

Bankruptcy Analysis as a Basis for Discontinuous Termination of Notaries

Amira Ulfah

Faculty of Law, Universitas Brawijaya, Indonesia

Abstract

A notary is a public official authorized to do authentic deeds and has other authorities referred to in Law Number 30 of 2004. In light of this, the author concludes that Article 12 letter a of Law Number 30 of 2004 concerning the Position of a Notary contains a legal ambiguity. As a result, the authors are interested in investigating bankruptcy as a reason for a notary's dishonourable dismissal. In terms of data, this study relies on qualitative. However, from the results and discussion above, it can be concluded that the Notary is classified as an individual legal subject rather than a legal entity under bankruptcy law. So, suppose a Notary is declared bankrupt. In that case, he or she loses only their authority to manage assets listed in the bankruptcy register, but not their position. Therefore, due to bankruptcy decisions, notaries cannot be dishonourably dismissed from their positions.

Keywords

notary; bankruptcy decisions;
dishonourably dismissed



I. Introduction

A notary is a public official authorized to do authentic deeds and has other authorities as referred to in Law Number 30 of 2004 concerning Notary Positions based on Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004. A Notary's presence is expected to assist and serve members of the public who require authentic written evidence of legal circumstances, events, or actions. An authentic deed is executed in the manner prescribed by law by or before a public official authorized to do so at the location where the deed is executed. According to this understanding, an act can be said to be authentic if it is made in a certain form following the law, made before an authorized official for that purpose, and made where the deed was done. Hulu (2020) stated that Law is one of the most important elements in a state life. The fact of people's increasingly dynamic life has made law a controlling sign. Law is also the work of humans in the form of norms containing behavioral guidelines which are a reflection of human will about how society should be fostered and where it should be directed (Hartanto, 2020).

The role of a Notary as a social functionary is still respected today. A notary is a government official who can provide advice. Everything that has been written assigned or is a constant is correct. In the legal process, a notary is a powerful document maker. His statements are trustworthy, and his signature and seal provide strong guarantees and evidence. He is an unbiased expert and an unblemished adviser who keeps his mouth shut and makes a pact that will protect him in the future. If an advocate defends someone's rights when a problem arises, a Notary must try to avoid the problem in the first place.

A Notary provides legal services to the public in his duties, as defined by Law Number 30 of 2004 on the Position of Notary and Law Number 2 of 2014 on Amendments to Law Number 30 of 2004. Notaries' duties, functions, authorities, obligations, and

prohibitions in their roles as Public Officials are governed by the law. The law lays out what a Notary must do to make an authentic deed step by step.

A notary can be dishonourably dismissed under article 12 letter a of the Notary Position Act if he has been declared bankrupt by a court decision with permanent legal effect. Because the bankruptcy law regulates legal efforts to protect the interests of creditors, as regulated in article 24, paragraph 1 of the Bankruptcy Law, this dishonourable dismissal is not by the concept of bankruptcy. According to Article 1 of Law Number 37 of 2004 Concerning Bankruptcy and PKPU, bankruptcy is a general seizure of all assets of a bankrupt debtor, whose management and settlement is carried out by a curator under the supervision of a supervisory judge, as required by law. Debtors who have two or more creditors, do not pay at least one due and collectable debt, and are declared bankrupt by a court decision, either at their request or the request of one or more creditors, are considered bankrupt.

When a Notary is dishonourably dismissed by the Minister on the Central Supervisory Council's recommendation, he loses not only the right to control and manage his assets but also his civil rights to work and his position as a Notary cannot be reapplied for even after rehabilitation.

In light of this, the author concludes that Article 12 letter a of Law Number 30 of 2004 concerning the Position of a Notary contains a legal ambiguity. The article can be interpreted in a variety of ways. Legal uncertainty will result from differing interpretations. The explanation section of Law Number 30 of 2004 concerning the Position of a Notary makes no mention of whether the position or position of a bankrupt notary is that of a person or that of a Public Official. Bankruptcy is a threat that can be used to derail a Notary's career. As a result, the authors are interested in investigating bankruptcy as a reason for a notary's dishonourable dismissal.

II. Research Methods

In terms of data, this study relies on qualitative. Qualitative research aims to comprehend the phenomenon of what the research subject experiences holistically and through the description in words and language, in a specific natural setting, and by employing various scientific methods (Moleong, 2003). Apart from that, researchers use normative legal research based on legal materials to develop arguments, concepts, or theories that can be used to solve problems.

III. Results and Discussion

3.1 Results

Dismissal of a Notary due to a bankruptcy decision as regulated in Article 12 letter an of Law Number 30 of 2004 concerning the Position of a Notary in connection with the provisions of the articles contained in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligation for Payment of Debt Related to the provision of sanctions for dishonourable dismissal of a Notary. The author believes that Law Number 30 of 2004's article 12 letter contains ambiguous norms. When looking at the provisions of Article 12 letter a of Law Number 30 of 2004 concerning the Position of a Notary, we can see some ambiguity in the meaning of that article. The explanation does not specify whether the bankrupt is a Notary in his capacity or his capacity as a public official. Therefore, the provisions of Law Number 30 of 2004 concerning the Position of a Notary, article 12 letter

a, give rise to various interpretations or multiple interpretations regarding a Notary who has been declared bankrupt.

