



The Ambiguity of Dismissal of Notary over Bankruptcy in Indonesia

Rahayu Hartini^{1*}

¹Faculty of Law, University of Muhammadiyah Malang, Malang, 65144, Indonesia

* Corresponding author: hartini@umm.ac.id

Article	Abstract
<p>Keywords: Meaning; legal consequences; regulation; notary position; bankruptcy.</p> <p>Article History Received: 20 Feb, 2021; Reviewed: 6 Mar, 2021; Accepted: 8 Jul, 2021; Published: 11 Jul, 2021.</p>	<p><i>Notary is a public official who has the authority to make authentic deeds and other authorities regulated in laws and regulations. Notaries are also private legal subjects (natuurlijk persons), which have free will to carry out legal actions. According to the Law on Notarial Positions, a Notary is dishonorably dismissed when (s)he is declared bankrupt. On the other hand, the UUK and PKPU recognize the rehabilitation of bankrupt debtors if they have fulfilled their obligations. This is where there is ambiguity or a fuzzy norm (vegen norm). Legal research aims to find out how bankruptcy is regulated in the notary position, and what are the legal consequences for the position of a notary both as a person and in relation to his/her position as a notary public? This legal research is normative juridical using a statutory approach and a conceptual approach. The legal materials obtained are analyzed using content analysis. The results of the discussion: 1). Notary bankruptcy has been regulated in UUK and PKPU as well as in the Law on Notary Position. 2). The legal consequences for a Notary who is declared bankrupt by the Commercial Court have an impact on the notary's personality, as well as on his position. According to the Law on the Position of Notary Public, if violating Article 84 which results in losses to the parties, the notary is obliged to pay compensation. According to the UUK and PKPU, this could result in the debtor losing the right to act freely on his assets, but not losing the right to perform his/her tasks and hold position. As a recommendation, in the Law on the Position of Notary Public, it is necessary to clearly define the separation of Notary as a person from her/his position as his profession.</i></p>

©2021; This is an Open Access Research distributed under the term of the Creative Commons Attribution License (<https://creativecommons.org/licenses/by/4.0>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original works is properly cited.

INTRODUCTION

Bankruptcy is a condition when a debtor who are in debt is declared bankrupt by Commercial Court, because the debtor cannot pay his debt until the specified maturity limit (Olabarrieta, Araujo, & San-Jose, 2020) (Wijayanti, Setiono, & Soehartono, 2019). In short this is deemed general confiscation of the debtor's assets taking place when the debtor is declared bankrupt or after the statement of bankruptcy for the benefits of all creditors who are declared bankrupt have debts under the supervision of authorities (Hartini, 2017).

According to M. Hadi Subhan, bankruptcy in its history in 1934 could only be reserved for merchants, but along with the times and developments in the economic field, bankruptcy was not only experienced by traders but also by those who had debts and were in a state of insolvency (Shubhan, 2008) (Lubis, 2018). The legal mechanism for bankruptcy, the concept of debt, is very decisive, because without debt, bankruptcy loses its essence as a legal institution to liquidate debtors' assets in order to pay their debts to their creditors (Shubhan, 2008).

According to Amanda Maylaksita, debt is the main element that must be fulfilled to apply for bankruptcy as well as other conditions such as the existence of two or more creditors as stipulated in Article 2 paragraph (1) of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (hereinafter UUK and PKPU) (Maylaksita, 2019). The UUK and PKPU stipulate that those who can be petitioned for bankruptcy are not only legal entities such as Limited Liability Companies, but also individuals as referred to in Article 1 number 11 UUK and PKPU.

One of the legal consequences of bankruptcy is that, from then on, the debtor loses his right or authority to administer (*daden van beboreen*) and to take ownership (*daden van beschikking*) of the assets included in bankruptcy (Lestari, 2020) (Stef, 2018). This is stated in Article 24 paragraph (1) UUK and PKPU that the Debtor by law loses his right to control and manage his assets which are included in the bankruptcy estate as from the date the decision on the bankruptcy declaration was pronounced.

Bankruptcy can also occur against a Notary as regulated in the Law on Notary Position Number 30 of 2004, Article 12 letter (a), related to sanctions for a Notary to dishonour a Notary that "Declared bankrupt based on a Court Decision that has permanent legal force".

Notary is a public official who is authorized to make authentic deeds and has other powers as referred to in Article 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter UU JN) or as regulated by other laws. The presence of a notary as a public official is the answer to the public's need for legal certainty for every engagement that is carried out, related to trade and day-to-day agreements the position of a notary as an official authorized

to make legal documents is powerful in legal proceedings because a Notary is trusted. That is, it is important for a notary to uphold dignity regarding their position to perform such tasks. In addition to making authentic documents or deeds, Notaries also have the authority to improve public awareness of law (Anggraeny & Al-Fatih, 2020).

With this authority, notarial deeds may serve as perfect evidence so as to guarantee certainty, order and legal protection for the sake of justice for the parties concerned (Stef, 2018). Notary's authority is determined based on the laws and regulations established by the State Institution (Government together with the House of Representatives) or State Officials who are authorized and legally binding (Ranggawidjaya, 1998).

