

Notary authority 90PMK

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Notary Authority in Making Auction Minutes Deeds Based on the Regulation of the Minister of Finance No.90/PMK.06/2016

Mahdalena^{1*} H. Sudiarto² Muhaimin²

1. Master of Notary Study Program, Faculty of Law, University of Mataram, Indonesia

2. Faculty of Law, University of Mataram, Indonesia

Corresponding Email : ninalena1997@gmail.com

Abstract

This study seeks to examine the authority of Notaries to create Auction Minutes Deeds in Indonesia, as well as the evidentiary power of Auction Minutes Deeds, in accordance with Minister of Finance Regulation Number 90 / PMK.06 / 2016. This type of research is normative legal research. As for this study, the authors used a Statute approach, a conceptual approach. The results of the analysis show that a Notary as a Public Official can also hold concurrent positions as a Class II Auction Officer, this is in accordance with Law Number. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary in Article 15 paragraph (2) letter g, which states that a Notary has the authority to make Deeds of Minutes of Auction based on Minister of Finance Regulation Number 106/PMK.06/2013 concerning Instructions for Conducting Auctions those who state that certain people are Class II Auction Officials are Notaries. A notary who has been appointed as Class II Auction Officer has the authority to make Deeds of Minutes of Auction and carry out auctions. Auction Minutes according to the Regulation of the Minister of Finance Number 90/PMK.06/2016 concerning Guidelines for the Implementation of Auctions with Written Bidding Without the Presence of Auction Participants Via the Internet is the minutes of the auction implementation made by the Auction Official which is an authentic deed and has perfect evidentiary power.

Keywords: notary authority, creation of deeds, auction minutes

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1. Introduction

Auction is a method of buying and selling in which prospective bidders are made aware of bidding on commodities as auction objects simultaneously. The auction is then held on the designated date, with buyers bidding prices that are closer to the price the seller or owner of the object intends. If the price has been reached or there are no other players bidding at a higher price, a winner is determined, and the seller/owner of the item will sell and purchase the item to the auction winner.

As a legal institution, an auction must adhere to specific philosophical principles, such as ensuring legal certainty, justice, and benefits. Auctions serve a crucial function for all parties who require them, as the auction itself consists of buying and selling. In buying and selling at auctions, there is an element of legal certainty in which every auction is required to issue Minutes of Auction that are authentic deeds with perfect proof. The obligation to make Minutes of Auction Deeds can be found in Article 85 of Minister of Finance Regulation Number 27/PMK.06/2016, which states that the Auction Official who conducts the auction must prepare the Minutes of Auction Deeds. There is no preferential treatment for any bids, and all participants have the same rights and responsibilities, all of which contribute to an objective execution of the auction. The facet of benefit in which the auction is advantageous to all involved parties, including buyers and sellers.

Private parties may provide auction organizing services through Auction Centers in accordance with Decree of the Minister of Finance Number 47/KMK.01/1996 concerning Auction Halls, which was amended multiple times most recently by Regulation of the Minister of Finance Number 118/PMK.07/2005 concerning Auction Halls, then revoked and replaced with Regulation of the Minister of Finance Number 176/PMK.06/2010 concerning Auction Houses as amended by Regulation of the Minister of Finance Number 176/PMK.06/2010 National and foreign private parties, as well as State-Owned Enterprises (Regional), are allowed the equal chance to conduct business in the auction sector through a limited liability company-structure auction agency under these regulations (Rachmadi, 2016). Then, on February 19, 2016, a new regulation, the Regulation of the Minister of Finance Number 27/PMK.06/2016 pertaining to the Instructions for the Implementation of the Auction, was released. As a closing provision, Article 99 PMK 27/PMK.06/2016 states: "At the time this Ministerial Regulation took effect, Minister of Finance Regulation Number 93/PMK.06/2010 regarding Auction Implementation Guidelines, as amended by Minister of Finance Regulation Number 106/PMK.06/2013, was revoked and declared invalid."

In general, every auction must take place by and/or in front of the Auction Official, except if the law or a government regulation specifies something else. Article 2 of Minister of Finance Regulation Number 27/PMK.06/2016 places additional emphasis on the obligation or responsibility for implementation to be carried

out by and/or in the presence of the Auction Official.

