

Legal Consequences of Authentic Deed Made by Notary after Declared Bankruptcy

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Dian's Garage Body Repair and Paint

Abstract

This research aims to analyze legal consequences of an authentic deed by Notary after being declared bankruptcy. The research method used is juridical normative. The data source is secondary data. The data analysis method used qualitative normative. The result of this research are normatively in the Law of Notary Position that Notary declared bankrupt based on court decision that has obtained permanent legal force will dishonorable dismissal. A Notary is declared bankrupt has legal consequences against the deed the made to lose authenticity. So, the authentic deed only has strength evidence the private deed.

Keywords: Notary; Legal consequences; Authentic; bankruptcy.

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Introduction

Indonesia is a country that adheres to the law as the foundation of the state. Indonesia as a state of law is constitutionally emphasized in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3) which reads "The State of Indonesia is a State of Law". In principle as a state of law, Indonesia has an obligation to ensure the creation of certainty, order and legal protection for the lives of its people. The existence of legal certainty as a form of legal protection against all acts of arbitrariness. With this those who get losses for these actions will get something fairly. Legal certainty is intended to create public order. Broadly speaking, order is fulfilled by the existence of rules of order, the provisions concerned with this order in the rules or norms that are positioned in society as legal norms, although other norms are no less important in the life of society (Muhammad, 2013). In realizing the implementation of legal certainty, it is necessary to have law enforcers. Law enforcers as defenders of truth and justice must carry out their duties and authority in good faith. So with this law enforcers as legal professionals should carry out the profession in the field of law as a choice and also the call of life to serve the community in the field of law (Huijbers, 1995).

This is one of the foundations for this research. And also supported by previous research conducted by Aga Waskitha Wiryawan (Wiryawan, 2020) in his writing discussing the factors of the Notary that influence so that it can be said to be bankrupt by the court is because it cannot pay compensation to the creditor, which is outside of his position as a Notary, that is, being a person with another business that does not interfere with/violate his position. The similarity with ongoing research is in the topic or subject taken, that is, Notary. However, there is a difference in the purpose of writing if the previous research aims to find out the factors of the notary so that it is declared bankrupt and also to find out the legal consequences that the Notary will receive if it is bankrupt in review of the notary office law (*UUJN*), while this ongoing research has the aim of knowing in more detail about the legal consequences of the authentic deed made by the Notary after being declared bankrupt.

Then one of the legal professions that have been discussed is notaries who provide services in the field of law. As stated in Article 1 point 1 of Law of the Republic

of Indonesia Number 30 of 2004 concerning Notary Position in conjunction with Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 30 of 2004 concerning Notary Position (hereinafter referred to as UUJN in Indonesia), Notary is a public official authorized to make authentic deeds and other authorities as referred to in this Law. Based on the wording of the article, the authority of a Notary as a public official is to make authentic deeds, while the authority of other officials is no more than the making of authentic deeds described in the Law. Regarding this authority, Soegondo Notodisoerjo explains that a party who can make an authentic deed must be someone who has a position as a public official (Notodisoerjo, 1993).

Public officials, in this case Notaries, in making authentic deeds are required by laws and regulations in order to realize certainty, order and legal protection. The notary is obliged to include everything desired by the parties in the authentic deed. The authentic deed made by the Notary must contain formal truth in accordance with the information of the parties. The notary is obliged to apply everything stated in the deed must be truly understandable and in accordance with the wishes of the parties, among others, by reading it out so that the contents of the deed become clear (Sjaifurrachman & Adjie, 2011). A deed is a writing made to be used as evidence. An authentic deed is a deed made before a Notary. Therefore, a deed is said to be authentic if it is made in front of an authorized official (Kohar, 1983).

An authentic deed is a deed made by an authorized official based on his general powers, using the format and content stipulated by law. Authentic deeds have high evidentiary power, because they are considered to have perfect legal force and can be used as valid evidence in court. According to Article 1866 of the Indonesian Civil Code (*KUHPerdata*), an authentic deed is defined as "a deed made by an authorized public official at the place where a legal event occurs and contains a statement made according to his general powers".