Deeds made by a notary can be used as evidence in case of disputes inside and outside the court. The position of a notary as a function in society is still respected until now, everything he writes and determines is true. It is the need for written proof that calls for the importance of this Notarial institution (Notodisoerjo, 1993).

A Notary is a public official greatly authorized by the state to issue authentic deeds, and s(he) is required to not only interpret the expectation of the parties into the deeds, but s(he) also must be aware of what counts in his/her professional position as an official in day-to-day basis (Kie, 2011).

As stipulated in the Law concerning Notarial Position, a Notary is a public official who exercises his/her authority based on the laws and regulations stipulated in the Law concerning Notarial Position. There are sanctions provisions that govern the dishonourable dismissal of a Notary, as in Article 12 letter (a) Law concerning Notarial Position which reads "Declared bankruptcy based on a Court Decision which has permanent legal force".(Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris).

Meanwhile, according to the Bankruptcy Law and PKPU, bankruptcy is not only restricted to legal entities like Limited Liability Companies, but it could also hit individuals, as referred to in Article 1 number 11 of the UUK and PKPU which reads "Every person is an individual or legal entity, including a company in the form of a legal entity or non-legal entity in liquidation".

According Habib Adjie, a notary is said to be bankrupt if the notary is sued to provide compensation for his mistakes which cause a deed to lose its evidentiary power as an authentic deed. When this is the case, the deed made by or before the notary becomes null and void by law (Adjie, 2008), resulting in losses to the parties, and it turned out that the value of the losses caused is so large that all the assets of the Notary fail to cover the losses. Thus, the notary can be declared bankrupt on the ground of such a situation. However, if the notary's position is as a debtor, the sanctions stipulated in Article 12 letter (a) of the Law concerning Notarial Position against the

Notary are incompatible with the legal consequences of bankruptcy, namely the inability to extend to one's assets (Budiono, 2013) (Retnaningsih & Ikhwansyah, 2017).

In addition, the bankruptcy also has an impact on the notary's position which requires the Notary to be dishonourably discharged. On the other hand, the UUK and PKPU recognize the rehabilitation of the bankrupt debtor if the person concerned has fulfilled his obligations or has made peace (Mulyadi, 2010).

The position of the Notary can be taken as a person or the Notary as a public official (who runs a company in the form of services). In this case, there is still ambiguity (*vegen norm*) between the JN Law on the one hand, and the Bankruptcy Law on the other.

Based on the description of the background, the authors conducted research with the title: "The Ambiguity of Dismissal of Notary Positions in Bankruptcy in Indonesia"

This study aims to determine the legal consequences or impacts on the notary as an official who is authorized to make deeds regarding their bankruptcy declared by the commercial court. The contribution of the results of this research can be used as material for the Indonesian government in evaluating or revising the rules, especially the Law on Notarial Position related to bankruptcy faced by a notary so that it can also protect notaries as highly trustable and respectable professionals in issuing deeds.

METHOD

The research employed normative juridical method (Marzuki, 2006), statutory approach, (Marzuki, 2006) and a conceptual approach (Marzuki, 2006) with the legal materials constituting primary and secondary data (Irwansyah, 2020). The primary legal materials involved Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Law Number 30 of 2004 concerning the Position of Notary in conjunction with Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, Minister of Law & Human Rights Regulation Number 25 of 2014, Code of Ethics for Notary Positions, while the secondary legal data involved Civil Code and books related to bankruptcy law. All the data obtained was analysed based on content analysis (Marzuki, 2006) with legal principles and theories to answer the research problems.

RESULTS AND DISCUSSION

Bankruptcy Arrangements for Debtors who serve as Notaries in Indonesia.

Bankruptcy that hit notaries in Indonesia is governed in the provisions of Law Number 30 of 2004 concerning Notarial Position (JN Law). In this case, the Notary as a public official authorised ~~are~~ to make authentic deeds for their clients. Likewise, if it is related to the duties and authorities, which include Notaries as he legal subjects in bankruptcy, it refers to Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK and PKPU). Therefore, the UUK

and PKPU serve as the legal basis to ensure that the responsibilities of a Notary are related to whether the person concerned becomes a debtor (an individual) or as a legal entity.

So, it is necessary to first describe the bankruptcy arrangements for Notaries by referring to UUK and PKPU No. 37 of 2004 and Law on Notary Positions No. 30 of 2004.