As stated above, unless otherwise required by law or government regulation, all auctions must be done by and/or in the presence of the Auction Official. If the Auction Officer is unavailable, the auction can still be held. As herein stated or an exemption applies, this indicates the auctioned item must be sold by and/or in the presence of the Auction Official (Rachmadi, 2016).

Article 1 number (14) of Minister of Finance Regulation Number 27/PMK.06/2016 defines "Auction Officer" as a professional who, in accordance with the Laws and Regulations, has been delegated the authority to conduct sales of goods at auction. For the purposes of this context, it might be assumed that an Auction Officer is a person specifically authorized by the Minister of Finance to conduct a sale by auction in accordance with the relevant Laws and Regulations.

Every auction must be conducted by and/or in the presence of the Auction Official if that individual falls under the purview of Article 2 of Minister of Finance Regulation Number 27/PMK.06/2016 in the area where the auction is being place. Since each auction must be conducted by and/or in the presence of the Auction Official, it can be inferred that the implementation of an auction that is not in line with Regulation of the Minister of Finance Number 27/PMK.06/2016 is regarded illegitimate or can be canceled.

Article 9 of Minister of Finance Regulation Number 27/PMK.06/2016 defines Auction Officers as Auction Officials of Class I and Auction Officials of Class II. Auction Officials of Class I are permitted to conduct all types of auctions at the request of Sales. Class II Auction Officials are permitted to conduct Voluntary Non-Execution Auctions at the Auction Center's or sales' request.

The provisions pertaining to Class II Auction Officers are still governed and refined by Minister of Finance Regulation Number 159/PMK.06/2013 about Amendments to Minister of Finance Regulation Number 175/PMK.06/2010 pertaining to Class II Auction Officials. To become a Class II Auction Official, one must first complete the education and training provided by the Director General of State Assets on behalf of the Minister of Finance.

Articles 12 through 15 of Minister of Finance Regulation No. 175/PMK.06/2010, as amended by Minister of Finance Regulation No. 159/PMK.06/2013, clarify the authorities, requirements, and prohibitions of Class II Auction Officials. Class II Auction Officials are required by regulation to keep minutes of auctions and to create copies of auction minutes, quotations of auction minutes, and grosse of auction minutes in compliance with Prevailing Laws.

Class II Auction Officials are appointed by the Director General of State Assets (also refers to DJKN), and the products they create are minutes of auction implementation made by the Auction Official, which are an authentic deed and have flawless evidence. These minutes are governed by Minister of Finance Regulation Number 27/PMK.06/2016.

The role of the Notary in producing Auction Minutes is very conceivable to exercise this authority as a Public Official to provide services on regulations that have been regulated in Notary Position Act (hereinafter refers to UUJN) No. 2 of 2014. This authority is set forth in Article 15 paragraph (2) letter (g) of the UUJN. In this instance, notaries can fulfill the responsibilities of a Class II Auction Officer without DJKN's authorization.

Further, Article 1 paragraph (1) of the General Provisions section of the Minister of Finance's Regulation No. 90/PMK.06/2016 on the Guidelines for Implementation of Auctions by Bidding in Writing without the Presence of Bidders via the Internet defines an internet auction as "the sale of goods open to the public with written price bids without the presence of bidders." The City of Yogyakarta's Directorate General of State Assets, under the Ministry of Finance of the Republic of Indonesia, has begun holding auctions through the internet. As an illustration, Yogyakarta has recently been in the news due to information sharing between news sources and online news outlets. Using a closed bidding system via email, Yogyakarta City's Government Building and Regional Assets Service will auction off 39 previously-owned government vehicles (Rusqiyati, 2016).

The Directorate General of State Assets in Indonesia, under the Ministry of Finance of the Republic of Indonesia, implements the authority and responsibilities of the Notary in the Notary's participation in the implementation of the auction as a Class II Auction Officer and how the auction is carried out over the internet.

In light of this context, the authors raise the following issue:

1. What is the authority of a Notary in making the Minutes of Auction Deed in Indonesia?
2. What is the strength of proof of the Minutes of Auction Deed based on Minister of Finance Regulation Number 90/PMK.06/2016?

