

ORIGINAL ARTICLE



Analysis of Notaries As Public Officials Who Have Been Declared Bankrupt from the Perspective of Notarial Law

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Abstract

Notaries play an important role in the Indonesian legal system, but the Notary Law does not regulate the dismissal of a Notary due to bankruptcy. This ambiguity gives rise to multiple legal interpretations regarding whether a Notary appointed by the State can be dishonorably dismissed in the context of bankruptcy. This study aims to analyze the interpretation of the dismissal of a Notary who is declared bankrupt and its legal consequences for the Notary's authority. The method used is normative juridical legal research with a conceptual, legislative, and analytical approach. The study results indicate that the provisions in Article 9 paragraph (1) and Article 12 letter a of the Notary Law give rise to legal uncertainty and are contrary to the principle of justice because bankruptcy is a civil matter and is not always related to violations of job ethics. This study suggests revising and eliminating these articles to overcome multiple interpretations, ensure fair legal protection for Notaries, and maintain the dignity of the Notary's position in the Indonesian legal system.

1. Introduction

As a state governed by law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution, Indonesia is firmly committed to upholding the principles of justice, legal certainty, and the welfare of society. [1,2]. As an integral component of the national legal system, the state entrusts various institutions and government bodies with specific mandates to realize these objectives [3]. One of the essential positions in ensuring effective legal administration is that of the Notary, who is authorized to draft authentic deeds with legally binding force [4]. This role has become increasingly important as Indonesia strengthens its legal governance framework, where clarity regarding professional accountability and state-delegated authority is fundamental to maintaining public trust. The presence of independent and competent notaries is therefore crucial in providing legal certainty for the public in every transaction or agreement undertaken [5].

As public officials appointed by the state, notaries bear significant responsibilities in performing their duties as regulated by the Notary Law [6,7]. This office, often referred to as a noble profession, grants notaries the authority to produce authentic deeds that serve as the legal foundation for the validity of agreements and transactions. Their role is vital not only in private legal relations but also in supporting the state's function to ensure sound legal administration and protect citizens' rights [8]. Within the Indonesian legal system, the notary's position occupies a central place in upholding integrity and justice in legal interactions between individuals and legal entities [9].

Although the position of a Notary as a public official is highly respected, the lack of clarity regarding the dismissal of a Notary declared bankrupt has generated significant controversy in legal practice [10]. Article 9 paragraph (1) and Article 12 letter a of the Notary Law stipulate that a Notary may be temporarily or dishonorably dismissed if declared bankrupt [11]. These provisions open room for multiple interpretations because bankruptcy is generally understood as a civil matter involving personal financial obligations rather than an issue directly related to the performance of a Notary's public duties [12]. As a result, legal uncertainty surrounding the dismissal of notaries due to bankruptcy requires closer examination [13]. Previous studies have not thoroughly addressed the contradiction between the civil nature of bankruptcy and its use as grounds for dismissal, leaving a substantial gap in doctrinal and practical understanding.

From a philosophical perspective, state officials, including notaries, exercise authority granted by the state for the public interest rather than as private individuals independent of state functions [14]. Accordingly, state officials should not be subjected to bankruptcy status in a way that affects their public office, as their actions represent the state's mandate carried out with integrity and independence [15]. Bankruptcy, which concerns personal or business financial liabilities, should therefore not constitute a valid basis for dismissing a notary appointed to perform public functions [16]. This highlights the need for a clearer interpretation of the legal status of notaries in bankruptcy cases and the implications for their office [17]. In line with this, the present study seeks to clarify the doctrinal issues involved and develop a more coherent legal framework concerning the dismissal of notaries declared bankrupt.

This study aims to examine the legal interpretation of notary dismissal in cases of bankruptcy, explore the implications arising from existing regulatory ambiguities, and offer constructive proposals to strengthen legal certainty and fairness [18]. Through this analysis, the study is expected to help address existing uncertainties and propose refinements to notarial regulations that align with the principles of justice and established legal norms [19].

