

# LEGAL CONSEQUENCES FOR THE POSITION OF A NOTARY DECLARED BANKRUPT

HABIB ADJIE

Narotama University, Surabaya, Indonesia

Email: adjieku61@gmail.com

## Abstract

The insolvency of a notary can yield substantial consequences for their professional standing, potentially impacting the provision of notary services to the general public. According to Article 12 letter A of Law No. 30 of 2004, also known as the Office of a Notary Act (UUJN), a notary may face dishonourable dismissal if they are officially declared insolvent. The objective of this study is to examine and assess the legal consequences that arise in the Indonesian legal framework when a notary is declared bankrupt. This will be achieved by conducting a comparative analysis of bankruptcy provisions under Law Number 30 of 2004 regarding the Position of Notary (UUJN) and Law Number 30 of 2007 regarding Bankruptcy and Postponement of Debt Payment Obligations (UUK PKPU). This research uses normative and empirical legal methodologies to examine the legal provisions pertaining to the status of notaries who have been declared bankrupt, as well as the practical implications these rules have on the field of law and the provision of notary services. The study findings indicate that there is a convergence in the concept of bankrupt notaries as outlined in the UUJN and UUK PKPU. While the UUJN defines a bankrupt notary as an individual occupying a position unrelated to bankruptcy, the UUK PKPU does not associate the notion of bankruptcy with the role of a notary. According to the UUJN, if a notary is found bankrupt by the court, the legal result is dishonourable dismissal. This implies, as per UUK PKPU, that the individual declared bankrupt is rendered legally incapable of performing any legal actions.

Keywords: Legal Consequences, Notary, Bankruptcy, Notary Position Law (UUJN), Bankruptcy Law and Postponement of Debt Payment Obligations (UUK PKPU)

## A. INTRODUCTION

According to Fartini (2018), Indonesia has been formally acknowledged as a legitimate nation-state, as stipulated in Article 1, paragraph 3 of the 1945 Constitution of the Republic of Indonesia. One of the primary attributes associated with the rule of law is its capacity to accomplish legal objectives, encompassing the preservation of justice, the provision of certainty, and the bestowal of advantages upon the populace of Indonesia (Usman, 2015). An essential role is to establish legal certainty, particularly in the domain of evidentiary law, which falls under the purview of Notaries as public officials vested with the power to produce authentic deeds and other legal instruments in accordance with the provisions outlined in Law Number 2 of 2014, which pertains to amendments made to Law Number 30 of 2004 concerning the Position of Notary (Kosasih & Haykal, 2021).

The notary profession plays a crucial role within the legal framework of a nation. Notaries play a key role in upholding the appropriate enforcement of the law, facilitating justice, and safeguarding the rights of persons and corporations involved in diverse legal transactions (Borman, 2019). The responsibilities of individuals in this role encompass the generation and authentication of legal documentation, the management of contractual arrangements, and the provision of crucial legal counsel that holds significance across diverse domains of individuals' existence. The maintenance of public faith in the legal system and relevant rules heavily relies on the key aspects of credibility and integrity possessed by notaries. According to Juanda (2015).

According to Musdiyanti et al. (2022), notaries, in their capacity as public officials, are obligated to consistently exhibit professionalism while performing their responsibilities and exercising their authorities, adhering to the prescribed standards set forth by UUJN. To uphold the standards of professionalism and ethical conduct expected of a Notary, it is imperative to establish a

robust organizational framework that effectively guides and sustains its members in consistently exhibiting professional behavior while fulfilling their responsibilities. This ensures the enduring preservation of the esteemed status associated with the role of a Notary. The requirement for Notaries to convene in a unified forum is stipulated in Article 82, paragraph (1) of the UUJN, as stated by Wiryawan (2020).