2. Theoretical Basis

2.1 Legal Certainty Theory

Normatively speaking, legal certainty exists when a rule is developed and issued definitely because it governs in a transparent and reasonable way. Guarantees of legal certainty ensure that the letter of the law can be relied upon to bring about social order.

Justice, usefulness, and certainty are the three pillars on which Gustav Radbruch based his theory of the law.

Certainty in the legal system is intrinsically linked to the functioning of society as a whole. According to the norm, legal certainty is fundamental (Rahardjo, 2020). Accordingly, the implementation of a system of life that is clear, orderly, consistent, and consequential and is not vulnerable to change based on people's subjective experiences is what is meant by "legal certainty."

2.2 Authority Theory

The term "*rechtsmacht*" is used to refer to authority or jurisdiction in the context of the concept of Constitutional Law (legal power). There is a subtle distinction between authority and power in public law. In public law, authority (also known as *gezag*) refers to what is known as formal power, which is a power that is obtained from that which is bestowed by law or legislative. In the meantime, authority, also known as competence or *bevoegdheid*, is solely concerned with a specific "*onderdeel*" (portion) of authority. Competence or jurisdiction refers to an authority in the realm of judicial power or the power to adjudicate. Often, these terms are used interchangeably (Philipus & Sri Djatmiati, 1997).

Any lawful authority must be grounded in preexisting legal laws (the constitution). This source of authority provides support to officials (organs) in the process of making decisions. Authorities for government officials or organs (institutions) are divided into: (Ridwan, 2014)

- 1) Attributive authority (original),
- 2) Authority that is non-attributive (non-original)

2.3 Theory of Evidentiary Power

Proof through writing consists of either authentic or private writings. Authentic writings in the form of authentic deeds that are executed in the manner prescribed by law, in the presence of authorized officials (Public Employees), and at the location where the deed was executed. A private writing, also known as a private deed, is created in a manner not prescribed by law, without intermediaries or in the absence of an authorized public authority. Likewise, it is possible to create authentic deeds as well as private deeds for the sole purpose of using them as proof.

There is evidence that the Minutes of Auction are an Authentic Deed if the criteria described in Article 1868 of the Indonesian Civil Code are applied in the Minutes of Auction. Specifically, these elements are as follows:

- 1) The Minutes of Auction are made in the form determined by law (Articles 37, 38, 39, *Vendu Regulations/Auction Regulations*);
- 2) Drafting of Auction Minutes is carried out before or by the Auction Official;
- 3) The Auction Official who makes the Minutes of Auction has the authority to:
 - a) Making Deeds made (Class II Auction Officials are authorized to make Minutes of Auctions and types of Voluntary Auctions)
 - b) When the deed was made (still active as an Auction Officer or not)
 - c) Where the deed was made (in relation to the area of office) For whom the deed was made (for the benefit of users of the auction service).

2.4 Notary

A public official with the authority to make deeds and others, a Notary, whose name in Dutch is van Notary, plays a crucial role in legal business, particularly in civil law (Salim, 2015).

For the most part, notaries serve as impartial general officers. In the context of government, a "general officer" is an employee whose duties benefit the public at large. The legal authority of a Notary to authenticate documents and exercise other responsibilities is known as "Notary authority" in English and "*de Notary autoriteit*" in Dutch. A Notary's authority is defined by his or her capacity to perform the duties of the office. According to Salim (2015), there are two distinct forms of notarial authority:

1. Authority to make authentic deed; and
2. Other authority.

2.5 Auctions Via the Internet

Auctions online or via the internet can be carried out or carried out with the provisions in the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Instructions for Implementation of Auctions, part two of the auction offer in Article 64 paragraph (3) also regulates online auctions, the article states that the bidding in writing without the presence of bidders is carried out:

Online auctions may be conducted or initiated in accordance with the provisions of the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Instructions for Implementing Auctions. Part two of the auction offer is governed by Article 64 paragraph (3), which specifies that bids must be submitted in writing without the presence of the bidders can be done Electronic mail (e-mail), mail (drum post), or online (both open and closed bids).

