, which states that if there are many requests for sales on one day that exceed what can be accommodated, then those requests are considered according to time. However, sales based on the execution of court decisions regarding the assets of absentees are prioritized.

Ideally, auction regulation as a sales instrument should accommodate all types of goods for sale through auctions. However, the *Vendu Reglement* explicitly stipulates that the sale of goods based on court decisions (execution auctions) is prioritized. This condition causes the development of auctions in Indonesia to be slow because it does not adequately accommodate the potential sale of privately owned goods that are unrelated to court decisions. Thus, the current implementation of auctions relies more heavily on auctions conducted by government agencies (State Assets and Auction Service Office/KPKNL) to resolve legal issues. Private sector participation in auction organizations is still limited in terms of auction organizers and auctioned goods, hindering auction development.

Based on Posner's theory, the auction regulation in the *Vendu Reglement* does not have optimal utility or benefit for society because it cannot generate more beneficial and meritorious gains that can increase personal satisfaction or enhance community prosperity (wealth maximization). Additionally, following the concept of human rationality, under such conditions, the norms of the *Vendu Reglement* tend to be abandoned or violated because they do not provide maximum benefits for fulfilling human needs and happiness.

3. Efficiency Aspect

The efficiency aspect of the auction regulation in the *Vendu Reglement* can be seen from its implementation as follows:

a. Physical Transaction-Based Auction Patterns

The regulation and implementation of auctions in Indonesia are officially recorded as starting in 1908—coinciding with the Industrial Revolution 2.0 before the invention of computers or internet technology. Therefore, it is logical to conclude that the regulations concerning auction transaction patterns are based on

physical transactions. The digitalization efforts for auctions through internet technology resulted in the PMK 90/PMK.06/2016. However, this regulation is partial. Thus, in reality, auction transaction patterns remain a physical transaction.

This condition results in auction transactions requiring considerable costs, done locally, and demanding significant effort. This pattern is inversely proportional to the development of buying and selling transaction patterns, which have significantly changed along with the Industrial Revolution. Currently, buying and selling transactions are conducted electronically through cyberspace, making them easier, faster, and cheaper while still prioritizing security and legal certainty in transactions.

According to Cooter and Ullen, a product is considered efficient if its quality, capacity, production power, and ability to produce desired results consistently are useful and on target, which can use the Pareto or Kaldor-Hicks efficiency concepts. Based on the Pareto and Kaldor-Hicks efficiency concepts, physical transaction patterns in auctions result in inefficient conditions because they do not support the achievement of satisfaction for the parties involved in the auction in the sense that they cannot create better transactions, or there is no optimal benefit for the parties involved from the resources expended. Thus, from an Economic Analysis of Law Theory perspective, physical transaction regulations for auctions are inefficient because they do not provide maximum benefits or advantages for the parties involved in auction implementation.

b. Physical Document-Based Auction Transactions

Although auction implementation has utilized internet support since 2017, auction transactions still fundamentally use physical transaction patterns in that the documents related to auction transactions, such as the auction requirement documents from the seller, participation documents from auction participants, and auction minutes prepared by the auction official, are still in physical form. In the disruption era, which allows the use of technology to support the ease of human activities, the use of physical documents does not provide significant added value to efforts to streamline services. Creating and storing physical documents require significant costs and effort, limited storage space, and prone to forgery. This condition indicates that all efforts made do not provide maximum satisfaction for the community. Additionally, based on the Kaldor-Hicks Efficiency concept, this condition does not reflect efficiency because the existing regulations do not generate more benefits for the parties involved in auction implementation than the costs incurred.

c. The sanctions for violations of auction provisions are very lenient.

Article 1a paragraph (1) of the *Vendu Reglement* stipulates that public sales may not be conducted except in front of an

auctioneer. This regulation forms the basis for the absolute authority of auctioneers as the sole public officials authorized to lead and conduct auctions. The logical consequence of this regulation is that public sales conducted by parties other than auctioneers violate norms and categorized as criminal offenses with fines as sanctions.

These fines are regulated in Article 1a paragraph (3) of the *Vendu Reglement* with a nominal value of 10,000 (ten thousand) guildens. Subsequently, based on Government Regulation in Lieu of Law Number 18 of 1960 (State Gazette Number 52 of 1960) concerning Amendments to the Number of Fines in the Criminal Code and Other Criminal Provisions Issued Before August 17, 1945, the fines in the *Vendu Reglement* became Rp 150,000.00.