When fulfilling their role, a Notary is required to operate autonomously, with integrity, neutrality, and a strong sense of accountability, while striving to deliver their services to the individuals in need to the best of their abilities (Gitayani, 2018). A Notary operates within the framework of regulations established by the State and overseen by the Ministry of Law and Human Rights in order to facilitate the provision of services to the community (Sinaga, 2019). Notaries perform their duties without the primary objective of pursuing financial gain or profit. Instead, their work is driven by their personal qualities and expertise. While they do receive compensation for their services, the specific amount is predetermined by the UUJNP (Undang-Undang Jabatan Notaris Publik), thereby preventing individual notaries from independently determining the fee for their services (Shahab, 2021). According to Sanjaya et al. (2016), it has been seen that notaries do not engage in bookkeeping activities similar to those performed by companies when providing services related to the creation of deeds. Consequently, based on the expert opinions presented, it can be inferred that notaries do not operate in a manner consistent with running a company.

However, similar to several other occupations, notaries may also have financial challenges that might result in bankruptcy, and could face financial insolvency. According to Damlah (2017), the term "debtor" as defined in Article 1 number 3 of Law Number 30 of 2007 on Bankruptcy and Postponement of Debt Payment Obligations, also known as UUK PKPU, refers to an individual who possesses a financial obligation resulting from a contractual arrangement or legal provision, which can be legally enforced through a court proceeding. Moreover, the principle of guarantee, which serves as an ancillary provision to the primary agreement, is governed by Article 1131 and Article 1132 of the Burgerlijk Wetboek (BW). According to Irianto (2015), these two legal norms stipulate that all assets belonging to the debtor, both current and future, serve as collateral for the purpose of repaying the obligation.

The personal insolvency of a notary carries substantial legal implications, as highlighted by Puspaningrum (2019). The repercussions of bankruptcy for a Notary entail the termination of their position, as stipulated in Article 9, paragraph (1), letter an of Law Number 2 of 2014, which pertains to Amendments to Law Number 30 of 2004 concerning the Position of Notaries (UUJN). This provision specifies that Notaries are subject to temporary dismissal from their position if they are involved in bankruptcy proceedings or have filed for a postponement of debt payment obligations. According to Kurniawan (2021), Article 12, paragraph (1), letter an of the UUJN stipulates that a Notary can be dismissed from their position due to dishonorable conduct. This dismissal is carried out by the Minister upon the recommendation of the Central Supervisory Council, specifically in cases where the Notary has been declared bankrupt as determined by a court decision that has attained permanent legal validity.

These two norms experience ambiguity or vagenorm and are inconsistent, giving rise to extensive interpretations regarding the dismissal of a notary who is in bankruptcy, considering that a bankrupt Notary is not a legal entity but is a person (natuurlijk person) carrying personal rights. Article 12 paragraph (1) letter a UUJN states that a notary can be dishonorably dismissed as a result of being declared bankrupt. The question is, what is the rationale behind this article? Wasn't a bankrupt notary just incompetent in the field of property law? Why should his position (which operates in the service sector) be at stake, which incidentally has nothing to do with bankruptcy? In fact, Article 22 letter B of the Bankruptcy Law excludes in bankruptcy (bankruptcy confiscation assets) anything obtained by the bankruptcy debtor from service fees, salaries and so on. 2) The Bankruptcy Law recognizes rehabilitation, which in my opinion means returning the debtor's legal condition to the same condition as before bankruptcy. With this rehabilitation, bankruptcy is automatically deemed to have ended. The question is, can the notary who was dismissed as

mentioned above be reappointed? For the record in this case Law no. 30/2004 does not specify this . Therefore, it is necessary to review the legal principles of Bankrupt Notary.

This study aims to provide a deeper understanding of the legal consequences of the position of a notary who is declared bankrupt. The bankruptcy of a notary can trigger a series of changes in the legal status and rights of the notary. In this study, we will further discuss the relevance of the research topic, the legal context in Indonesia, and the conceptual framework that will be used in analyzing the legal consequences of the position of a notary who is declared bankrupt. Through a better understanding of the impact of bankruptcy law on notaries, this research is expected to make a useful contribution to the notary's professional development, legal protection, and public trust in the legal system in Indonesia.