2.6 Deed of Auction Minutes as an Authentic Deed

In accordance with PMK No. 213/PMK.06/2020, providing Instructions for Conducting Auctions, an Auction Officer is specifically designated by the Minister of Finance to produce the Minutes of Auction following the conclusion of the auction process. The Minutes of Auction play a key role in the auction of both portable and fixed items. According to Article 1868 of the Civil Code, the weight of evidence consists of physical, formal, and material evidence. The question then arises as to whether or not the Minutes of Auction is intended to serve as an Authentic Deed.

2.7 Authentic Deed Position

In accordance with established procedures and with or without the help of the parties involved, an authorized official drafts a legitimate deed that includes all of the information desired by the parties involved. An official's declaration detailing what he seen firsthand is included in the genuine document.

In Article 1868 of the Civil Code, what is meant by "Authentic Deed is a deed made in a form determined by law by/or before a public official authorized for that purpose, at the place where the deed was made".

In Article 165 HIR it is stated that "Authentic Deed, namely a deed drawn up by or in the presence of an official who is authorized to do so, constitutes complete evidence between the parties and their heirs and those who receive rights from him regarding what is listed in it as back notice". The deed is called authentic if it fulfills 3 elements, namely:

- a) Made in a form according to the provisions of the law;
- b) Made by or before a public official;
- c) The general official must have the authority to do so at the place where the deed was made.

Irawan Soerodjo further claimed that in order to fulfill the formal requirements of a genuine deed, there are three (three) fundamental aspects that must be present. These elements are as follows:

- a) In the form determined by law;
- b) Made by and before a Public Official;
- c) The deed made by or before the authorized Public Official for that purpose and at the place where the deed was made.

3. Methodology

This type of research was normative legal research. In this study, the legal materials used consisted of legal materials in the form of:

a. Primary Legal Materials

1. Constitution of the Republic of Indonesia.
2. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.
3. Auction Rules (*Vendu Reglement*).
4. Regulation of the Minister of Finance Number 106/PMK.06/2013 concerning Amendment to Regulation of the Minister of Finance Number 93/PMK.06/2010 concerning Instructions for Conducting Auctions.
5. Minister of Finance Regulation Number 159/PMK.06/2013 concerning Amendments to Minister of Finance Regulation Number 175/PMK.06/2010 concerning Class II Auction Officers
6. Minister of Finance Regulation Number 158/PMK.06/2013 concerning Amendments to Minister of Finance Regulation Number 174/PMK.06/2010 concerning Class I Auction Officers
7. Other laws and regulations related to this research.

b. Secondary Legal Materials

The Secondary Law materials were obtained from books, legal dictionaries, expert opinions, legal journals, scientific papers, articles, newspapers and magazines that are closely related to the issues that are the object of this research.

c. Non Legal Materials

Non-legal sources can be useful for academic and legal study. As a support for primary legal materials and secondary legal materials, sources of non-legal materials can be in the form of Indonesian dictionaries, non-legal journals as long as they have relevance to the research topic under study.

As for this study, the authors used a statue approach and conceptual approach. The research data obtained in this study was presented and arranged in a complete, systematic, correct and consistent manner. Afterwards, the data analyzed qualitatively by using the method of interpretation or legal discovery to build a legal argumentation in the form of prescriptions (stating what should be according to principles, theories, and legal rules). Furthermore, conclusions were carried out using the deductive method, namely drawing conclusions from general matters to specific issues (Muhaimin, 2009).

4. Result and Discussion

4.1 Notary Authority in Making Auction Minutes Deeds in Indonesia

A Notary is a public official who is empowered to make valid deeds and other authority as mentioned in Article 1 point 1 UUJN. The responsibilities and authority of a Notary are described by UUJN's definition. A Notary is a public person who is tasked with and has the authority to create legally binding documents in accordance with UUJN (Anshori, 2009).

Authorized terminology (*bevoegd*) is necessary in PJN and UUJN since it corresponds to the provisions of Article 1868 of the Civil Code, which specifies that an authentic deed is one that was executed in the form prescribed by law or before a public official authorized to do so, in the location where it was executed. In order to execute Article 1868 of the Civil Code, legislators must appoint public officials allowed to make authentic deeds; accordingly, notaries are appointed as such officials in accordance with PJN and UUJN (Lumban, 1999).