2. Methods

This study employs a normative legal research method with conceptual, statutory, and analytical approaches to examine legal issues related to the dismissal of a Notary declared bankrupt under the Notary Law [20]. The data used consist of primary legal materials, including the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law Number 2 of 2014 regarding Notaries, and Law Number 37 of 2004 concerning Bankruptcy. Secondary legal materials, such as books, journals, and expert opinions, are also utilized. Data collection is conducted through library research and interviews to obtain practical insights related to the dismissal of notaries due to bankruptcy [21,22]. The collected materials are then analyzed qualitatively using a descriptive approach to explain the legal phenomena involved and to provide a deeper understanding of the provisions governing the dismissal of notaries declared bankrupt, as well as possible solutions to the regulatory ambiguities.

In this study, the selection of primary legal materials such as constitutional provisions, statutory regulations, and bankruptcy decisions is based on their relevance to the issue of notary dismissal. Secondary materials, including journals, books, and expert analyses, are selected through thematic keyword mapping to ensure comprehensive coverage of doctrinal discussions. The analytical process applies a structured legal interpretation framework through grammatical, systematic, and teleological analyses to examine statutory ambiguities. Interview data are incorporated using a triangulation technique to validate conceptual findings and reinforce the normative analysis.

3. Results and Discussion

To address the research questions, this discussion analyzes how the provisions of the Notary Law relate to bankruptcy status and examines their implications for legal certainty and

professional integrity. Each subsection presents an explanation aligned with the objectives of the study, illustrating how the identified legal ambiguities influence notarial authority and the broader framework of public legal services.

The key findings of this study indicate three main points: first, the provisions in Articles 9 paragraph (1) and 12 letter (a) of the Notary Law create doctrinal inconsistencies when applied to bankruptcy cases; second, bankruptcy as a civil financial condition does not logically correspond with the ethical grounds used to dismiss a public official; and third, the absence of a mechanism for reappointment exacerbates legal uncertainty. Compared with previous research, these findings reaffirm existing concerns regarding unclear statutory interpretation while also identifying additional gaps that have not been fully addressed, particularly the tension between civil insolvency and public office accountability.

3.1. Interpretation of the Termination of a Notary's Position as a Public Official under the Notary Law

The provisions on the dismissal of a Notary declared bankrupt, as regulated in Article 9 paragraph (1) and Article 12 letter a of the Notary Law, have generated substantial debate due to their lack of clarity. These articles state that a Notary may be temporarily or dishonorably dismissed while undergoing bankruptcy proceedings or a suspension of debt payment obligations. This raises essential questions regarding the relevance of bankruptcy to the notarial office. Bankruptcy is fundamentally a financial condition reflecting an individual's inability to meet debt obligations; it pertains to personal civil liabilities rather than professional misconduct.

A grammatical and systematic interpretation of these provisions suggests that the application of dishonorable dismissal based on bankruptcy risks disregarding principles of fairness. Bankruptcy affecting a Notary in a personal capacity does not necessarily indicate ethical failures or professional incompetence. Therefore, treating bankruptcy as grounds for dismissing a Notary may be disproportionate and inconsistent with the public nature of the notarial office. A more precise interpretative framework is required to ensure that dismissal based on bankruptcy aligns with legal certainty and the principle of justice.

3.2 Legal Certainty and Justice in the Dismissal of a Bankrupt Notary

As public officials authorized to create authentic deeds, Notaries occupy an honorable and strategic position within the Indonesian legal system. Linking bankruptcy to their dismissal risks undermining the dignity and stability of the notarial office. The ambiguity of existing legal provisions creates uncertainty and may weaken public trust in notarial services. Moreover, dismissal based solely on a Notary's financial condition, without assessing their integrity or professional performance, may lead to unfair outcomes.

The principle of legal certainty requires that legal norms be clear, consistent, and free from multiple interpretations. The current formulation of the provisions regarding bankruptcy as grounds for dismissal contradicts this principle because it fails to distinguish between personal civil matters and professional obligations. This inconsistency also conflicts with the principle of justice, which demands fair treatment and equal protection under the law. Therefore, a clearer demarcation is necessary to differentiate the personal legal status of a Notary from their authority as a public official.

Comparative analysis with prior studies reinforces these findings. While some scholars argue that financial insolvency may reflect negatively on professional credibility, such claims lack sufficient doctrinal support because bankruptcy does not inherently indicate ethical or professional violations. This contrast highlights the need for a coherent legal framework that adheres to principles of justice and legal certainty.