## **B. METHOD**

In this study the research methodology used is the method of normative juridical approach. Because in this research the author carried out research using secondary data in the form of library materials and also bibliography research. According to Soerjono Soekanto (2007), the normative juridical approach is legal research carried out by examining library materials or secondary data as basic material for research by conducting searches on laws, regulations and literature related to the problem being studied."

This study employs both the legislative approach and the conceptual approach as its methodological frameworks. The methodology employed in this study involves a comprehensive examination of all pertinent statutes and regulations pertaining to the legal matters under analysis (Benuf & Azhar, 2020). The legal approach seeks to analyze the coherence and appropriateness of a given law in relation to other laws, as well as its compatibility with the 1945 Constitution. Additionally, it examines the alignment between regulations and the Law on Notary Positions and the Bankruptcy Law.

The chosen methodology for data collecting in this legal research study is library research, specifically focusing on the utilization of papers and materials available within library resources. The process of data collection involves the acquisition of written data that pertains to the specific subject being investigated. The present research use deductive reasoning to analyze legal materials, specifically by examining many legal premises in order to arrive at a conclusion that effectively addresses the aforementioned problem formulation.

## **C. RESULTS AND DISCUSSION**

### **1. Bankruptcy Problems of Notary Position According to UUJN and UUK PKPU**

Bankruptcy is a legal status that arises when an individual or entity is unable to fulfill their financial obligations to their creditors. The inability to make payments can arise from encountering financial challenges. According to Article 1 of Law Number 37 of 2004, which pertains to Bankruptcy and Suspension of Debt Payment Obligations (UUK PKPU), bankruptcy is a comprehensive seizure of all assets belonging to a debtor who has been declared bankrupt. The administration and resolution of the bankruptcy proceedings are overseen by a curator, under the supervision of a supervisory judge, as stipulated in this legislation. (Sinaga and Sulisrudatin, 2018).

According to Article 12, letter an of the Indonesian Notary Law (UUJN), a Notary may face dismissal on grounds of dishonorability if they have been declared bankrupt through a court order that holds permanent legal validity. According to Purwaningsih (2011), the court's bankruptcy decision has a lasting legal effect, resulting in the dishonorable dismissal of the Notary and the subsequent loss of their rights and obligations as a public official. Consequently, it can be concluded that the Notary is deemed incapable of fulfilling their duties and responsibilities due to being declared bankrupt by the court. In the event that a Notary is deemed bankrupt by the court due to an inability to fulfill financial obligations to creditors, it is important to note that the debts owed are separate from the Notary's professional role. Specifically, these debts pertain to the Notary's involvement in another business venture, which does not infringe upon the Notary's position. Consequently, the court's declaration of bankruptcy, resulting from the Notary's failure to compensate creditors, led to

the Ministry of Law and Human Rights dishonorably dismissing the individual from their Notary position (Yuliandari & Oppusunggu, 2021).

The issue pertaining to Article 12 of the UUJN revolves around the question of whether a position might be subjected to bankruptcy proceedings, hence serving as grounds for the dishonorable termination of a Notary. It is important to acknowledge that within the realm of bankruptcy law, the term "bankruptcy debtor" refers to an individual who possesses a financial obligation resulting from a contractual arrangement or legal statute, which can be pursued for repayment through the judicial system. If the legal status of the Notary under consideration is that of an individual, they have the capacity to engage in legal relationships with other parties, either through contractual agreements or as mandated by law. Nevertheless, Article 12 of the UUJN (Undang-Undang Jabatan Notaris) establishes the legal framework for bankruptcy, wherein it defines bankruptcy as the state in which a notary, who is considered a public official, is declared insolvent. The role of a Notary, as a public official, is established by a legal relationship that is derived from the authority granted by the law. The legal relationship established by the UUJN serves as the foundation for the emergence of rights, obligations, power, and responsibilities of Notaries. The formulation of bankruptcy legislation ought to recognize the role of a Notary as an individual, rather than merely a position. According to Sanjaya et al. (2016), a notary is an individual who facilitates legal transactions between parties, hence establishing legal relationships between debtors and creditors.