1. According to Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK and PKPU)

Debtors are the subjects of bankruptcy law, as in line with Bankruptcy Law Number 37 of 2004. Debtors can represent either individuals, private bodies, or legal entities. Parties that can be declared bankrupt include:

a. Private Person

Whereas a debtor, who has two or more creditors and does not pay in full at least one due and collectible debt, is declared bankrupt under a competent court decision either on his own request or at the request of one or more creditors. The debtor can be a private person or entities that can be humans or legal entities such as Limited Liability Companies, foundations or others as referred to in Article 1 paragraph (1) in conjunction with Article 2 paragraph (1) of the Law on Bankruptcy and Suspension of Debt Payment Obligations (UUK and PKPU).

b. Married Debtor

For a request for a bankruptcy statement filed by a married debtor, the husband or wife must agree if there is a mixture of assets between them, as referred to in Article 3 in conjunction with Article 4 of the Law on Bankruptcy and Suspension of Debt Payment Obligations. (UUK and PKPU). Furthermore, according to the provisions in Civil Code, especially in Article 119, it is stated that from the time the marriage is governed by law, the unanimous union between the assets of the husband and wife applies, as in line with Civil Code and Law concerning Marriage. only regarding that with the marriage agreement there are no other provisions. Therefore, for those who are married under the Civil Code, to apply for bankruptcy, there must be the consent of the husband or wife unless there is a marriage agreement between them, as in Article 119 of Civil Code.

c. Legal entity

A legal entity as a legal subject that has assets separate from the company's assets can also be declared bankrupt. By declaring bankruptcy, the organs of the legal entity will lose their rights to manage the assets of the legal entity. The management of the assets of a legal entity declared bankrupt is transferred to a trustee. Therefore, legal claims originating from the rights and obligations of the bankrupt debtor must be submitted to the trustee, as referred to in Article 24 of the Law on Bankruptcy and Suspension of Debt Payment Obligations (UUK and PKPU).

If a Limited Liability Company (PT), cooperative, or other legal entity such as an association or foundation has a legal entity status, the management who is responsible for the bankruptcy is declared bankrupt. With respect to a bankruptcy statement requested by a company or a firm, the court's jurisdiction includes the legal domicile of the firm as in Article 113 of the Law on Bankruptcy and Suspension of Debt Payment Obligations (UUK and PKPU).

d. Inheritance.

An application for bankruptcy over inheritance can only be filed by one creditor through the commercial court in the jurisdiction where the debtor died. The application is submitted within 3 months after the inheritance is received, or within 6 months after the death of the debtor concerned. The declaration of bankruptcy results in the assets of the deceased being separated by law from the assets of their heirs, as referred to in Article 20 of Code Civil of Law (KUH Perdata).

The assets of a deceased person must be declared bankrupt if a person or several creditors wish to submit a request and briefly state that the deceased person is in a state of stopping paying his debts, or at the time of his death, his / her inheritance is not sufficient to pay his debts, as referred to in Article 197 of the Law on Bankruptcy and Suspension of Debt Payment Obligations (UUK and PKPU).

Bankruptcy related to inheritance is more clearly regulated in a separate section in the UUK and PKPU (Bankruptcy arrangements relating to inheritance are regulated in Part Nine with the title Bankruptcy of Legacy of Law Number 37 of 2004 concerning UUK and PKPU (articles 207-2011)). Article 207 states that the assets of a deceased person must be declared bankrupt, if two or more creditors apply for this and can briefly prove that: a.) The debt of the dead person was not paid in full when (s)he was alive. B). At the time of the death of the person, the inheritance was not sufficient to pay the debt.

The application must be submitted to a court whose jurisdiction includes the last residence of the deceased debtor. Next, the heirs must be summoned under a bailiff's writ for hearing regarding the application, wherein the subpoena must be delivered to the debtor's last residence, without having to mention the names of each heir unless their names are known. The application for a bankruptcy statement must be submitted to the court no later than 90 (ninety days) after the debtor dies, as referred to in Article 208 of the Law on Bankruptcy and Suspension of Debt Payment Obligations (UUK and PKPU).

2. According to Law Number 30 of 2004 concerning the Position of Notary Public (JN Law)

Notary is a public official who is authorized to make authentic deeds and has some other power as referred to in the Law in Article 1 paragraph 1 of Law Number 30 Year 2004 regarding the Position of Notary Public. The Law on the Position of Notary, which is a product of legislative law, regulates all matters concerning the functions and duties of a notary in performing them, as referred to in Article 12 letter (a) of the Law on Notary Position.

If the notary in exercising his authority is not in accordance with the law, especially the Law concerning Notarial Position, then the notary has deviated from his authority and may be subject to sanctions. The notary was dishonourably dismissed from his position at the suggestion of the Central Supervisory Council (MPP) because he was declared bankrupt based on a court ruling that has permanent legal force in Article 12 of Law Number 30 Year 2004 regarding the Law of Notarial Position. The Notary who is dishonourably dismissed from his position is in the legal domain of administrative sanctions.

The imposition of these sanctions is regulated in a legislation that is binding and enforceable. In the Law on Notarial Position Number 30 of 2004, two types of sanctions are regulated, including:

a. Civil Sanctions

Law concerning Notarial Position states that: violation of legal provisions committed by a notary refers to Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51 or Article 52, resulting in a deed only having the power of proof as an underhand deed or a deed to be null and void. This situation can cause losses based on which reimbursement of expenses and redress can be requested. In exercising his authority in making authentic deeds, the notary must guarantee that the deed he has made is appropriate and does not contradict predetermined legal rules to protect the interests of the parties, as referred to in Article 84 of Law Number 30 Year 2004 regarding the Law concerning Notarial Position.

