

## **Juridical Analysis of Bankruptcy in the Notary's Position Regulations as a Reason for Disrespectful Dismissal from Notary's Position**

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**Abstract.** *The aim of this research is to find out and analyze the regulation of notaries as public officials who can be bankrupted, to find out and analyze the legal harmonization between the Law on Notary Positions and the Bankruptcy Law and PKPU regarding the dishonorable termination of a notary's position, this type of normative legal research uses an approach legislation. Based on the results of the research, it was found that firstly, the correct meaning of bankruptcy is bankrupt. From this, it was explored with a systematic interpretation, it was found that the position of a bankrupt notary was if in making a deed, the deed resulted in the parties suffering losses and demanding compensation, efforts that the notary could take if they were dishonorably dismissed is by suing the TUN, secondly, disharmony occurs between UUJN and UUK PKPU.*

**Keywords:** *Bankruptcy; Disrespectful; Notary; Termination.*

### **1. Introduction**

Legal politics relates to applicable law and the law aspired to in a country (ius constituendum).<sup>1</sup> Often the formation of laws has not gone as expected, because the formation of laws is often influenced by the political interests of a certain section of society.

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<sup>1</sup>Moh. Mahfud MD, 2023, Legal politics in Indonesia, PT. Raja Grafindo Persada, Depok, p. 9.

A notary is a public official who is authorized to make authentic deeds and has other authorities as intended in this law or other laws.<sup>2</sup>In carrying out his position, a notary needs to obtain protection and guarantees in order to achieve legal certainty. The Law on Notary Positions (UUJN) was born with the background as stated in the preamble. To guarantee certainty, order and legal protection, authentic written evidence is needed. In carrying out his office, a notary has authority, obligations and restrictions. In administrative law, authority can be obtained by attribution, delegation or mandate.<sup>3</sup>The authority of a notary is regulated in Article 15 paragraph (1) to Article 15 paragraph (3) UUJN-P, based on this article, the authority of a notary as a public official obtains authority by attribution, where authority is created and granted directly by UUJN. The authority as in Article 15 paragraphs (1) to paragraph (3), is divided into three, namely the general authority of a notary, namely making a deed not making a letter in accordance with the wishes of the parties by paying attention to the applicable legal rules so that it has perfect legal evidentiary power, authority specifically for notaries to carry out certain legal actions as stated in Article 15 paragraph (2) and the notary's authority will be determined based on related laws and regulations.

Notary obligations are something that a notary must do as stated in Article 16 paragraph (1) letters a to letter k UUJN-P, which if violated will be subject to sanctions as regulated in Article 84 UUJN. And a notary prohibition is an action that is prohibited from being carried out by a notary as stated in Article 17 letters a to letter i UUJN-P, if this prohibition is violated then the notary who violates it will be subject to sanctions as stated in Article 85 UUJN.

Notaries in carrying out their profession if they do not comply with their authority, obligations and prohibitions will receive sanctions, ranging from light sanctions to heavy sanctions in the form of verbal or written warnings, temporary dismissal sanctions, honorable dismissal sanctions to dishonorable dismissal sanctions.

As Article 12 letter a UUJN explains, a notary is dishonorably dismissed from his position by the Minister on the recommendation of the Central Supervisory Council if he is declared bankrupt based on a court decision that has permanent legal force. When discussing bankruptcy, the provisions must refer to the PKPU UUK which is *lex specialis* as an inseparable legal norm.

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<sup>2</sup>Republic of Indonesia, Law number 2 of 2014, amendment to law number 3 of 2004, concerning "notary services", article 1 paragraph 1.

<sup>3</sup>Habib Adjie, 2018, Indonesian Notary Law Thematic Interpretation of Law No. 30 of 2004 concerning the Position of Notary, Refika Aditama, Bandung Hal. 78.

The object of bankruptcy law in UUJN is not regulated, whereas in UUK and PKPU money obtained from the salary of a position is not an object of bankruptcy property and the consequences of bankruptcy law in UUK and PKPU are that the debtor remains legally competent and provides an outline for the debtor not having the right to control and manage his assets whereas in UUJN it is clear that dismissal is dishonorable because there is no connection. This lack of connection makes the bankruptcy decision a dishonorable dismissal for the notary, of course very detrimental and creates injustice for the notary.

## **2. Research Methods**

The method used in this paper is normative juridical, namely the main material is based on library studies in the form of library books and journals.

## **3. Results and Discussion**

### **3.1. Notary arrangements as public officials can be bankrupt**

Looking for the meaning of bankruptcy in the UUJN, it is necessary to use an interpretation. The appropriate method for finding this is the language interpretation (grammatical) method. For A. Pitlo, grammatical interpretation means that we try to capture the meaning of a text/regulation according to the sound of the words.<sup>4</sup>

The definition of bankruptcy, if interpreted in legal terms, must be distinguished between bankruptcy and insolvency, two things that are considered the same but are different. According to the law, it can be explained as a process where a debtor who has financial difficulties to pay his debt is declared by the court. The court that has the right to sue here is the commercial court because the debtor cannot pay his debt. Bankruptcy in Indonesian legislation is not regulated either generally or specifically. Bankruptcy, according to the Big Indonesian Dictionary, is a condition where a company experiences major losses to the point that the company's assets are depleted. Even in healthy financial conditions, you can be declared bankrupt due to late debt payments. So,

The position of bankruptcy referred to in the UUJN was traced using a systematic interpretation of Article 16 paragraph 11, it was found that the notary in carrying out his office violated the provisions as in the UUJN resulting in a deed he made being inauthentic or degraded into a private document so that the parties/persons were harmed by the deed ask for compensation. If the notary is

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<sup>4</sup>Jazim Hamidi, 2011, Legal Hermeneutics History-Philosophy & Interpretation Methods, UB Press, Malang p.

unable to pay compensation (all assets have been used up) as a result of the deed he made, the notary may go bankrupt.