Notaries in carrying out their duties and positions as stated in Article 15 paragraph (1) of the Notary Position Law have the authority to make authentic deeds. The authority is regarding all acts of agreement and stipulation required by laws and regulations. Notaries not only have this authority, but must be able to function as a law maker because the agreement between the parties applies as a legal product that binds the parties. In carrying out his/her position, the Notary must be able to behave professionally. Errors made by Notaries in making deeds, both personal and professional, which contain elements against the law, will cause legal problems. Therefore, in carrying out the authority and duties of his position, it must be in accordance with what is regulated in the *UUJN* (Anshori, 2009).

Bankruptcy is a situation where the debtor is no longer able to make debt payments to his creditors. Regarding this matter, if a Notary is declared bankrupt by the court because he is unable to pay debts to his creditors, where the Notary owes debts to creditors outside of his position as a Notary, that is, as a debtor, then the Notary is declared bankrupt by the court. As a result of this bankruptcy, the Notary is dishonorably dismissed by the Minister at the request of the Central Supervisory Council. The Notary Position Law does not clearly regulate bankruptcy experienced by Notaries. The uncertainty is whether the Notary is bankrupt as a Notary or bankrupt outside the Notary position, that is, the debtor.

The provision of Article 12 letter (a) of the Notary Position Law that a Notary who is dishonorably dismissed due to being declared bankrupt by the court and the decision has permanent legal force, it can be said that the rehabilitation of the bankrupt debtor does not cause the Notary to be reappointed by the Minister. This

is because the Notary Position Law only regulates the reappointment of Notaries for Notaries who are temporarily dismissed, not for Notaries who are dishonorably dismissed. Therefore, bankruptcy rehabilitation cannot save a Notary who has been dismissed due to bankruptcy can be reappointed as a Notary by the minister.

Based on the statement above, this research has a detailed explanation of the bankruptcy of the Notary, where this novelty is also suggested by previous research. However, this research still has limitations, that is, focusing on the legal consequences of authentic deeds made by Notaries after being declared bankrupt.

Research Problems

After the explanation above, the researcher can formulate problems including the following; First, what if a notary can be declared bankrupt followed by being dishonorably dismissed and Second, what legal consequences will be obtained if an authentic deed made by a notary after being declared bankrupt.

Research Method

This research uses normative juridical method, that is, research conducted by reviewing and analyzing legal materials related to bankruptcy experienced by Notary. The data used in this research is secondary data obtained from laws and regulations, jurisprudence, literature/books, and scientific journals. The laws and regulations used in this research are Law of the Republic of Indonesia Number 30 of 2004 concerning Notary Position in conjunction with Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 30 of 2004 concerning Notary Position and Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The data analysis method uses normative qualitative method.

Discussion

1. Notary declared bankrupt and dishonorably discharged

As a public official with authority, Notary has been regulated in Article 1 point 1 of the Notary Position Law which states, Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws. Regarding the definition of public officials, a restriction is made that public officials are positions given to those who are authorized by law to make authentic deeds. The existence of a Notary as a public official is necessary to fulfill the legal needs in society, that is, legal certainty in performing legal acts between fellow elements of society.

Nowadays the Notary profession is increasingly needed in making an authentic written evidence of a legal act committed by the community. So that the community in the need to make a deed is very dependent on the Notary. Based on this, various laws and regulations require certain legal acts to be made in an authentic deed. Notary as a public official authorized to make authentic deeds can be interpreted as a state effort to create legal certainty and protection for community members.