UUJN no longer employs the PJN formulation which defines a Notary as the only public authority entitled to make deeds. By using the singular form of the term solely (*uitsluitend*), the Dutch seek to highlight that the Notary alone possesses this broad discretionary power, rather than in conjunction with other government authorities. All other officials have just the limited authority to perform the pledged acts specifically vested in them by law. With regards to the final PJN sentence, the word *uitsluiting* means "exclude everyone else" (*met uitsluiting van ieder ander*). The Notary's authority is more pervasive than that of other officials. For this reason, if a notarized deed is needed to take legal action, this can only be done in jurisdictions where the law recognizes notaries public as the sole or primary public officers allowed to attest to the validity of legal documents (Lumban, 1999) In such a circumstance, the *lex specialis derogate legi generali* principle applies, and the Notary is the authorized official to execute this exception deed based on other (special) Laws and Regulations (Anshori, 2009).

The single terminology (*uitsluitend*) in UUJN has been removed. The role of notaries has evolved over time, although its definition has remained rather stable. This is due to the fact that *uitsluitend* phrase has been incorporated into the clarification of UUJN, which specifies that a Notary is a Public Official permitted to produce authentic deeds, provided that the creation of such deeds is not limited to other Public Officials (Anshori, 2009).

The authority of a Notary, according to Article 15 UUJN, is making authentic deeds regarding changes, agreements, and stipulations required by law and/or what is wished by interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, giving grosse, copies, and excerpts of the deed, all of which are permitted provided that the deed's creation is not also delegated to or exempted from other officials or other people determined by law.

This knowledge of notarial practice reveals that a notary's duty is to serve the public as an official, and that his power lies in the making of legally binding documents. Meanwhile, a legitimate deed is one that follows the prescribed legal form and is executed by or in the presence of public officials with the appropriate authority in the jurisdiction where the deed is made. A notary deed is a valid deed if it is prepared in the manner prescribed by UUJN (Anshori, 2009). According to the UUJN and PJN definition, a Notary is a constitutional officer (*openbaar ambtenaar*). If a person is granted the power to make decisions on behalf of the public and the obligation to do so, he or she is considered to be a public official and may be removed from office by the government (Anshori, 2009).

In this case, the office of notary public, like every other office in this country, has with it certain responsibilities and powers. It is essential that all forms of authority be grounded in law. Regarding authority, the laws and regulations that apply to any given official or position must be unambiguous and unwavering. An official's actions that go beyond his authority are considered illegal. This means that authority cannot just arise from a conversation or a speaker at the desk, or from debates or opinions in the legislature; rather, it must be stated explicitly in the applicable laws and regulations (Adjie, 2008).

Soerjono Soekanto gives the meaning of Authority as power and authority (authority). In the sense that power is the ability to influence other parties according to the will of those in power and authority is power that exists in a person or group that has support or gets recognition from society (Soekanto, 2011). Utrecht, gives the definition of Authority as strength and power. Meanwhile, Indroharto define authority is not just the ability to cause legal consequences, but also to be able to do or do something, according to him the source of authority is divided into 3 parts: (Indroharto, 2000)

- a) Attribution, the formation of authority originating from Legislation, this authority is also called original authority (born from the Law to the position holder) for example the Ministry of Home Affairs has attribution authority in the administration of Population Administration which originates from Law Number 24 of 2013 concerning Population Administration;
- b) Delegation, namely the delegation of authority from one position holder to another party (another official, another organ) this delegation is also regulated in the Law, where the authority that has been handed over results in the giver of authority no longer having his authority, and the responsibility for lawsuits and legal responsibility is transferred to officials recipient of the delegation;

- c) Mandates, assignments made by superiors (who obtain their authority from attribution or delegation) to subordinates, and legal responsibility as well as liability for lawsuits remain with the giver of the mandate vide Article 1 paragraph (2) of Law No. 5 of 1986 Juncto Law no. 9 of 2004, Law no. 51 of 2009 concerning the State Administrative Court.