This gives rise to a legal relationship between the notary and the parties. Civil sanctions apply to actions that cause harm to the parties. Violations of the provisions of Article 84 of Law concerning Notarial Position degrading authentic deeds into underhand kind or null and void deeds are a form of unlawful action Article 1365 of Code Civil of Law Such deeds cannot be assessed by the Supervisory Board, Notary, or the parties, but it should take into account a general court for lawsuit procedure.

Parties who assess or are aware of a violation of the provisions of Article 84 of the Law concerning the Notarial Position are required to prove their arguments based on Article 163 HIR and Article 1865 of the Civil Code. If the court

determines that the deeds have the power of evidence as underhand deed, or they become null and void, then based on the court's decision the notary may be sued for reimbursement of fees, compensation or interest to the notary public. In the event that the lawsuit submitted is not proven and is rejected, then the deeds still have perfect evidentiary power and the notary may file a lawsuit against the parties in order to defend the Notary's rights and obligations of in performing his / her duties in administering deeds.

b. Administrative Sanctions

Administrative sanctions are one of the discussions in Law concerning Notarial Position because part of the notary's position is as a public official who is also subject to administrative law. The sanctions stipulated in Article 85 of the Law on the Position of Notary Public include:

- 1) Verbal warning;
- 2) Written warning;
- 3) Temporary suspension;
- 4) Dismissal with respect;
- 5) Disrespectful dismissal.

It is the authority of the Regional Supervisory Council to impose sanctions in the form of oral or written warnings, as referred to in Article 73, paragraph 1, letter (e) of Law Number 30 Year 2004 concerning the Notarial Position. Verbal or written reprimand is not a type of administrative sanction but is a procedure prior to sanctions in the form of government coercion. The authority to impose administrative sanctions rests with the Regional Supervisory Council and the Central Supervisory Council.

Connection with these sanctions, the authority of the Regional Supervisory Council (MPW) in Article 77, letter (c) and letter (e) of Law Number 30 Year 2004 regarding the Law concerning Notarial Position (Yuliarti & Purnawan, 2018) (Shabrina, Fendri, & Adegustara, 2019) highlights 2 issues, namely: a) Imposing temporary suspension; b) Proposing to impose sanctions in the form of dishonourable discharge to the Minister.

Meanwhile, according to the provisions of Article 12 letter a of the Law concerning Notarial Position, the notary who is declared bankrupt is sanctioned by dishonourable discharge based on a court decision that has permanent legal force. This applies to notaries who draft deeds, and they can also be declared bankrupt due to illegal acts. In terms of a notary's capacity as a public official, bankruptcy as a result of an act against the law is a form of civil sanction in the form of compensation for expenses, compensation, or interest that the notary is unable to fulfil because (s)he is in a state of insolvency so that (s)he is declared bankrupt.

During the bankruptcy process, notaries are subject to administrative sanctions in the form of temporary dismissal in Article 9, paragraph 1 of Law Number 30 Year 2004 regarding the Position of Notary Public. Prior to the decision on the temporary dismissal, a notary may submit a self-defence before the Supervisory Board in stages.

In the event that the bankruptcy decision states that the application for bankruptcy declaration is rejected, the notary may be reappointed as a notary by the minister after his/her rights have been restored, as referred to in Article 10, paragraph 1 of Law Number 30 Year 2004 concerning Notarial Position. However, if the decision states that the notary is declared bankrupt, the Central Supervisory Council proposes to the Minister ~~that~~ regarding dishonour dismissal of the notary.

Legal consequences for the position of a notary public who has been declared bankrupt by a commercial judge, both as a person and because of his position.

The definition of Bankruptcy according to the UUK and PKPU is general confiscation of all assets of the bankrupt debtor whose management and settlement is carried out by a trustee under the supervision of the Supervisory Judge, as in Article 1 paragraph (1) of the Law on Bankruptcy and Suspension of Debt Payment Obligations (UUK and PKPU). The term General confiscation is relevant to the condition in which the confiscation was not only for the benefit of one or several creditors, but for all creditors, with the aim of preventing the confiscation from being executed by an individual creditor.

There are several steps that creditors can take to save their receivables from debtors who are in default (Omakoya & Oluto, 2017) (Majamaa, Lehtinen, & Rantala, 2019): *The first* is through a civil suit, if this is done, only the interests of the creditor / plaintiff will be fulfilled by the debtor's assets confiscated and then executed for the fulfilment of their receivables at the request of the creditor, while other creditors who do not make the lawsuit are not protected.

The second is by filing a petition for bankruptcy, and if this is done, then general confiscation of all assets of the debtor will fall and since then all confiscations that have been made will be void. One thing that needs to be understood is that bankruptcy is only about the debtor's property and not the person, profession or position.

Meanwhile, according to UUK and PKPU, bankruptcy applies to people, private bodies, and legal entities, and the following are the parties that can be declared bankrupt:

1. Individuals or private bodies (Article 1 in conjunction with Article 2 UUK and PKPU).
2. Married debtors (Article 3 in conjunction with Article 4 UUK and PKPU).