In accordance with civil law, Notary as a public official is authorized in terms of making authentic deeds, that is, for the benefit of the law of evidence or evidence. So as long as authentic evidence in the civil and criminal justice system, the position of Notary will continue to need its existence in the community. Notary is a state official or public official who can be appointed by the state to perform state duties in terms of providing legal services to the public so that legal certainty can be

created, especially in making authentic deeds. The position of Notary is an office of trust for the state and society to keep all information of the parties submitted or notified to him in carrying out his official duties.(Febiana, 2013)

Basically, Notaries are authorized to make authentic deeds in accordance with the wishes of the parties concerned. Article 15 paragraph (1) of the Notary Position Law states the authority of the Notary, that is, that the Notary is authorized to make authentic deeds regarding all acts, agreements and stipulations required by laws and regulations and / or desired by those concerned to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide a grosse, copy and quotation of the deed, all of which are insofar as the making of the deed is not also assigned or excluded to other officials or other persons stipulated by law. Notary as a public official authorized to make authentic deeds, his statements, signatures and seals must be reliable and can provide guarantees and as strong evidence, as well as an independent party in legal counseling that has no drawbacks. (Purwaningsih, 2011). With this authority, the Notary should always be careful and thorough with the deed he makes. In addition, the Notary must also be careful about the parties regarding the identity of the parties.

In addition to the authority listed in Article 15 paragraph (1) of the Notary Position Law, Notary also has 4 (four) authorities as follows:

- a. The notary is authorized as far as the deed made is concerned;
- b. The notary is authorized to the extent of the persons for whose benefit the deed is made;
- c. The notary is authorized as far as the place where the deed is made;
- d. The notary is authorized as far as the time of making the deed is concerned.(G.H.S Lumban, 1992)

The position of Notary as a professional position in the field of law that provides services to the public. Therefore, the Notary must consider the norms and rules in carrying out the duties of his position Notary must maintain behavior, dignity and dignity as a public official authorized to make a deed, considering the role of Notary in society is very important. The role of the Notary in carrying out his/her position is inseparable from the fundamental problems related to the function of the law itself. The responsibility of the Notary in relation to his position cannot be separated from the power of the law itself, so that the Notary must act to reflect in the service of the community. Notaries in the civil law legal system have a role like a judge, that is, only as a party who acts to apply the rule of law. As a party appointed by the state, the Notary can be categorized as a state official. Therefore, the Notary can be said to be a representative of the state.(Hartanti & Nisya, 2013)

In the civil law legal system, an authentic deed made by a Notary is a perfect deed, so that it can be used as valid evidence in court. Article 1868 of the Civil Code requires an authentic deed to have 3 (three) elements, that are:

- a. The deed is made in the form prescribed by law. The form of a Notarial deed is explained in detail in Article 38 of the Notary Law;
- b. Deed made by a public official or before a public official;
- c. The public official must have the authority to make the deed.

Notary is one of the elements of the state that can provide legal certainty, especially in civil law. Regarding this, it does not mean that a Notary cannot be dismissed from his position. Article 12 of the Notary Position Law states:

“Notaries are dishonorably dismissed from office by the Minister upon the proposal of the Central Supervisory Board if:

- a. declaring bankrupt based on a court decision that has obtained permanent legal force;
- b. being under guardianship continuously for more than 3 (three) years;
- c. committing an act that degrades the honor and dignity of the office of Notary; or
- d. committing a serious violation of the obligations and prohibitions of office."

Based on the Article letter (a), a Notary may be dishonorably dismissed from his/her position by the Minister at the proposal of the Central Supervisory Council if declared bankrupt based on a court decision that has obtained permanent legal force. The bankruptcy regulation in Article 12 letter (a) of the Notary Position Law has an attachment to the regulation of bankruptcy in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy Law). Because the Bankruptcy Law is the basis or benchmark that is used as the basis for whether Article 12 letter (a) of the Notary Position Law can be implemented.

Bankruptcy is a situation where a debtor is declared unable to pay debts. There are several benchmarks for the court to determine a bankruptcy petition filed by a creditor or debtor. The provisions regarding this matter are regulated in Article 2 paragraph (1) of the Bankruptcy Law which states:

"A debtor who has two or more Creditors and fails to pay in full at least one debt that is due and collectible shall be declared bankrupt by a decision of a competent court as referred to in Article 2, either at his own request or at the request of one or more of his Creditors."