Nowadays, the sanctions in the *Vendu Reglement* appear very lenient, so they do not create a deterrent effect. In comparison, the effort the state must make to prosecute violations of norms and impose fines will be greater than the value of the fines themselves. The result is that law enforcement related to auctions does not run effectively. Additionally, the *Vendu Reglement* does not regulate procedures for imposing sanctions, making enforcement difficult.

Referring to the concept of rational choice in the Economic Analysis of Law Theory, people tend to obey the law if they estimate they can obtain maximum benefits, and vice versa. Based on this concept, people will obey auction regulations if they believe compliance with the norms will bring maximum benefits. Conversely, if they believe that the current norms cannot satisfy their needs, they will rationally tend to abandon those norms.

Therefore, the effectiveness of the auction regulatory norms in the *Vendu Reglement* does not have significant value, resulting in regulatory obsolescence because they cannot serve society's current legal interests and needs. This condition causes auction transactions to be ineffective and inefficient, as the existing auction regulations cannot serve as a leitmotif to drive societal change in following sales and purchase transaction patterns in the disruption era. As the *Vendu Reglement's* regulations are ineffective at meeting society's needs, they are also essentially unresponsive to future demands. This suggests that in the future, the *Vendu Reglement* will not be able to meet society's changing needs regarding auction transactions.

Auctions in China's National Economic Activities

Auctions in China are regulated by Law Number 70 of 1996, as amended in 2004 and 2015 (China Justice Observer, 2023). According to China Association of Auctioneers (2023), the categorization of auctions in China is similar to Indonesia, which categorizes auctions into mandatory auctions (judicial auctions) and voluntary auctions. In China, auctions are conducted entirely by the private sector, including auctioneers. These events are supervised by the Chinese Association of

Auctioneers, a non-governmental organization comprising representatives from the government and auction houses.

In China, electronic transactions have become the norm for all kinds of auctions. Taobao (<https://sf.taobao.com>) is one of the private auction firms in China that offers a C2C platform for auction implementation. Taobao offers execution auction items (judicial auctions) and voluntary auctions. Chenyang Zhang (2023) stated that judicial online auctions through Taobao have been conducted since 2015 as the government's response to criticism regarding the transparency of judicial auction sales conducted through courts. Currently, almost all courts in China use the Taobao platform to sell their seized goods (Global Times, 2015). Even the Supreme People's Court plans to mandate that judicial auctions be conducted online.

The use of electronic transactions in auctions in China has a positive impact on judicial auction sales. Thus, Taobao has assisted in recovering non-performing loan (NPL) values of financial institutions in China through judicial auction sales.

Some similarities between Indonesian and Chinese auctions are as follows:

1. The auction rules are carried out in special law,
2. Auction categorization includes mandatory auctions and voluntary auctions,
3. The existence of public officials who have monopolistic rights regarding the validity of the auction (auctioneer).

Some of the differences between the two are as follows:

1. Private involvement in organizing auctions in Indonesia is still limited, while in China all auction implementation has been handed over to the private sector,
2. The use of information technology to support auction transactions in China has been integrated with various service user needs and pays attention to the fulfillment of User Interface/User Experience (UI/UX), while in Indonesia this is still limited,
3. Auctions provide optimal contributions to the Chinese economy, while the contribution of auctions to the Indonesian economy is not yet optimal.

The Concept of Renewal of Auction Regulation to Support the National Economy in The Disruption Era

The *Vendu Reglement*, as the foundational regulation for auctions, was enacted in 1908, coinciding with the industry 2.0 era, where sales and purchase transactions were still primarily physical. In the disruption era, sales and purchase transaction patterns have rapidly evolved towards electronic transactions conducted in cyberspace. However, the *Vendu Reglement* has not accommodated electronic transaction patterns for auctions, resulting in slow auction development and a significant lag in general sales and purchases. This slow development occurs because the *Vendu Reglement* fails to address

society's current and future problems regarding auction transactions, leading to its norms being abandoned or violated. A further consequence is that auctions do not optimally support the national economy.

This situation requires the Indonesian government to reform auction regulations by redefining the basic concept of auction regulation to align with society's evolving needs in the disruption era, aiming to achieve ease, speed, and efficiency in transactions. According to Emirzon, such regulatory reform has a dual role: breaking free from the shackles of colonial legal structures and simultaneously driving economic development to enhance societal welfare (Emirzon, 2021). The massive development of digital technology in the disruption era presents a timely opportunity to reform auction regulations in Indonesia to support national development success. This action aligns with Friedman's view that one stimulus for legal change is the development of knowledge and technology, which creates new forms in specific legal fields (Friedman, 1972).