3.3. Lack of Legal Protection for Notaries Declared Bankrupt

The Notary Law does not provide a clear mechanism for the reappointment of a Notary who has completed the bankruptcy process. This legal gap creates significant uncertainty regarding the rights and future status of Notaries who have undergone financial rehabilitation. Without explicit provisions governing reappointment, Notaries face obstacles in restoring their professional status, despite having resolved the financial circumstances underlying their bankruptcy.

This regulatory omission has broader implications. It not only affects the Notary's professional future but also challenges constitutional principles that guarantee each individual's right to fair treatment and the opportunity to resume their profession after rehabilitation. Therefore, legal reform is necessary to establish a transparent and fair pathway for reappointment, ensuring that Notaries who have undergone rehabilitation can re-enter public service without undue legal barriers.

3.4. Legal Consequences on the Authority of a Notary Declared Bankrupt Based on the Notary Law

The dismissal of a Notary declared bankrupt pursuant to Article 12 of the Notary Law carries substantial legal implications for the authority inherent in the notarial office. Although bankruptcy concerns the inability to meet personal financial obligations, the imposition of dishonorable dismissal on this basis raises critical questions about justice and legal certainty. From a doctrinal standpoint, bankruptcy pertains solely to an individual's incapacity to manage personal assets and should not automatically impede a Notary's authority to perform public duties, including drawing up authentic deeds that constitute the legal foundation for various transactions [23]. The relevant statutory provisions do not clearly distinguish between personal insolvency and the authority attached to the notarial office, thereby creating legal uncertainty that adversely affects both the Notary concerned and members of the public who rely on notarial services. A more coherent and transparent interpretation of these provisions is therefore required to prevent misuse and to ensure that a Notary declared bankrupt is not deprived of the dignity and integrity associated with the office.

The findings of this study are significant because they illuminate key doctrinal inconsistencies that arise when bankruptcy is treated as grounds for dismissing a Notary. By demonstrating how such provisions undermine legal certainty and professional protection, this research contributes meaningfully to ongoing discussions on legal reform in Indonesia. The insights generated also have practical implications for policymakers, supervisory authorities, and notarial practitioners who require clearer regulatory guidelines to ensure a fair and consistent application of the law. This study offers a novel contribution by focusing specifically on the intersection between bankruptcy law and the regulation of the notarial office, an area that has received relatively limited scholarly attention. Unlike previous studies that examine bankruptcy or notarial duties in isolation, this research highlights the contradictory interaction between these two legal domains and proposes conceptual solutions to address the inconsistencies. This integrated approach expands existing legal scholarship and strengthens the conceptual basis for regulatory reform.

This study also acknowledges several limitations. As a normative juridical inquiry, the analysis relies primarily on statutory interpretation and secondary legal literature, which may limit empirical verification. The scarcity of case law concerning notaries declared bankrupt further restricts comparative legal assessment. These limitations indicate the need for additional empirical and doctrinal research to deepen understanding of the issues underlying notarial bankruptcy.

Future research should examine empirical cases involving notaries affected by bankruptcy to

obtain a clearer picture of how current provisions operate in practice. Comparative studies with jurisdictions that adopt different approaches to regulating notarial bankruptcy would offer valuable perspectives for refining Indonesia's legal framework. Moreover, deeper analysis of the ethical and administrative implications of financial insolvency for public officials is necessary to develop a more comprehensive and coherent regulatory model.

4. Conclusions

The interpretation of the provisions on dismissing a Notary due to bankruptcy in Article 9 paragraph (1) and Article 12 letter a of the Notary Law shows legal uncertainty caused by multiple interpretations. It is contrary to the principle of justice. The dishonorable dismissal of a Notary declared bankrupt creates a legal contradiction because bankruptcy is civil and is not always related to violations of job ethics. In addition, the lack of regulations regarding the reappointment of a Notary who has been rehabilitated further exacerbates injustice for Notaries who wish to continue their duties. Therefore, there needs to be a review to eliminate or revise more comprehensive regulations and strengthen legal protection for Notaries. The legal consequences of dismissing a Notary who is bankrupt, as regulated in the Notary Law, also show a broad impact, not only on the individual Notary but also on the validity of the deeds that have been made and the community who needs legal services. An in-depth evaluation of these provisions is essential to avoid injustice and ensure legal certainty and adequate protection for Notaries and the community.

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