Bankruptcy is defined as a general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by the curator under the supervision of the supervisory judge, according to Article 1 of Law Number 37 of 2004 concerning Bankruptcy and PKPU. The same for the bankrupt debtor's assets among its creditors, to avoid seizure of the debtor's assets if several creditors are collecting receivables from the debtor at the same time.

The purpose of bankruptcy law is to prevent debtors from harming creditors' interests, such as debtors attempting to provide benefits to one or several specific creditors at the expense of other creditors. Runaway with all of his belongings to absolve himself of his debts to creditors. The third goal of bankruptcy law is to provide debtors in good faith with protection from their creditors through debt relief.

For assets that go bankrupt, there are some exceptions. Everything obtained by the debtor from his work as compensation for a position or service, such as wages and pensions, is not included in the object of bankruptcy, according to Article 22 letter b of Law Number 37 of 2004. If his position as a Notary is dishonourably terminated, it becomes irrelevant.

Relevance to the dishonourable dismissal of a Notary as a result of a bankruptcy decision that a Notary who has been declared bankrupt based on a permanent legal decision by a court can be dishonourably dismissed from his position by the Minister on the recommendation of the Central Supervisory Council, as regulated in Article 12 letter a of the Law. The position of a notary is governed by Law Number 30 of 2004. Disrespectful dismissal is a disciplinary action taken against a Notary. The Notary loses his right to manage his assets due to the bankruptcy decision, which is now the curator's responsibility under the supervision of the Supervisory Judge. Furthermore, the bankruptcy decision has resulted in other laws that are detrimental to his position. For example, the Notary's authority to do an authentic deed is revoked.

Individuals and legal entities are the legal subjects of bankruptcy, according to Law No. 37 of 2004 concerning bankruptcy and PKPU. The position of Notary is not a legal entity. As a result, a Notary's rights as a person are only affected by the bankruptcy decision. As a result of the bankruptcy decision, he no longer has the legal right to act freely on his assets. Notaries retain their ability to practice their profession or work. Bankruptcy is not a crime or a criminal act. The imposition of sanctions for a Notary's dismissal is inconsistent with the provisions of Law Number 37 of 2004 on Bankruptcy and PKPU. The author believes that the provisions regarding the sanction of the dismissal of a Notary from his position due to a bankruptcy decision refer to the provisions that are clear and in detail regulated in Law Number 37 of 2004 concerning bankruptcy and the PKPU. The possibility of errors in understanding the rule of law will be reduced if the rules are clear and detailed (multi-interpretation). The definition of certainty in society is the clarity and firmness of the law.

3.2 Discussion

As defined in Article 1 point 6 of Law Number 37 of 2004, the concept of debt in bankruptcy law refers to a debtor's inability to repay multiple creditors. In bankruptcy law, debt refers to property assets. In bankruptcy law, the definition of debt is the result of an agreement between debtors and creditors. As public officials, notaries are unable to carry out legal actions that establish legal relationships between debtors and creditors. According to Law Number 37 of 2004 concerning Bankruptcy and PKPU, compensation due to the

Notary's inability to do the deed, causing the power of proof of the deed to be degraded to be in the hands, cannot be equated with the concept of debt. Therefore, a Notary who can be declared bankrupt is a Notary who is not subject to the provisions of the Notary Positions Law.

Compensation, interest, and costs claims arising from the Notary's failure to do an authentic deed are resolved through a lawsuit in the General Court under Article 1365 of the Civil Code. A person who infringes on the rights of others has committed a crime. As a result of the consequences of an unlawful act, there is a legal obligation to compensate those who have been harmed as a result of the act. According to Article 1365 of the Civil Code, any unlawful act that causes harm to another person obligates the person who caused the loss due to his mistake to compensate. The provisions of Article 1365 of the Civil Code state that an error resulting from an unlawful act obligates the party who committed the act to compensate the victim.

Article 1365 states that filing a lawsuit for an unlawful act is an act against the law, an error, a resulting loss, and a causal relationship between the act and the resulting loss. If a Notary commits an illegal act, he can be sued for damages. Suppose a notary violates the law while performing his duties as a public official. In that case, he is said to have committed an unlawful act. If an act is against the law, it is against the perpetrator's legal obligations. Notaries have a responsibility to assist the community in executing genuine deeds. If the parties suffer losses due to the deed being made in violation of the provisions of the Law on Notary Positions, namely Law Number 30 of 2004, the parties may seek compensation for their losses.

IV. Conclusion

From the results and discussion above, it can be concluded that the Notary is classified as an individual legal subject rather than a legal entity under bankruptcy law. So, suppose a Notary is declared bankrupt. In that case, he or she loses only his or her authority to manage assets listed in the bankruptcy register, but not his or her position. Due to bankruptcy decisions, notaries cannot be dishonourably dismissed from their positions. Therefore, the compensation claim is based on an illegal act that cannot be resolved under the Bankruptcy Code.

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