The PKPU Law does not acknowledge the legal concept of bankruptcy. In essence, it is not possible for positions to undergo bankruptcy or file for bankruptcy. However, individuals have the option to file for bankruptcy and seek protection under the Indonesian Bankruptcy Law (PKPU). According to Maylaksita (2019), bankruptcy law stipulates that only individuals or business entities with outstanding debts resulting from contractual obligations or legal provisions can be declared bankrupt. Consequently, only individual Notaries can be subjected to bankruptcy proceedings or undergo the PKPU process, without it leading to their dismissal from their professional position.

The aim of establishing UUJN is to achieve legal certainty and protection for both the public and notaries. The existence of legal certainty indicates that the legal instrument is instrumentalistic-positivistic, namely that the government is not responsive to fulfilling the principles of justice and protection, especially for its own people, especially Notaries who are regulated in the UUJN. The bankruptcy norms regulated in the UUJN have no basis in judicial consideration. This indicates a mix-up of norms resulting in a lack of certainty, let alone legal protection (Diatmika et al, 2014).

Even though UUJN's political configuration can be categorized as democratic because it involves parliament and the executive in discussing its regulations, it cannot necessarily make the resulting legal product autonomous. There are at least two reasons, the first is that the sociological basis of UUJN is the needs of society which increasingly requires the role of Notaries. However, on the other hand, many problems arise due to notaries who are incompetent or violate their mandate. UUJN which has been revised then prioritizes the protection of public law from the notary's unprofessionalism. This regulation actually creates an imbalance of protection, which instead bases Notary as a position that seems to be dominated by the state. As a result, many norms in the UUJN are vague, inconsistent, and make the workload of Notaries beyond what they should be. 18 Second, legislators do not understand the existence and nature of the Notary's position, which regulates or links the Notary's position in inappropriate regulations or definitions. . For example, in addition to UU K PKPU which is suddenly listed in UUJN even though there is no connection at all (Zulkhainin, 2021).

Consistently, Article 12 UUJN does not fulfill the principles of legal protection and equality as mandated by the constitution. Because the legitimacy of a bankruptcy decision directed at the dishonorable dismissal of a position granted by law, is contrary to the principle of legal protection. The basis of this article does not provide a guarantee of legal certainty for a Notary, and is contrary to the principle of equality, because among other nobile officiums there is no basis for 'dismissal' from office for the reason of being declared bankrupt. In terms of relevance, harmonization between bankruptcy law which is a *lex specialis* from the norms contained in Article 12 UUJN is not related. Because bankruptcy law itself does not regulate 'position' as one of the elements that can be

bankrupted. So, if we examine the UUJN itself, it gives rise to various interpretations, which means that the UUJN needs to be revised immediately.

To delve into the subject matter extensively According to Habib Adjie (2008), the term 'Bankrupt Notary' is associated with the responsibilities and powers of a notary. This implies that the notary committed an error, displayed neglect, or acted in contravention of the UUJN, so causing financial harm to the affected parties. Losses attributed to the notary's responsibility cannot be satisfied using the notary's personal assets, resulting in the notary being declared bankrupt. According to Habib Adjie, a bankrupt notary refers to a situation where a notary public is legally obligated to provide compensation due to errors resulting in the loss of evidentiary power of an authentic deed or rendering a deed made by or before the notary null and void. Consequently, the affected parties incur significant losses, exceeding the entirety of the notary's assets. In such cases, a court ruling with permanent legal validity declares the notary bankrupt.