3. Legal entities such as limited liability companies, state companies, cooperatives, associations with legal status such as foundations (Article 113 UUK and PKPU).
4. Inheritance property (Article 97 in conjunction with the ninth part of Articles 207 - 211 UUK and PKPU).

So based on the author's description above, the author can explicitly say that Bankruptcy and PKPU as stipulated in Law Number 37 Year 2004 do not apply to Notaries for the following reasons:

1. Notary is a position (See Article 1 number 1 of Law No. 30 of 2004 concerning Notarial Position (JN Law)), whereas according to Article 1 point 3 UUK and PKPU, a debtor is a person, or business entity that has a debt due to an agreement or law, the payment of which can be collected before the court.

According to Article 1 number 6 UUK and PKPU, that debt is an obligation that is stated or can be stated in the amount of money that will arise in the future from an agreement or due to law and that must be fulfilled by the debtor. Failure to pay off the debt often results in the seizure of the debtor's assets to cover the debt; the author argues that a notary is not a debtor who has at least 2 (two) creditors and does not pay his due debts.

Personally, a notary can also have other businesses outside his position as a notary, for example as a trader or entrepreneur, and in these circumstances the Notary may be a debtor who could be bankrupt but as an individual in his position as a trader or entrepreneur.

2. In performing his / her duties, a Notary has never entered into an agreement or debt agreement with a business person or entity (creditor).

According to Fathul Laila (Laila, 2021), one of the senior notaries in Malang City, it is not appropriate for a minister to dishonourably terminate a Notary from his/her position simply because s(he) is declared bankrupt, as in line with Article 12 letter a of the JN Law. This notion is relevant to the following grounds:

- a. A Notary is a public official who is not paid by the state, but by his/her clients for authentic deeds he/she signs, and the income can fluctuate.

Apart from that, the notary also has quite burdensome obligations because he has to prepare the following matters, among others:

- 1) Preparing a minimum of 2 witnesses in each reading of the deeds he makes, which cannot be delegated to others.
- 2) Providing adequate filing cabinets in his office, and others.

- b. The term bankruptcy as experienced by a notary should be distinguished based on the state of the bankruptcy, whether it is more related to the notarial position, or whether it is deemed personal despite the fact that the two are almost inseparable.

Still according to Fathul Laila, even if a notary keeps borrowing money until (s)he is finally declared bankrupt by the commercial court, for example, then it cannot be used as a basis for the notary's bankruptcy and dishonourable discharge, as referred to in Article 12 letter a of the Law concerning Notarial Position. It is better if there is a nominal limit on the amount of debt, for example, as referred to in the Indonesia Deposit Insurance (henceforth LPS) implying that for the amount below 2 billions if the bank goes bankrupt, the State will cover the loss and repay the people through the LPS, but it does not apply the same way when a Notary goes bankrupt, where the State will not take any liability to cover the loss the Notary is experiencing.

Should dishonourable discharge happen to the notary's position as in the provisions of article 12 as of the Law concerning Notarial Position, this is considered unfair for the notary. Thus, Standards of the dishonourable discharge of a Notary must be set. Salary and even his/her assets as mentioned in the provision of Article 1131 and 1132 of Civil Code could be at stake should a Notary be declared bankrupt.

So, if the notary is (disrespectfully) dismissed simply because of the Commercial Court decision on bankruptcy, it is unfair. Moreover, notary is an honourable professional or *officium nobile*. This notary's job is a service work whose income fluctuates dishonourable discharge imposed will only stop the notary from earning more money.

According to Fathul Laila (Laila, 2021), this is not a violation of the code of ethics or a violation of ethics or morals, but rather the inability of the notary in economic terms, which is incomparable with the violation of code of ethics which is the authority of the Notary Supervisory Council for him to be able to dismiss a notary with respect or disrespect, but it is a matter of the Notary's incapacity in economic terms and those are two different things. Therefore, Article 12 as of the Law concerning Notarial Position should be revised because it is not quite right so that there is a difference between a notary as an individual and a notary with his position in the case of bankruptcy.

When examined further, the object of bankruptcy here is assets, not their profession or position, and one thing that needs to be known is that between the Notary as a public official and the Notary as a private person, there is actually *no separation of assets*.

So, according to the author, it is clearer that the assets he has obtained from other businesses outside his profession as a notary, as well as those obtained in his position as a notary in the form of an honorarium for services in making deeds are the same (one asset). Even though the Notary is a general officer, he cannot be bankrupt according to UUK and PKPU Number 37 of 2004, but if as a private person he has been declared bankrupt, then even as a Notary, (s)he is considered bankrupt.

Under circumstances of bankruptcy, debts, being sued by other parties, and incapability to pay off debts despite the fact that all assets are auctioned, a Notary

either as a person and as an entrepreneur could be declared bankrupt by the court, and this decision holds permanent legal force. In such a condition, the assets owned personally or in the perspective of notarial position are inseparable and deemed as one asset.

