



## Bankruptcy as a Reason for Termination of Notary in Indonesia

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### **Abstract**

A Notary declared bankrupt can be temporarily dismissed from his position as stated in Article 9 paragraph (1) letter a and if the bankruptcy statement has permanent legal force, the notary will be dishonorably dismissed from his position by the Minister on the proposal of the Central Supervisory Council, as stated contained in Article 12 letter a Law Number 2 of 2014 concerning Notary Position. The article does not provide a detailed explanation regarding the notary who was declared bankrupt and why the bankruptcy was used as an excuse to dismiss a notary from his position. In addition, the dishonorable dismissal of a notary from his position due to bankruptcy is contrary to the legal consequences of bankruptcy for debtors as regulated in Law Number 37 of 2004 concerning Bankruptcy and PKPU. The purpose of this research is to find out how bankruptcy can be used as an excuse for disrespectfully dismissing the notary from his position, knowing the legal position of the notary's office who has gone bankrupt, knowing the process of dismissing the notary in an indiscriminate manner in connection with the bankruptcy that occurred to a notary. Adpaun The research method used is normative juridical. This study uses secondary data. The results of this research are, first, bankruptcy is used as an excuse to dismiss a notary from his position because bankruptcy is an act that is morally an act that defies dignity and opposes the dignity of the notary's position and this act is an act that violates religious norms, polite norm courtesy, moral and legal norms, so that if the notary is declared bankrupt with permanent legal force, the legislators need to dishonorably dismiss the notary from his position. Second, the legal position of a notary who experiences bankruptcy is that the notary is categorized as an individual legal subject and not a legal entity so that if he is bankrupt then only in his capacity as a debtor or an individual, not in his position. Third, the process of disrespectfully dismissing a notary from his position is through the bankruptcy process at the commercial court and the process of imposing sanctions through examinations conducted by the Notary Examining Council in stages.

**Keywords:** *Notary; Bankruptcy; Disrespectful Dismissal of Notary Public*

### **Introduction**

Indonesia as a constitutional state based on Pancasila and the Constitution of the Republic of Indonesia guarantees legal certainty, order and protection in society.<sup>1</sup> The development of national law is

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<sup>1</sup> Moh. Mahfud MD, *Politik Hukum di Indonesia*, Rajawali Pers, Jakarta, 2009, hlm.9

carried out in the context of realizing a just and prosperous society which aims to support and guarantee certainty, order, upholding and protection with the core of justice and truth. Every law enforcer and apparatus is required to have the desire to uphold law, justice and truth as a form of a sense of responsibility and devotion to God Almighty, homeland, nation and state.<sup>2</sup>

Law enforcement in Indonesia itself consists of various fields, both in the field of criminal law enforcement, and in the field of civil law enforcement, and as an example of law enforcement in the civil sector as practiced by a Notary. In having a function as an authentic deed-making official, he has a great responsibility to the public for the legal certainty of each deed made by the notary, so this must be guaranteed by continuous supervision and guidance so that the notary is always in accordance with the rule of law that underlies its authority and can avoid misuse of the authority or trust given. The purpose of notary supervision is to fulfill the requirements and carry out their duties in accordance with the provisions of the prevailing laws and regulations for the sake of safeguarding the interests of the general public.

Law Number 30 of 2004, State Gazette Number 117, Supplement to the State Gazette Number 4432 concerning the Position of Notary Public (UUJN), determines that the supervisory institution that has the authority to carry out the supervisory and guidance function is called the Notary Supervisory Council.<sup>3</sup> The position of a notary is very important in providing legal certainty for the community. Considering the role and authority of a notary which is very important for legal traffic in social life, the behavior and actions of the notary in carrying out the function of authority are vulnerable to abuse that can cause harm to the community.<sup>4</sup>

Temporary dismissals are regulated in Article 9 UUJN through Article 11 UUJN, namely:

1. In the process of bankruptcy or postponement of debt payment obligations, is under interdiction, commits a disgraceful act, or has committed a violation of the obligations and prohibition of office, as regulated in Article 9 paragraph (1) UUJN.
2. Appointed as a state official as stipulated in article 11 paragraph (1) UUJN.

From the explanation above, one of the sanctions given to a notary is being dismissed from his position, where one of the causes is due to a statement of bankruptcy. A notary who is declared bankrupt can be temporarily dismissed from his position as stated in Article 9 of the UUJN and if the bankruptcy statement has permanent legal force then he can be dishonorably discharged as contained in Article 12 letter a UUJN. Article 1 of Law Number 37 of 2004 concerning Bankruptcy and PKPU, explains that bankruptcy is general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by a curator under the supervision of the supervisory judge as regulated in this law, where the requirements for a debtor can be bankruptcy refers to Article 2 paragraph (1) of the Bankruptcy Law and PKPU states that a debtor who has two or more creditors and does not pay in full at least one debt that has matured and can be declared is declared bankrupt by a court decision, either on his own request. or at the request of one or more creditors. In Article 1 number 11 of the Bankruptcy and PKPU Law, it is explained that debtors who can be declared bankrupt are individual debtors and legal entity debtors. This Law shows that those who can be declared bankrupt are legal entities and individuals only.