Moreover, Adjie and Gunarsa (2013) propose a more suitable euphemism, 'insolvent,' to refer to a notary who is unable to meet their financial obligations. Bankruptcy arises in the context of a notary's occupation when the individual's financial liabilities exceed their available assets, rendering them unable to fulfill their obligations. In this particular scenario, the court has seized the notary's assets as a result of a compensation claim that has been filed against them. In the event that a notary declares bankruptcy voluntarily, it does not result in an immediate resignation from their office. A formal procedure should be established by the Central Supervisory Council to submit a proposal to the Ministry of Law and Human Rights for the termination of a notary. In adherence to the principle of *contrarius actus*, in the event of an absence of a decision from the Ministry of Law and Human Rights, the notary is still authorized to fulfill their responsibilities as a notary. In the event that a decision is given by the Ministry of Law and Human Rights, the Notary has the legal recourse of initiating a lawsuit with the state administrative court, seeking a consistent ruling.

## **2. Legal Consequences for the position of a Notary Declared Bankrupt**

According to Article 12, letter an of Law Number 30 of 2004, which pertains to the Position of Notaries (UUJN), a notary may be subject to dishonorable dismissal from their position. This dismissal is carried out by the Minister, upon the recommendation of the Central Supervisory Council, in the event that the notary is declared bankrupt as determined by a court decision that has obtained permanent legal force. This article highlights that the legal ramifications of a Notary who has been declared bankrupt extend beyond the inability to compensate the affected parties. In addition, the Notary, in their official capacity, will forfeit their power and privileges associated with the role.

To gain comprehension of the significance of Article 12, letter a, as stated in Law 30/2004, it is necessary to consult the stipulations outlined in Law Number 37 of 2004, which pertains to Bankruptcy and Postponement of Debt Payment Obligations (UUK PKPU). According to the General Explanation of UUK PKPU, the act of declaring bankruptcy results in a shift in an individual's legal standing, rendering them incapable of executing legal proceedings and exercising control over their assets, starting from the moment the bankruptcy declaration is made.

So, someone who is declared bankrupt becomes incompetent to take legal action. Therefore, a notary who is declared bankrupt can no longer be a notary, who is authorized to:

- a. make authentic deeds regarding all deeds, agreements and stipulations that are required by statutory regulations and/or that are desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, store the deed, provide grosses, copies and quotations of the deed;
- b. validate the signature and determine the certainty of the date of the underwritten letter by registering it in a special book;
- c. record letters under hand by registering in a special book;
- d. make a copy of the original letter privately in the form of a copy containing the description as written and described in the letter concerned;
- e. validate the suitability of the photocopy with the original letter;
- f. provide legal counseling in connection with the making of the deed;
- g. making deeds related to land;

h. make a deed of minutes of auction.

All of the notary's authority above is a legal act. Legal actions according to Hukumpedia are actions that have legal consequences. All of the notary's powers above are clearly actions that have legal consequences. Therefore, a person who is declared bankrupt cannot become a notary because he cannot exercise his authority when he is incompetent.

The subsequent inquiry pertains to the possibility of reinstating a notary who has been dishonorably discharged, as previously indicated, due to the absence of clarification within the UUJN about this matter. According to the author's perspective, the reappointment of the notary by the Minister does not occur as a consequence of rehabilitating bankrupt debtors. Rehabilitation refers to the process of reinstating the reputation of a debtor who has been previously declared bankrupt. This is achieved through a court ruling that confirms the debtor's fulfillment of their commitments.

Article 215 of the KPKPU Law encompasses a legal provision that affords borrowers or their successors the chance to undertake legal measures aimed at reinstating the reputation and good standing of debtors who have previously encountered the repercussions of bankruptcy. Bankruptcy refers to a condition in which a debtor becomes unable of meeting their financial obligations to creditors, so significantly affecting both the debtor's reputation and financial capacity.

Upon the conclusion of the bankruptcy proceedings, which may occur through a settlement arrangement with the creditor, full repayment of the debt to the creditor, or the finalization of asset distribution in the bankruptcy closing procedures, Article 215 grants the debtor or their successors the opportunity to seek rehabilitation from the Court that had previously rendered the bankruptcy judgment. In essence, this legal maneuver seeks to eliminate the social disapproval and adverse consequences commonly connected with the state of bankruptcy.