The reform of Indonesia's auction regulations must consider the following fundamental principles in Posner's theory:

1. Value Aspect

The reform of auction regulations must reflect Indonesian society's social values and interests by upholding Pancasila values, especially humanitarian and social justice values. Society's social values and interests in the current disruption era are closely aligned with the use of digital technology to support the ease of fulfilling their needs. Therefore, in formulating the concept of auction regulation reform, it is necessary to accommodate the optimal utilization of Internet technology to support the auction process.

2. Utility Aspect

The reform of auction regulations should be intended as an effort to renew national legal products to replace the *Vendu Reglement* as a colonial statutory regulation, support national economic development, create investment certainty, especially legal enforcement, and protection to support ease of doing business and eliminate the possibility of collusion, corruption, and nepotism.

3. Efficiency Aspect

The reform of auction regulations must be able to realize efficiency in the auction process so that it can meet society's legal needs in accordance with current and future developments.

Considering the social conditions of society in the disruption era, which heavily utilizes digital technology support in its activities, the reform of auction regulations must be directed towards realizing a digital auction ecosystem as part of the digital economy ecosystem in national development. Thus, auctions must be developed into a modern, simple, easy, transparent, accountable, fair, and legally clear sales and

purchase instrument. The direction of the reformed auction regulation must have the following aims:

1. To make auctions a modern, simple, easy, objective, and safe sales and purchase instrument for the prosperity of society, through:
 - a. Modernizing the auction business processes,
 - b. Simplifying auction business processes,
 - c. Delegating auction activities to the private sector.
2. Optimize technology utilization to support auction transactions in the digital auction ecosystem, through:
 - a. Digitalizing auction business processes based on electronic transactions,
 - b. Digitalizing auction transaction documents,
 - c. Using electronic signatures in auctions.
3. Ensure transparency, accountability, legal certainty, and legal protection in auction transactions through:
 - a. Legal certainty of auction transactions,
 - b. Strengthening legal protection for parties involved in auctions,
 - c. Applying strict sanctions in law enforcement.

Based on the above regulatory direction, the reform of auction regulations is focused on developing a digitalized auction process. Therefore, all stages of the auction process are conducted electronically through cyberspace. The conceptual framework for the digitalized auction process is as follows:

1. Auction transactions are conducted electronically through cyberspace using an electronic system.

Although conducted through cyberspace, electronically conducted auction transactions remain valid, constitute real legal acts, and are binding on the parties involved. This follows Article 11 of the UNCITRAL Model Law on Electronic Commerce, which states that contract formation through e-commerce is valid and enforceable. In positive Indonesian law, this has been explicitly regulated in Article 18 paragraph (1) of Law Number 11/2008 concerning Electronic Information and Transactions, as amended several times, most recently by Law Number 1/2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), which states that electronic transactions embodied in electronic contracts are binding on the parties.

2. Documents related to auction transactions are created as electronic documents.

The following documents related to auction transactions are created electronically:

- a. Auction request letters along with auction requirement documents, which must be fulfilled by the seller,
- b. Participation documents, which must be fulfilled by auction participants, and

- c. Auction implementation documents are in the form of auction minutes, which are created by the auctioneer.

Quoting Adolf, electronic documents have the same legal force as physical documents based on the functional equivalence approach in Model Law (Adolf, 2013). In positive law, this has been accommodated in Article 5 of the ITE Law, which regulates that electronic information and/or electronic documents and/or their printouts are valid legal evidence. The authenticity and validity of electronic documents related to auction transactions are authenticated with electronic signatures. Article 3 of the UNCITRAL Model Law on Electronic Signatures 2001 states electronic signatures are acknowledged as having the same legal power as traditional signatures. These provisions have also been adopted in Article 11, paragraph (1) of the ITE Law and Article 59, paragraph (3) of Government Regulation Number 71/2019 concerning the Implementation of Electronic Transaction Systems (PP PSTE).

3. Auction announcements are conducted electronically through the electronic system used.

Auction announcements are a mandatory step to fulfill the principles of transparency and accountability. In a digitalized auction process, auction announcements are conducted in an integrated manner through the electronic system used for the auction process. However, to broaden the reach of information, auction announcements can also be made through other media outside the electronic system used for auctions.

4. The presence of sellers, auction participants, and auctioneers can be physical or virtual (hybrid).

Parties involved in auction implementation are fundamentally required to be present to conduct the legal act of sales and purchases through auction. However, with the support of digital technology, this presence can be physical or virtual.