The legal consequences of a notary who has been declared bankrupt by the court as stipulated in Article 12 letter a UUJN are different from the bankruptcy provisions experienced by this debtor as

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<sup>2</sup> Anggaran Dasar Ikatan Notaris Indonesia, Hasil Kongres Luar Biasa Ikatan Notaris Indonesia, Bandung, 27 Januari 2005, Page.2

<sup>3</sup> N.G. Yudara, *Notaris dan Permasalahannya (Pokok-Pokok Pemikiran di Seputar Kedudukan dan Fungsi Notaris Serta Akta Notaris Menurut Sistem Hukum Indonesia)*, Jakarta: Majalah Renvoi Number 10.34.III,2006, Page.72.

<sup>4</sup> Habib Adjie, *Undang-Undang Jabatan Notaris (UUJN) sebagai Unifikasi Hukum Pengaturan Notaris*, Number 28, Year III 2005, Page.130.

stipulated in Article 24 paragraph (1) of Law Number 37 Year 2004. The Bankruptcy Law and PKPU are not as regulated in the Law on Notary Position, where in the Law on Notary Position, bankruptcy can result in someone being dismissed from his position. Here the debtor is only incompetent in managing his assets so that the other rights of the debtor can still perform other legal actions. Other rights here are that a notary who is declared bankrupt is entitled and competent to exercise his / her authority as an official. However, according to the Notary Position Law stipulates that a notary who has been declared bankrupt will be dishonorably discharged from his position, so it can be said that the notary is deemed incompetent in exercising his authority as a notary.<sup>5</sup>

The sanctions given according to Article 9 paragraph (1) and Article 12 letter a of the UUNJ are clearly very detrimental to notaries.<sup>6</sup> If seen in the article, there is no explanation that explains in detail whether the notary bankrupt is bankrupt in his position as a notary official or as a private person, and the substance of the article does not explain whether the notary declared bankrupt is subject to Law Number 2. 2014 concerning the Position of Notary or Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, hereinafter abbreviated as UUK-PKPU.<sup>7</sup> From the above provisions, it can be seen that the notary position is not included in the subject of bankruptcy, notary as a position, so it is illogical if a notary as an official position can be bankrupt until he loses his position.

Furthermore, bankruptcy is a threat that can be misused by other parties who do not like a notary in order to bring down the existence of the profession concerned without any other rules which may give an exception to a notary who is in a state of bankruptcy. Based on the description of the background of the problem that the author has described above, the author is interested in conducting research by lifting it into a thesis with the title Bankruptcy As a Reason For Termination of Notary in Indonesia

## **Research Method**

The research used in this research is normative legal research or normative juridical research, namely research conducted. The approaches used in secondary data research are focused on research activities.<sup>8</sup> Legal research is a statutory approach (statute approach), a case approach, a historical approach (historical approach), and a conceptual approach (conceptual approach).

## **Discussion**

### *1. Bankruptcy As a Reason For Termination of Notary in Indonesia*

Bankruptcy is a confiscation and execution of all the assets of the debtor (the person in debt) for the benefit of all his creditors (the person who owes it).<sup>9</sup> The explanation regarding the bankruptcy of the notary is too narrow because the explanation only focuses on the losses incurred by the notary due to a deed made and if the notary's assets are insufficient to pay compensation, the notary is already bankrupt without any other legal remedy that can be taken by the notary before being declared bankrupt . In fact, if it is related to the Bankruptcy Law and PKPU, this Law emphasizes that debtors and creditors can be given the opportunity to settle debt payments through debt reorganization or debt restructuring (PKPU) and provide a fresh start for debtors, while the bankruptcy route is a ultimum remedium or the last resort taken to resolve debt repayment difficulties when payment reorganization or restructuring cannot be taken.

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<sup>5</sup> <http://ejournal-s1.undip.ac.id/index.php/dlr/> accessed 2 May 2020.

<sup>6</sup> Sjaifurachman, *Aspek Pertanggung Jawaban Notaris dalam Pembuatan Akta*, Mandar Maju, Bandung, 2011, Page. 74.

<sup>7</sup> Habib Adjie, *Hukum Notaris Indonesia*, PT Refika Aditama, Bandung, 2008, Page. 64.