Based on the provisions in the Article, it can be concluded that a request for a bankruptcy statement if it meets the conditions 1. the debtor has two or more creditors; 2. the debtor does not pay in full at least one debt that has fallen due or is due and collectible. Bankruptcy experienced by a debtor must be caused by the debtor's debt to creditors. In the bankruptcy proceedings, the debt has a strong influence, therefore without debt it is impossible for bankruptcy to occur. (Subhan, 2008) The Law on Trusteeship explains the definition of debt in a broad sense. Debt is a claim either based on agreement or law that cannot be a claim based on a performance and on the basis of an illegal act.

The Bankruptcy Law states that a debtor who is bankrupt by law will only lose his right to manage and perform actions regarding his ownership of the assets owned which are included in the object of bankruptcy. The loss of rights is only limited to the assets, not to his personal status. So far, it has been normatively explained in the Notary Position Law that a Notary declared bankrupt based on a court decision with permanent legal force will be dishonorably dismissed. This statement means that the framers of the law wanted and considered that bankruptcy experienced by a Notary is a violation of the Notary Position Law. (Puspaningrum, 2019)

Notary can be said to be bankrupt if the Notary is sued to pay compensation for losses caused as a result of him making mistakes in carrying out his official duties where he causes a deed to lose its evidentiary power as an authentic deed. In addition, it causes the deed made by him to be null and void, causing considerable losses to the parties and the parties claim damages for this. With these losses, the Notary must compensate for the losses and if all of the Notary's assets are not sufficient to compensate for these losses, the Notary can be said to be bankrupt.

Notaries who are declared bankrupt, must first be examined by the Regional Supervisory Council, so that the Regional Supervisory Council can provide

recommendations to the Regional Supervisory Council to give oral or written warnings and provide proposals to the central Supervisory Council regarding sanctions given to Notaries, whether in the form of temporary dismissal sanctions or sanctions of respectful or dishonorable dismissal. After going through the proposal, it can then be submitted to the Commercial Court to request bankruptcy for the Notary.

Bankruptcy experienced by a Notary is caused by certain things either determined by law or from his own circumstances. . Bankruptcy that is determined by law is called formal bankruptcy. In formal bankruptcy, a Notary must be able to prove that he is in the position of a debtor who has the responsibility to pay his debts to creditors. In this situation, the Notary is a debtor and has creditors whose debts cannot be repaid and are due for repayment, so steps must be taken to repay their debts from the Notary's assets through the bankruptcy process. Material bankruptcy is caused by the absence of debt. Material bankruptcy is caused by several things, that is, the existence of a large enough fine from the state or a claim for interest compensation, the costs caused by the Notary's unprofessionalism in carrying out his duties and the Notary's family or the Notary himself is wrong in managing his assets. In this state of material bankruptcy, the Notary is still authorized to make deeds, because there is no decision from the Commercial Court stating that the Notary was sentenced to bankruptcy.

The bankruptcy experienced by the debtor begins with a bankruptcy decision by the Commercial Court against the bankrupt debtor, where in principle the bankruptcy decision can be executed first even though further legal action is still being taken against the decision. As the enforcement of a bankruptcy decision is basically a tool to accelerate the liquidation of the debtor's assets to be used as payment of his debts. Similarly, bankruptcy is a means to avoid the seizure of the bankrupt debtor's assets from unlawful execution by creditors.

Bankruptcy can be imposed on any person or legal entity. A Notary who is declared bankrupt, in law, is a personal legal subject or person, not in office declared as a legal entity.(Foresta, 2017) Notary as a legal subject, in bankruptcy issues is a collateral that strengthens when the debtor seeks debt loans to the debtor as long as the naturlijke person or person becomes a debtor and the debtor is a Notary, then the Notary can be bankrupted. Bankruptcy imposed on a Notary must fulfill the requirements in Article 2 paragraph (1) of the Bankruptcy Law.