The legal consequences of bankruptcy against an individual who is a notary not only cause him/her to lose his/her right to act freely and manage his/her assets, but it can also cause him to be dismissed from his position as a Notary. The legal consequence of a bankruptcy statement causes the bankrupt by law to lose his right to act freely with his assets which are included in bankruptcy, as well as the right to administer it, from the date the bankruptcy decision is pronounced.

For an individual who is a Notary public, the bankruptcy decision not only causes him to lose the right to act and manage his assets which are included in the bankruptcy bill, but it can also lead to the dismissal from his/her position as a Notary. The condition where a Notary is declared bankrupt can be due to two reasons (Irsan, 2008):

First, if the parties involved in a deed call for compensation against the Notary because they are affected by the deed made by the Notary, according to the provision of Article 84 of Law concerning Notarial Position, the notary is required to pay for the compensation, interest, and other cost as demanded, following the permanent legal force held in a court decision.

If in fact the notary public is unable to fulfil his obligation to compensate for losses, even though all of his assets have been auctioned off, but cannot compensate for all losses, and (s)he does not have any assets anymore, then since then in fact a notary public can be declared bankrupt. If this happens, the notary can be filed for bankruptcy but in his capacity as an individual because, according to the provisions of UUK and PKPU Number 37 of 2004, those who can be declared bankrupt are people and business entities or legal entities.

In fact, if examined further, the object of bankruptcy here is the assets, not the profession or position, and one thing that needs to be known, according to Fathul Laila (Laila, 2021), is that between the notary as a public official and the notary as a private person, there is actually no separation of assets. assets obtained from other business outside the professional scope as a notary public, as well as those obtained in the position as a notary in the form of an honorarium for services in making deeds, are the same (one asset), so even though as a general officer he cannot be declared bankrupt according to law number 37. In 2004; however, if as an individual he was declared bankrupt, then even as a notary public he was considered bankrupt.

Secondly, if a Notary as a person or as an entrepreneur is in debt, sued by creditors, and unable to pay off the debt although all his/her assets have been auctioned, the Notary is declared bankrupt under a court decision with permanent legal force, either it is based on his request, or on behalf of the creditor. Since the bankruptcy decision was made, both personally and as a notary have gone bankrupt because the notary as

an individual and as a public official is the same person. Assets owned as an individual or as a notary are the same and cannot be separated or constitute one unit (one asset).

According to Habib Adjie (Adjie, 2008), a bankrupt notary can be defined as a situation in which a Notary is sued to provide compensation for his mistakes which cause a deed to lose its evidentiary power as an authentic deed, or a deed made by or before the Notary becomes null and void, causing losses to the parties and it turns out that the value of the losses being sued was so great that all the assets of the notary were insufficient to replace them. When this is the case, the Notary can be declared bankrupt under a court decision having permanent legal force.

In line with Fathul Laila (Laila, 2021) and Habib Adjie, it is illogical if a notary as an official position is subject to bankruptcy and PKPU regulations; therefore, the provisions as stated in law number 37 of 2004 should not apply to notaries as it is not congruent with article 12 letter a Law of Notarial Position.

Another Notary argues that bankruptcy decision against a person as a Notary could ruin the credibility and dignity of the Notary who is often deemed honorable. (Irsan, 2008). So, it is appropriate for him to be dismissed from his position, because since then the Notary has lost his credibility as a notary and could also lose the trust of his clients. This is in line with A. Kahar (Kahar, 1983) in his book “Notaris Dalam Praktik Hukum”, asserting that a Notary is a position of trust (*vertrouwen ambts*), so the notary who is bankrupt is considered untrustworthy (Utomo & Karjoko, 2018) (García-Posada & Mora-Sanguinetti, 2014), because he is considered default and unable to complete his obligations properly and on time, so that the Notary is declared bankrupt.

Credibility and Trustworthiness are very important things for a notary. A notary who has lost his credibility due to the bankruptcy decision can cause the notary to lose public trust. Due to the bankruptcy law, the condition where a person is under the supervision of a trustee and supervisory judge, a person who is a Notary and bankrupt will clearly have an impact on his/her-professional position as a Notary (Delines, Daulay, & Fauzi, 2020) (Wijaya, 2019). In performing his work, a Notary Public has an obligation to keep everything that is entrusted to him confidential regarding the making of deeds as regulated in the Law concerning Notarial Position. A person who is a Notary and declared bankrupt, resulting in that person or the Notary under supervision of a trustee and supervisory judge can no longer maintain his/her confidentiality and independence, because (s)he always has to report everything that is requested by the curator regarding income, which is related to his obligation to pay off debts. For example, a trustee may inquire about the Notary's income earned from deed issuance. When the Notary reveals his earnings, the Notary is deemed to have violated his/her profession, for (s)he fails to keep things about their clients confidential, contrary the code of conduct where a Notary is required to keep the confidentiality of the deeds

he/she issues. All information gained on deed making complies with the oath of office, unless stipulated otherwise.