5. Facilitation of first-stage dispute resolution online through the electronic system.

As a civil agreement, disputes between parties in an auction are possible. According to Fakhriah, fundamentally, the easiest dispute resolution is self-resolution by the disputing parties, either through negotiation or with the assistance of a third party as a mediator. For electronic transactions, dispute resolution can use online dispute resolution (ODR) mechanisms, including litigation and non-litigation methods (Fakhriah, 2021). In a digitalized auction process, first-stage dispute resolution must be facilitated online through the electronic system. In practice, online dispute resolution mechanisms have been implemented in the digital auction ecosystem in China through Taobao.

Quoting Pangondian et. al (2019), one of the success key factors of electronic services through cyberspace is legal readiness. Therefore, to support the development of a digitalized auction process, legal

preparation must be carried out immediately through updating auction regulations. Reforming auction regulations to involve the utilization of digital technology is a manifestation of the law's function as an infrastructure for transformation, as the law is at the forefront of regulating and guiding auction development for the better (Ramli & Ramli, 2022). However, regulations regarding digital technology in auction services cannot cover all transaction aspects. This is meant as mentioned by Lisaldy, Ismail, and Iryani (2024), that conventional law is estimated to be unable to anticipate the development of digital technology. This can be seen from the stuttering of the conventional legal approach in anticipating the development of other technologies in Indonesia, for example in the governance of ride hailing services. Therefore, regulations sourced from evolving customs in electronic transaction practices through cyberspace, known as *lex informatica*, are also needed (Reidenberg, 1998, p. 553).

Reidenberg (1998) stated that in general legal development is always slower than technological development, therefore, in addition to conventional law, *lex informatica* is also needed so that there are no deficiencies or gaps in certain matters related to the technology that will be regulated. *Lex Informatica* can offer solutions when conventional law, as a legal regime, cannot reach the regulation of transactions in cyberspace (Priowirianto, 2020). Thus, regulations concerning auction transactions through cyberspace will be sourced from conventional law on auctions and *lex informatica* related to transactions. Conventional law and *lex informatica* can be used together in parallel, coexistent, and continuously to regulate the governance of systems built on technology.

Some advantages of the digitalized auction process that can add value are:

1. A broad economic/marketing network, optimizing prices;
2. A wider reach of auction participants;
3. Ease of transactions for sellers and buyers;
4. Sellers meeting buyers directly/without intermediaries;
5. No time and place constraints; and
6. Mitigation of predatory actions/intimidation among auction participants (Klemperer, 2002).

Nevertheless, the expansion of auction transactions must be complemented by a substantial private sector investment, which requires a wide range of private entities to participate in the auction industry. The idea of catalytic government, put forth by Osborn and Gaebler is one of the fundamental justifications for reinventing government (Osborn and Gaebler, 2000). It suggests that if the government is compared to a boat, it should act as the driver steering the vessel's path rather than as the rower pushing it forward. The private sector is the rower here.

Other justification for participating private entities in auction industry is based on the concept of governance as a system of values, policies and institutions where economic, social and political affairs are managed through interactions between the community, government

and the private sector (Keban, 2008). Quoting Enroth (2014), if the government has limitations in terms of human and financial resources, the government needs to involve other parties who have more capacity or ability to help. Thus, the government does not only make policies for the community, but also facilitates, enables role, and creates a conducive political and legal environment. Meanwhile, the private sector creates jobs and income with producing goods and services. Community groups participate in social, economic and political activities, and maintain good rules of the game and rules of ethics in social, economic and political interactions, empowering the community (Bintoro, 2001).

Private entities participation in public services has been proven to have a positive impact on tourism development (Rusli, Tuanaya, & de Fretes (2023), Suherlan, et al. (2022), Ibrahim, Madjid, & Hafel (2024), Bachtiar, et al. (2022), Dewi & Nyoman (2024)), economic (Apriliana & Pujianto (2023), Ramdhani, et al. (2024), Khristianto, et al. (2024), health (Pujilestari, et al. (2023), Ibrahim, Leus, & Dewi, (2024), and social (Triwidodo, et al. (2024), Priadi, et al. (2024)) in Indonesia. Based on that, auction development is thought to benefit from significant private involvement, as demonstrated by China's 2015 auction deregulation, which produced better outcomes.

CONCLUSIONS

Indonesia's auction regulatory policies lack the effective capacity to support national economic development in the disruption era due to their failure to meet current societal needs regarding value, utility, and efficiency. To help the country's economy grow, the Indonesian government needs to develop a new auction regulation idea that includes digitalizing the auction process and heavily involving the private sector. Such changes will allow auctions to become more popular and benefit society more significantly.

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