4.2 The Evidentiary Power of The Auction Minutes Deed Based on The Regulation of The Minister of Finance

Number 90 / PMK.06 / 2016

Regulation of the Minister of Finance Number 106/PMK.06/2013 concerning Instructions for Conducting Auctions contained in Article 1 number (23) which states that "Minutes of Auction are minutes of auction implementation made by the Auction Official which is an authentic deed and has perfect evidentiary power".

As previously explained, authentic Auction Minutes can be seen from the way the Auction Minutes are made. Minutes of Auction are said to be authentic deeds if the making or occurrence of the deed is carried out by and or in the presence of a Public Official who is authorized to make it, namely the Auction Officer. Thus, the Minutes of Auction made by the auctioneer is valid and has binding legal force as an authentic deed.

The Minutes of Auction are a legally binding document created by the Auction Officer. Auction Officers are public servants who have been delegated the authority to conduct auction sales in accordance with applicable laws and regulations, as later reaffirmed by Decree of the Minister of Finance No. 156/PMK.06/2013 on modifications to Regulation of the Minister of Finance No. 175/PMK.06/2010 on Class II Auction Officers. Article 1868 BW's definition of a Public Official is associated with this term. In the case where the Auction Officer is acting in his or her official capacity, the Minutes of Auction will be of the "relaas deed" or "Officer Deed" form.

Minutes of Auction prepared by Auction Officials are valid deeds with ideal evidentiary power in accordance with Minister of Finance Regulation No. 90/PMK.06/2016 on the Guidelines for Implementation of Auctions with Written Bidding Without the Presence of Bidders over the Internet. While Auction Minutes are copies of the Original Auction Minutes and any appendices that were approved at the time.

The use of Quotations of Auction Minutes in the implementation of online auctions does not necessarily imply that they can be easily taken or downloaded from the internet. Quotation of Auction Minutes must be obtained from the State Asset Management and Auction Services Office (hence referred to as KPKNL), which organizes the auction, despite the use of internet auctions. In the annex to Minister of Finance Regulation Number 90 / PMK.06 / 2016 on the Implementation of Auctions with Written Bidding Without the Presence of Auction Participants Via the Internet, it is stated that the Quotation of Auction Minutes is taken by the Buyer or his attorney at the KPKNL that organizes the auction. Consequently, if people wish to acquire the Auction Minutes Quotation, then must still visit the KPKNL, which organizes the auction. It is not necessarily retrievable or downloadable online. Still, bidders and buyers must visit KPKNL. The implementation of auctions via the Internet is confined to their implementation via the Internet, but their legal force and the creation of Auction Minutes and Quotations of Auction Minutes are identical to those of traditional auctions.

The Minutes of Auction that are submitted through the internet have the same binding legal effect as those submitted at a conventional auction. The Regulation of the Minister of Finance specifies that the Minutes of Auction is an official report that is a legitimate deed and has flawless evidential power for all auctions, whether they are conducted online or in person. Credible and undeniable proof thanks to the authenticity of the source material. According to Article 1868 of the Civil Code, a valid deed is one that is made in the manner and before the officials authorized to do so in the jurisdiction where the deed is made.

5. Conclusion

Based on the finding above, we can conclude that:

1. As a Public Official, a Notary can also hold the position of Class II Auction Officer. This is in compliance with Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 Concerning the Position of Notary in Article 15 paragraph (2) letter g, which states that a Notary has the authority to make Deeds of Minutes of Auction in accordance with Minister of Finance Regulation No. 106/PMK.06/2013 Concerning Instructions for Conducting Auctions, which states that A Class II Auction Officer-designated notary has the authority to create Deeds of Minutes of Auction and conduct auctions.
2. Minutes of Auction, as defined by Regulation of the Minister of Finance Number 90/PMK.06/2016 concerning Guidelines for Implementation of Auctions with Written Bidding Without the Presence of Bidders Through the Internet, are records of the execution of the auction made by the auction officials and are true and proper acts with absolute evidentiary value.

The first recommendation is that the public must be educated about public sales and auctions, both traditional auctions and Internet auctions. Due to the absence of submissions for purchasing and selling through auctions, many auction officials do not conduct auctions in practice. Second, it is vital to educate Auction

Officials, auction halls, and the general public on the new rules and facilities governing the implementation of internet-based auctions, since this is essential for the development of internet-based public sales and auctions to make their usage more efficient.

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