Notary who made a mistake in making a deed, which results in the deed losing its authenticity or becoming null and void, thus requiring the Notary to compensate the court order as referred to in Article 84 Law of Notary Position, according to I Ketut Dharma Susila (Irsan, 2008), cannot be deemed bankrupt, even though in the end the Notary is unable to fulfil all of its obligations to provide compensation, because in that case there is no element of debt or credit. The compensation arises because of an error, thus creating an obligation for the party that causes the error to provide compensation, while the accounts payable arise from agreement between 2 (two) parties, which causes both parties to be legally bound by the contents of the agreement. If one of the parties neglects it, it will result in sanctions for the negligent party. So, there are 2 (two) elements that are not supposed to be declared bankrupt, *first*, there is no debt, *second*, there is no agreement between the 2 (two) parties that causes the debt and credit. Meanwhile, due to the law of bankruptcy towards individuals who work as Notaries (Irsan, 2008), in UUK and PKPU Number 4 of 1998 in conjunction with UUK and PKPU Number 37 of 2004 are not different from those of private persons or legal entities, and there are no special regulations.

The consequences of bankruptcy law in UUK and PKPU Number 37 of 2004 are regulated in a separate section, namely in chapter 11, the second part starts from Article 21 to Article 64, while in UUK Number 4 of 1998 is regulated in the second part, starting from Article 19 to Article 62, and in principle both of them regulate the same matter, that the legal consequences of a bankruptcy statement for the debtor (person and legal entity) are: that based on the provisions of Article 21 UUK Number 37 of 2004, it is the entire assets of the debtor that are declared bankrupt, not the person, his profession, or position. Therefore, according to Article 24 of UUK Number 37 of 2004, following the decision of bankruptcy, the notary lawfully loses his right to act freely with his bankrupt assets and to perform his notarial tasks from the date the bankruptcy decision is pronounced.

In other areas of law such as family law, he remains legally competent, for example he is still capable of filing a divorce suit, denial of the legality of the child, but claims concerning the rights and obligations of the bankrupt debtor's assets must be filed by a trustee. If the legal action that is filed or continued against the bankrupt debtor results in a punishment against the bankrupt debtor, then the sentence has no legal force against the assets that have been included in the bankruptcy statement, as well as all lawsuits to fulfil the commitment of the bankruptcy assets during the bankruptcy, even though it is filed. To the bankrupt debtor, it can only be submitted with a report to match it (see Article 27, Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK and PKPU)).

CONCLUSION

1. Arrangement for Bankruptcy for Debtors who have served as Notaries in Indonesia, regulated in UUK and PKPU as well as the Law of Notary Position, is described in the following:
 - a. A notary is categorized as an individual legal subject, and not a legal entity, so that if he / she goes bankrupt, it is only in the capacity of the debtor or the individual is not in a position.
 - b. The position of a notary cannot be bankrupt because UUK and PKPU have provided clear regulations regarding the legal subject to bankruptcy, namely individuals and legal entities.
2. As a result of the Bankruptcy Decision on Notary Public as well as in his position:
 - a. Bankruptcy notary according to Article 12 letter a Law Number 30 of 2004 concerning Notary Position is if the notary is sued for compensation by the parties, because the deed made before / by a notary violates the provisions of article 84 of Law concerning Notarial Position, resulting in losses to the parties, and the notary is obliged to pay compensation.
 - b. The result of bankruptcy according to UUK and PKPU Number 37 of 2004 is that it causes a person to lose the right to only act freely with his assets, but does not lose the right to carry out his profession and position.

ACKNOWLEDGMENTS:

I gratefully acknowledge Universitas Muhammadiyah Malang for financing this research through the law faculty grand block fund 2019-2020.

REFERENCES

- Adjie, H. (2008). *Sanksi Perdata Dan Administrasi Terhadap Notaris Sebagai Pejabat Publik*. Bandung: Refika Aditama.
- Anggraeny, I., & Al-Fatih, S. (2020). Kata Sepakat Dalam Perjanjian Dan Relevansinya Sebagai Upaya Pencegahan Wanprestasi. *De Lega Lata: Jurnal Ilmu Hukum*, 5(1), 57–66. <https://doi.org/10.30596/dll.v5i1.3446>
- Budiono, H. (2013). *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan*. Bandung: Citra Aditya Bakti.
- Delines, H., Daulay, Z., & Fauzi, W. (2020). Bankruptcy as a Reason for Termination of Notary in Indonesia. *International Journal of Multicultural and Multireligious Understanding*, 7(11), 318–324. <https://doi.org/dx.doi.org/10.18415/ijmmu.v7i11.2175>
- García-Posada, M., & Mora-Sanguinetti, J. S. (2014). Are there alternatives to bankruptcy? A study of small business distress in Spain. *SERIEs*, 5(2), 287–332. <https://doi.org/doi.org/10.1007/s13209-014-0109-7>
- Hartini, R. (2017). *Hukum Kepailitan (Edisi Revisi)*. Malang: UMM Press.
- Irsan. (2008). *Akibat Hukum Pernyataan Pailit Terhadap Orang Pribadi Yang Berprofesi Sebagai Notaris*. University of Diponegoro.
- Irwansyah. (2020). *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel (A*.