The implementation of Article 12 letter (a) of the Notary Position Law is considered unfair when the Notary has been dishonorably dismissed from his position due to a bankruptcy verdict, this causes a Notary to not be reappointed even though in the future the bankruptcy situation can be restored by the Notary in the sense that the rehabilitation efforts made by the Notary are successful. As it is known that a Notary who has been dishonorably dismissed cannot be reappointed as a Notary.

For this reason, the author argues that the implementation of Article 12 letter (a) of the Notary Position Law cannot be applied optimally. The provisions in the Article cause vagueness, which raises questions for the author as to whether a Notary can be declared bankrupt, in what cases a Notary can be declared bankrupt, why a Notary is declared bankrupt and why the Notary is dishonorably discharged. Bankruptcy that causes a Notary to be dishonorably discharged cannot be clearly defined regarding the things that cause bankruptcy experienced by a Notary. The law does not yet regulate bankruptcy caused by actual circumstances, in this case

bankruptcy that is not caused by debt. This has not been able to provide an explanation that the regulation on Notary has been realized.

In a legal perspective, a regulation can be said to work well if it can be implemented properly and clearly without having to have interpretations of it. So there must be special regulations regarding Notaries who are declared bankrupt. Based on the explanation that the author has conveyed, a person should be said to be bankrupt if his assets are unable to pay off his debt obligations. Therefore, the author feels that it would be unfair if a Notary is declared bankrupt due to errors in carrying out the duties of his office and errors in managing assets, not because he is a debtor to the debts of his creditors.

2. Legal consequences of authentic deeds made by Notary after being declared bankrupt

According to Article 1 point 1 of the Bankruptcy Law, bankruptcy is a general confiscation of all assets of a bankrupt debtor, the management and management of which is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law. Based on these provisions, the court can grant a bankruptcy petition if there are facts and circumstances that can prove that the bankrupt has been declared bankrupt in the trial as stipulated in the Bankruptcy Law.

Based on Article 12 letter (a) of the Notary Position Law, it is stipulated that a Notary is dishonorably dismissed from his position at the proposal of the Central Supervisory Council (MPP) because he is declared bankrupt by a court decision with permanent legal force. Then in Article 215 of the Bankruptcy and Suspension of Debt Payment Obligations Law states that after the end of bankruptcy, either due to peace, payment of debts to creditors or the closing distribution list becomes binding, or the end of bankruptcy from the assets of the deceased debtor, the debtor or heirs are allowed to apply for rehabilitation.

Rehabilitation is a legal effort that can be made to restore a person's condition as it was before the bankruptcy. Bankruptcy rehabilitation is an effort to restore good name by means of a declaration made by the Debtor stating that he is no longer in a state of bankruptcy. (Haniaden & Fitriyah, 2022). The author assumes that rehabilitation efforts against Notaries declared bankrupt cause Notaries not to be reappointed by the Minister. This is because the Notary Position Law only regulates the reappointment of Notaries for Notaries who are temporarily dismissed. Meanwhile, if the Notary is declared bankrupt, then the Notary is dismissed dishonorably. Article 10 paragraph (1) of the Notary Position Law does not regulate the reappointment of a Notary who has been declared bankrupt by the Commercial Court, even though the Notary can prove that he/she has successfully paid off his/her debt obligations and repaired the Notary's good name. Other laws do not regulate the reappointment of Notaries who have been dismissed from office, either honorably or dishonorably. On this basis, the author concludes that bankruptcy rehabilitation cannot save a Notary who has been dishonorably dismissed from being reappointed as a Notary by the Minister.

The position of a Notary after being declared bankrupt in the Notary Position Law, it is necessary to interpret the position of the Notary and the consequences of being dishonorably dismissed. This interpretation can be done using the statutory interpretation method by connecting it with other legal regulations or with the entire legal system. Looking at Article 12 letter (a) of the Notary Position Law, the legal consequences arising from the bankruptcy experienced by the Notary are up to

his position, so the author interprets that the bankruptcy that occurs is related to the authority of the Notary in making authentic deeds.