However, a notary can be terminated without respect according to his position because compensation is a form of notary's responsibility for failure to fulfill his achievements (making a deed). Fred BG Tumbuan stated that in the event that a person, because of his actions or not doing something, results in him having an obligation to pay compensation, give something or not give something, then at that time he also has a debt, has an obligation to perform. So debt equals achievement.<sup>5</sup>As a notary can be dismissed because the parties appearing (making the deed) suffer losses as a result of the deed and demand reimbursement of costs, compensation and interest from the notary.

Efforts that can be made to the notary so that the dishonorable termination decision is canceled or revoked can apply the principle of *contrario actus* which means that the authority to cancel and revoke the TUN decision is the one who issued the TUN decision itself, confirmed on the basis of article 53 paragraph (1) which states that:

"A notary who feels that his interests have been harmed by a State Administrative Decree can submit a written complaint to the competent Court containing a demand that the disputed State Administrative Decree be declared null or invalid with or include a claim for compensation or rehabilitation."

### **3.2. Harmonization of UUJN Law with Bankruptcy Law and PKPU Regarding Disrespectful Termination of Notary's Position**

The writer describes the disharmony between these two laws and regulations as follows:

First, the legal politics of Law Number 30 of 2004 concerning Bankruptcy and PKPU with the legal politics of Law Number 37 of 2004. These two policies are in conflict in that a notary as a public official who has the authority to make authentic deeds cannot be bankrupted on the basis of the Law. -Law Number 30 of 2004 where UUK and PKPU only apply to entrepreneurs or economic actors. Notaries are not entrepreneurs, but notaries are positions. From the legal politics it is clear that UUJN was created to provide legal certainty for deeds made by notaries and to provide legal certainty to notaries, how can legal certainty be achieved if there is an offense that could result in the notary being dishonorably dismissed but it is considered that there is no such thing and it is not in harmony with consideration.

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<sup>5</sup>Fred BG tumbuan 2005, Examining the Meaning of Debtors, Creditors and Debts Related to Bankruptcy", Jakarta, page 7.

Second, debt as an object of bankruptcy, in terms of the object of bankruptcy in terms of UUJN, there is no limit on what assets are classified as bankruptcy assets. different from UUK PKPU. Regarding salary money, it is excluded as in Article 22 letter b which reads "everything the debtor obtains from his own work as salary for a position or service, as wages, pensions, waiting money or allowances, to the extent determined by the supervising judge". Based on Article 22 letter b, if it is related to the provisions for the dishonorable termination of a notary in Article 12 letter a, it is not appropriate because a notary is a public official who, in serving the public, receives an honorarium.

Third, the subjects that can be bankrupted in Article 12 letter a are not clear. Notaries in carrying out their profession and position act as public officials, not as individuals (natuurlijke person). This is because in Article 12 letter a there is no harmonious or related article to explain in detail what can result in bankruptcy of a notary's office or person. On the other hand, if you look at the UUK PKPU profession, position or notary are not included in the bankruptcy subjects. Bankruptcy subjects according to UUK and PKPU are<sup>6</sup>Individuals, married debtors, legal entities, inherited assets.

Fourth, the consequences of bankruptcy in the position of notary as in Article 12 letter a notary can be dishonorably dismissed due to bankruptcy based on a decision that has permanent legal force, which results in the notary not having the authority as granted by the UUJN, no longer having his position and being deemed incompetent in carrying out his profession and his position. In contrast to UUK PKPU, the result that arises is that the debtor by law loses his right to control and manage his assets which are included in the bankruptcy assets, from the date the decision to declare bankruptcy is pronounced (Article 24 paragraph 1). In UUK PKPU Article 104 there is the Going Concern Principle where a bankruptcy declaration does not prevent the business from operating as usual.

#### **4. Conclusion**

The position of a notary who can be declared bankrupt is compensation due to the deed made by the notary causing losses to the parties, an effort that the notary can take by filing a lawsuit with the PTUN. There is disharmony between UUJN and UUK and PKPU so that UUK and PKPU cannot be used as a basis for the dishonorable dismissal of a notary due to bankruptcy.

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<sup>6</sup>Ryan Sanjaya, Ety Susilowati, Siti Mahmudah 2016, Study of Notary Bankruptcy in Indonesia, Diponegoro Law Journal, Vol. 5, no. 4, p. 9-11. <http://www.ejournal-s1.undip.ac.id/index.php/dlr/>

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