- Yunus, Ed.). Yogyakarta: Mirra Buana Media.
- Kahar, A. (1983). *Notaris dalam Praktik Hukum*. Bandung: Alumnus.
- Kie, T. T. (2011). *Studi Notariat Dan Serba-Serbi Praktek Notaris, Cetakan Kedua*. Jakarta: Ichtar Baru van Hoeve.
- Laela, F. (2021). *Notary in Malang*. Malang.
- Lestari, K. A. I. (2020). Kadek Ayu Intan Lestari, Pemberhentian Notaris Dengan Tidak Hormat Akibat Dinyatakannya Pailit Berdasarkan Undang-Undang No. 2 Tahun 2014 Tentang Jabatan Notaris. *Jurnal Kertha Semaya*, 8(5), 822–831.
- Lubis, M. F. R. (2018). Pertanggungjawaban Direksi Disuatu Perseroan Terbatas Ketika Terjadi Kepailitan Pada Umumnya Dan Menurut Doktrin Hukum Perusahaan & Undang-Undang No.40 Tahun 2007. *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat*, 17(2), 25–47. <https://doi.org/doi.org/10.30743/jhk.v17i2.350>
- Majamaa, K., Lehtinen, A.-R., & Rantala, K. (2019). Debt Judgments as a Reflection of Consumption-Related Debt Problems. *Journal of Consumer Policy*, 42(1), 223–244. <https://doi.org/doi.org/10.1007/s10603-018-9402-3>
- Marzuki, P. M. (2006). *Penelitian Hukum (Cetakan Kedua)*. Jakarta: Kencana Prenadamedia Group.
- Maylaksita, A. (2019). Problematik Interpretasi Pengaturan Kepailitan Terhadap Jabatan Notaris Di Indonesia. *Jurnal Lex Renaissance*, 4(1), 126–144.
- Mulyadi, L. (2010). *Perkara Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU), Teori Dan Praktik*. Bandung: Alumnus.
- Notodisoerjo, R. S. (1993). *Hukum Notariat Di Indonesia*. Jakarta: Raja Grafindo.
- Olabarrieta, U., Araujo, A., & San-Jose, L. (2020). *Ethics of Bankruptcy Creditor*. https://doi.org/doi.org/10.1007/978-3-030-00001-1_16-1
- Omakoya, A. B., & Oluto, A. E. (2017). Bankruptcy and Insolvency: An Exploration of Relevant Theories. *International Journal of Economics and Financial Issues*, 7(3), 706–712.
- Ranggawidjaya, R. (1998). *Pengantar Ilmu Perundang-Undangan Indonesia*. Bandung: Mandar Maju.
- Retnaningsih, S., & Ikhwanisyah, I. (2017). Legal Status Of Individual Bankrupt Debtors After Termination of Bankruptcy and Rehabilitation Under Indonesian Bankruptcy Law. *Indonesia Law Review*, 7(1), 79–94. <https://doi.org/dx.doi.org/10.15742/ilrev.v7n1.289>
- Shabrina, D., Fendri, A., & Adegustara, F. (2019). The Role of the Notary Regional Supervisory Board in Preventing Legal Violations Committed by Notaries in Padang City. *International Journal of Multicultural and Multireligious Understanding*, 6(1), 292. <https://doi.org/doi.org/10.18415/ijmmu.v6i1.571>
- Shubhan, M. H. (2008). *Hukum Kepailitan, Norma Dan Praktek Di Pengadilan*. Jakarta: Kencana Prenadamedia Group.
- Stef, N. (2018). Bankruptcy and the difficulty of firing. *International Review of Law and Economics*, 54(1), 85–94. <https://doi.org/doi.org/10.1016/j.irle.2017.11.002>
- Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*. (n.d.).
- Utomo, R. N., & Karjoko, L. (2018). Role of the Shareholders within the Composition of Authentic Deed by the Notary. *International Journal of Multicultural and Multireligious Understanding*, 5(3), 307.

- <https://doi.org/doi.org/10.18415/ijmmu.v5i3.428>
- Wijaya, G. (2019). Legal Consequences of Making Deed Of Granting of Security Rights By Notary With a Guarantee Object Through Different Bank. *South East Asia Journal of Contemporary Business, Economics and Law*, 18(5), 91–94.
- Wijayanti, R. A., Setiono, & Sohartono. (2019). Verdicts on Bankruptcy Cases Study Case on Judges' Legal Behaviour. *Journal Of Law, Policy and Globalization*, 81, 82–98. <https://doi.org/doi.org/10.7176/JLPG>
- Yuliarti, & Purnawan, A. (2018). Regional Assembly Supervisory Effectiveness of Supervision in Efforts to Increase The Professionalism of Notary in The Region of Purwokerto and Purbalingga. *Jurnal Akta*, 5(4), 905–912. <https://doi.org/doi.org/10.30659/akta.v5i4.3731>