The regulation of bankruptcy experienced by Notaries in the Notary Law is only limited to what causes a Notary to be dishonorably dismissed, and it should be noted that after the Notary is declared bankrupt, he can still carry out his duties and positions as a public official to make deeds as long as he has not been dismissed by the Minister at the proposal of the Notary Central Supervisory Council.

A court decision regarding bankruptcy experienced by a Notary changes a person's legal status to become incapable of performing legal acts. Notary Enarwanto argues that "regarding the legal consequences of a Notary who has been declared bankrupt, not only the loss of not being able to pay the losses of the parties but the Notary as an official will lose the authority and rights of the Notary." (Wiryawan, 2020). Based on this statement, a Notary declared bankrupt cannot become a Notary, who is authorized as stated in Article 15 paragraph (1) and paragraph (2) of the Notary Position Law, that are to:

- (1) Notaries are authorized to make authentic deeds concerning all deeds, agreements, and provisions required by laws and regulations and/or desired by those concerned to be stated in an authentic deed, guarantee the certainty of the date of making deeds, keep deeds, provide grosse, copies and quotations of deeds, all insofar as the making of deeds is not also assigned or excluded to other officials or other persons stipulated by law.
- (2) Notary is also authorized:
 - a. certifying the signature and establish the certainty of the date of the underhand letter by registering it in a special book;
 - b. recording the letters under hand by registering them in a special book;
 - c. making copies of the original underhand letters in the form of copies containing the description as written and described in the letter concerned;
 - d. attesting the suitability of the copy with the original letter;
 - e. providing legal counseling in connection with the making of deeds;
 - f. making deeds relating to land; or g. make deeds of minutes of auction.

A legal act is any act that has legal consequences. The authority of a Notary listed in Article 15 paragraph (1) and paragraph (2) of the Notary Office Law is a legal act. So that the Notary in exercising his authority will have legal consequences. Based on this statement, it can be said that a Notary declared bankrupt cannot carry out his duties as a Notary because he is considered incompetent in making authentic deeds. If the Notary is considered incompetent, it will have an impact on the authentic deed made by the Notary. Article 17 of the Notary Position Law provides an explanation of the debtor as a Notary with other legal consequences related to his/her position. If a Notary is under receivership, the Notary can be said to be legally incapable so that the Notary cannot perform legal acts. For this reason, the Notary does not have the authority to certify a deed. (Prastyo, 2018)

Article 1 point (7) of the Notary Position Law states that a Notarial deed is an authentic deed made by or before a Notary according to the form and procedure stipulated in this Law. The definition of a Notarial deed is also regulated in Article 1868 of the Civil Code that a Notarial deed is a deed in the form prescribed by law, made by or before public servants authorized to do so in the place where the deed is made.

Bankruptcy experienced by Notary is caused by two facts, that are, formal factors or based on material factors, regarding both facts the author has explained in the previous explanation. A Notary who is declared bankrupt due to formal facts

or fulfills the requirements in Article 2 of the Bankruptcy Law, the bankruptcy causes the Notary to be incapable of making authentic deeds so that the authentic deed made by the Notary has only the strength of proof under the hand. Regarding the evidentiary power of a deed under the hand is regulated in Article 1869 of the Civil Code which states "A deed which due to the lack of power or incapacity of the employee referred to above, or due to defects in its form, cannot be treated as an authentic deed, but nevertheless has the strength of a writing under the hand if it is signed by the parties".