However, it is important to note that rehabilitation in this context is not returning the debtor's legal status to what it was before, such as if they had never been bankrupt. Conversely, rehabilitation aims to provide an official statement from the Court that the debtor has fulfilled all of his obligations to the creditor. This is a form of official recognition that the debtor has improved their financial situation and has carried out their obligations in accordance with the law. In other words, the debtor is no longer considered bankrupt, and their reputation is restored in the eyes of the law and society.

Rehabilitation is an important legal mechanism because it can help debtors previously affected by bankruptcy to restore their financial and business lives. It also creates incentives for debtors to comply with bankruptcy proceedings and comply with obligations to creditors, as they have the opportunity to restore their good name if they successfully resolve their financial problems. Thus, Article 215 of the KPKPU Law regulates a fair and authoritative process to overcome the negative effects of bankruptcy.

Article 12 UUJN (Notary Public Law) regulates the dishonorable dismissal of a notary if he is declared bankrupt by a court decision that has permanent legal force. In this context, "disrespect" indicates that the notary's dismissal was a serious and negative action, and this usually ends the notary's tenure.

However, it is important to understand that UUJN focuses more on the temporary suspension of notaries during the bankruptcy process. This means that a notary involved in the bankruptcy process can be temporarily suspended from office by the competent Minister. This is a step taken to avoid potential conflicts of interest and ethical issues that may arise during the bankruptcy process. However, this does not mean that the notary is automatically dishonorably dismissed and can no longer be a notary after the bankruptcy rehabilitation process is complete.

In the context of bankruptcy rehabilitation, this process focuses more on recovering the finances and reputation of debtors who experience bankruptcy. This means that after successfully undergoing the rehabilitation process and obtaining a decision recognizing the recovery of his obligations, the debtor is no longer considered bankrupt in the eyes of the law and society. However, this does not automatically result in the notary being dismissed due to the bankruptcy process being re-appointed by the Minister.

In other words, the UUJN does not explicitly regulate the reappointment of a notary who has been dismissed both honorably and dishonorably after the bankruptcy rehabilitation process is

complete. Therefore, in this case, the status of a notary who has been dismissed due to bankruptcy proceedings will depend on other provisions that may apply or policies implemented by the competent authority. In conclusion, the bankruptcy rehabilitation process does not automatically result in the reappointment of a notary who has been dismissed for this reason.

#### D. CONCLUSION

The provision outlined in Article 12 of the UUJN, which permits the dishonorable termination of a Notary who has been legally declared bankrupt, presents several challenges within the framework of bankruptcy legislation and the role of a Notary. The content of this article appears to deviate from the constitutional values of legal protection and equality. Moreover, it is more appropriate to designate the notion of "Bankrupt Notary" as "Bankrupt Notary," given that the role of a Notary should not entail financial indebtedness. Furthermore, it is imperative to elucidate the procedural framework for the termination of Notaries in bankruptcy proceedings, necessitating a more transparent approach that incorporates the participation of the Central Supervisory Council and the Ministry of Law and Human Rights. In the Indonesian legal framework, the provisions outlined in Article 12 of Law Number 30 of 2004, which pertains to the Position of Notaries (UUJN), govern the circumstances under which a notary may face dishonorable dismissal. Specifically, this provision stipulates that a notary might be subject to such dismissal if they are officially declared bankrupt by a court of law, and if this declaration carries the weight of permanent legal authority. The termination of employment is a significant outcome stemming from the notary's bankruptcy status. This outcome not only leads to financial losses for the parties involved, but also strips the notary of their authority and rights in fulfilling their professional responsibilities. Nevertheless, the UUJN does not provide precise regulations for the reappointment of notaries who have been discharged due to bankruptcy, subsequent to the completion of the rehabilitation process. The reinstatement of a notary who has been dismissed as a result of bankruptcy proceedings is contingent upon the relevant regulations and policies. It should be noted that there is no inherent assurance of reappointment following the completion of the bankruptcy rehabilitation process in accordance with the Bankruptcy and Suspension of Debt Payment Obligations Act (UUK PKPU).

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