<sup>8</sup> R. Subekti dan Tjitrosoedibyo, *Kamus Hukum*, Pradnya Paramita, Jakarta, 1989, Page.85.

<sup>9</sup> Andrian Sutedi, *Hukum Kepailitan*, Jakarta, Ghalia Indonesia, 2009, Page.24.

Notary who has experienced bankruptcy as contained in Article 9 paragraph (1) letter a UUJN states that, Notary is temporarily suspended from his position due to bankruptcy process or postponement of debt payment obligations, and Article 12 letter a UUJN states that, Notary is dishonorably dismissed from his position by the Minister at the recommendation of the Central Supervisory Council (MPP) if declared bankrupt based on a court decision that has obtained permanent legal force. In both articles, the main point of thought is bankruptcy. Regarding the same matter previously stipulated in Article 51 paragraph (4) of the Notary Position Regulation, that a notary is temporarily suspended from his position on the grounds of bankruptcy or is in a state of postponement of payment by the Minister of Justice at the suggestion of the agency that made a bankruptcy statement in the postponement of the payment. When viewed through statutory theory, the substance of these articles does not explain what the bankruptcy notary has to say and what bankruptcy can be used as a reason for dishonorably dismissing a notary from his position, resulting in various interpretations by several parties.

Bankruptcy against a Notary according to the Notary Position Law occurs when a notary who is sued to provide compensation for his mistake which causes a deed to lose its evidentiary power as an authentic deed or a deed made by or before him becomes null and void because the error violates the provisions of Article 84 Law on the Position of Notary, causing losses to the parties / parties and if proven, the notary may be subject to Civil Sanctions in the form of payment of compensation, compensation and interest, if it turns out that the value of the loss demanded is so large that the notary's assets are insufficient. to replace him, the notary has declared bankruptcy. so that a statement of bankruptcy like this can be used as the basis for the dismissal of a notary from his position

In addition, another thing that is not explained in the bankruptcy of the notary above is whether the loss suffered by the notary has resulted in a notary having debts due to the parties whose rights have been injured or not. Because as previously explained, the main element in the Bankruptcy Law and PKPU is debt. The bankruptcy law and PKPU as outlined in Article 2 paragraph (1) concerning the provision of bankruptcy for a debtor, is one of them with at least one debt that is due and can be billed as a condition for a creditor or debtor to apply for bankruptcy. Due and payable is a marker of time that the demand for payment can be filed. In the absence of debts that are past due and collectible, a bankruptcy application is considered a premature claim.<sup>10</sup> So that according to the author, bankruptcy against the notary occurs when the notary has fulfilled the concept of bankruptcy due to debt.

## 2. *Reasons for Disrespectfully Dismissed Notary from Position Due to Bankruptcy*

Notary as stipulated in Article 1 Paragraph 1 of Law Number 2 Year 2014 concerning the Position of Notary Public is a public official who is authorized to make authentic deeds and has other powers as stipulated by the Law. Notary in this case is a legal profession that exercises legal power in accordance with statutory regulations, in this case the notary has the duty and function of assisting the government to carry out legal order in Indonesia as regulated in Article 24 of the 1945 Constitution of the Republic of Indonesia, In accordance with the mandate of Article 24, it can be said that a notary is an extension of the government in resolving existing legal issues so that notary is one of the government officials who carry out duties in accordance with statutory provisions.<sup>11</sup>

The Law on Notary Position, which is a product of legislative law, regulates all matters concerning the functions and duties of a notary in carrying out his position, as well as the bankruptcy norms stipulated in Article 12 letter a UUJN. This article regulates the provisions regarding the sanctions for bankruptcy of a Notary if the notary in exercising his authority is not in accordance with the Law.

<sup>10</sup> Susanti Adi Nugroho, *Hukum Kepailitan Di Indoneia Dalam Teori dan Praktik Serta Penerapan Hukumnya*, Prenadamedia Group, Jakarta, 2018, Page.31.

<sup>11</sup> Habib Adjie, *Hukum Notaris Indonesia Cetakan Keempat*, Refika Aditama, Bandung, 2014, Page. 66.

This article states that a notary is dishonorably discharged from his position at the suggestion of the Central Supervisory Council (MPP) if he has been declared bankrupt based on a court decision that has permanent legal force. Article 12 letter a does not provide a detailed explanation as to why a bankruptcy can cause a notary to be dishonorably dismissed from his position.

Bankruptcy based on Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU is a situation in which a debtor who has two or more creditors and does not pay at least one debt that is due and can be collected, and can be subject to a bankruptcy decision. Bankruptcy in Article 1 number 1 of Law Number 37 of 2004 concerning Bankruptcy and PKPU is general confiscation of all assets of the bankrupt debtor whose management and / or settlement is carried out by the curator under the supervision of the Supervisory Judge.