However, if a Notary is declared bankrupt due to material factors or not based on a legally binding decision from the Commercial Court stating that the Notary was sentenced to bankruptcy, the Notary is still declared capable of making authentic deeds. So that with his ability, the deed made by Notary has the evidentiary power as an authentic deed. Based on this situation, Article 1868 of the Civil Code explains that a deed in the form prescribed by law is made by or before public servants authorized to do so at the place where the deed is made. So that every authentic deed made by a Notary who is still capable of performing legal acts, the Notary's deed has evidentiary power as an authentic deed.

Notaries who still make authentic deeds after being declared bankrupt based on a decision with permanent legal force from the Commercial Court, the Notary will be given sanctions along with his responsibility. In the Notary Position Law, accountability is in the form of civil sanctions and administrative sanctions. These sanctions can be in the form of verbal reprimand, written reprimand, temporary dismissal, honorable dismissal to dishonorable dismissal sanctions. Based on the above analysis, the author argues that a Notary declared bankrupt has legal consequences for the deed he made to lose its authenticity. So that the authentic deed only has the evidentiary power of a private deed. A private deed only have formal evidentiary power, that is, if the signature on the deed is recognized (in this case it is evidence of recognition) which means that the statements contained in the deed are recognized and justified. In contrast to the evidentiary power of an authentic deed which has perfect evidentiary power, that is, formal, material and binding evidentiary power. For losses suffered by the parties due to the authentic deed made after the Notary was declared bankrupt, they can claim compensation in the form of reimbursement of costs, compensation and interest through the court.

Conclusion

Normatively explained in Law of the Republic of Indonesia Number 30 of 2004 concerning Notary Position in conjunction with Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 30 of 2004 concerning Notary Position, a Notary declared bankrupt based on a court decision with permanent legal force will be dishonorably discharged. Bankruptcy imposed on a Notary must fulfill the requirements in Article 2 paragraph (1) of the Bankruptcy Law. The implementation of Article 12 letter (a) of the Notary Position Law is considered unfair when the Notary has been dishonorably dismissed from his position due to a bankruptcy verdict, this causes a Notary to not be reappointed even though in the future the bankruptcy situation can be restored by the Notary in the sense that the rehabilitation efforts made by the Notary are successful.

The position of Notary after being declared bankrupt in the Notary Position Law, it is necessary to interpret the position of Notary and the consequences if dismissed dishonorably. Bankruptcy experienced by a Notary is caused by two

factors, that is, formal factors or based on material factors. A Notary who is declared bankrupt due to formal factors or meeting the requirements in Article 2 of the Bankruptcy Law, the bankruptcy causes the Notary to be incapable of making authentic deeds so that the authentic deed made by the Notary has only the strength of proof under the hand. While the Notary is declared bankrupt due to material factors or not based on a legally binding decision from the Commercial Court stating that the Notary was sentenced to bankruptcy, the Notary is still declared capable of making authentic deeds. Notaries who still make authentic deeds after being declared bankrupt based on a permanent legal verdict from the Commercial Court, the Notary will be given sanctions in the form of civil sanctions and administrative sanctions.

Based on the above analysis, the author argues that a Notary who is declared bankrupt and dishonorably discharged will have legal consequences for all authority in his official duties. So that a deed made or by in front of him loses its authenticity. The authentic deed only has the evidentiary power of a private deed. For losses suffered by the parties to the authentic deed made after the Notary is declared bankrupt, they can claim compensation in the form of reimbursement of costs, compensation and interest through the court.

Suggestions

Based on the above problems, the author suggests that there is a need for revision or improvement of the Law of the Republic of Indonesia Number 34 of 2004 concerning Notary Position and Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 30 of 2004 concerning Notary Position. This is because this law has not regulated and provided clarity regarding bankruptcy caused by actual circumstances, in this case bankruptcy that is not caused by debt. In addition, it would be better if there were laws and regulations governing the authority of Notaries in making authentic deeds after being declared bankrupt. So that the bankruptcy of the Notary who is not capable of making an authentic deed does not cause harm to the party making the authentic deed in front of him.

Notaries must be more careful, thorough and professional in carrying out their official duties. So that the Notary avoids mistakes that can make him sanctioned.

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