In the Minutes of the Meeting on the Discussion Process of the Draft Law on Notary Position conducted by the House of Representatives of the Republic of Indonesia in 2004, it is explained that the reason or background for the disrespectful dismissal of the notary is due to the notary's bankruptcy as contained in Article 12 letter a Law Number 2 of 2014 concerning the Position of Notary Public is because this act is morally an act that is against the honor and dignity of the notary's position, and is a serious violation of the prohibition of his position. And these actions are acts that violate religious norms, norms of courtesy, moral norms and legal norms.

With this construction, the main reason why a bankruptcy is used as an excuse to dishonorably dismiss a notary from his position is because the bankruptcy is considered an act that violates the honor and dignity of a notary public, so that if a notary cannot maintain honor and dignity profession, the notary is deemed to have committed a serious violation and can be given sanctions in the form of dishonorable dismissal from his position. With the necessity of a notary to maintain the honor and dignity of a notary, it can be interpreted that the notary profession is a noble profession, based on the position of trust given to a notary, a notary is obliged to uphold the dignity and dignity of the notary office that he holds.

Dignity and dignity are two terms that cannot be separated from every human being as a creature of God, even though they have different meanings, the two terms are closely related. Human dignity is the degree of human dignity, while human dignity is the dignity or right of a person to be respected and respected and treated ethically. Dignity is an important concept in the fields of morality, ethics, law and politics, and is rooted in the concept of rights inherent in humans. According to Critoph Enders, he illustrates that human dignity is the main root (the deepest) which becomes the foundation of a tree, and if the root is damaged, the tree cannot grow properly. So that if the dignity is lost in humans, it means that the human being is no longer at a good and correct standard.<sup>12</sup>

So that according to the author, it is not because of bankruptcy that a notary is considered immoral, because the bankruptcy only causes the notary to be incapable of managing his assets, not causing a notary to be unable to perform other legal actions such as carrying out his duties as a deed official. On the other hand, the bankruptcy is not a reprehensible act because the bankruptcy arose with the aim of providing legal protection for creditors and debtors in terms of settlement of debts, in other words, if a debtor is insolvent it indicates that the debtor has good intentions to settle debts. receivables to creditors. This actually indicates that the bankruptcy is not a moral violation by the notary public, because it actually indicates that bankruptcy is a "good" way for the notary to pay off his debt to the creditor.

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<sup>12</sup> Chritoph Enders, *A Rights to Have Rights*, NUJS Law Review, Vol 3, 2010, Page. 253.

## Conclusion

1. Bankruptcy notary according to Article 9 paragraph (1) letter a and Article 12 letter a of Law Number 2 of 2014 concerning Notary Position is if the notary has fulfilled the concept of bankruptcy, where the bankruptcy concept is based on the existence of a debt, without any debt. then bankruptcy will lose its essence as a legal institution to liquidate debitu assets (notary) in order to pay debts to creditors. Bankruptcy is used as an excuse to dismiss a notary public because the bankruptcy experienced by the notary is morally an act that defies honor and defies the dignity of the notary's office, and is a grave violation of the notary's position.
2. The legal position of a notary who is declared bankrupt is that the notary is categorized as an individual legal subject and not a legal entity, so that if he is bankrupt, it will only be in the capacity of the debtor or individual, not in his position. The position of a Notary cannot be bankrupt because Law Number 37 of 2004 concerning Bankruptcy and PKPU has provided clear regulations regarding legal subjects that can be bankrupt. There is an inconsistency between the legal consequences in the Law on Notary Position and the Law on Bankruptcy and PKPU, however, if viewed through the Lex Specialis derogate Legi Generalist principle, the Law on Notary Position is a systematically specific rule so that in this case, if If a notary is going bankrupt, the legal consequences in effect are the provisions contained in Article 9 paragraph (1) letter a and Article 12 letter a of the Law on Notary Position.

## Suggestion

3. In imposing sanctions on the disrespectful dismissal of notaries who experience bankruptcy as contained in Article 9 paragraph (1) letter a and Article 12 letter a of Law Number 2 of 2014 concerning the Position of Notary Public, the Notary Supervisory Council as an employee for the notary should be able to provide solutions and solutions to this bankruptcy problem. In imposing sanctions, the decision of the sanction should first be considered, because bankruptcy against a notary only concerns the notary as an individual and has nothing to do with the position he holds.
4. The government should need to conduct a basic and comprehensive review of the contents of the bankruptcy regulations against a notary as referred to in Article 9 paragraph (1) letters a and 12 letter a of Law Number 2 of 2014 concerning the Position of Notary Public, so that there is no confusion. law and there are different interpretations regarding the purpose of bankruptcy against a notary.

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