




The Authority of A Notary Who Is Declared Bankrupt Against The Validity of The Deed That Has Been Made

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Abstract

Introduction: Notaries have the authority to make authentic deeds based on the Notary Law. However, if a notary is declared bankrupt, a statement will arise regarding his/her authority and the validity of the deeds that have been made. However, deeds made before the notary goes bankrupt remain valid as long as they meet the legal requirements.

Purposes of the Research: This study aims to explore the legal impact and responsibilities of notaries who are declared bankrupt, especially regarding the validity of the documents they have created.

Methods of the Research: The type of research used is Normative Juridical research or library legal research method, namely reviewing laws and regulations and relevant case studies on the importance of understanding bankruptcy status where notaries affect their professional duties and the authenticity of legal documents.

Results Main Findings of the Research: The results show that deeds made by a notary before being declared bankrupt generally still have legal validity, although bankruptcy can affect public trust and the notary's ongoing responsibility.

Keywords: Notary Bankruptcy; Legal Documents; Professional Responsibility; Public Trust.

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INTRODUCTION

The notary profession in the legal context, plays a vital role in the creation and ratification of legal documents, including deeds¹. Notaries are responsible for ensuring that all documents they create or notarize comply with applicable legal standards². Therefore, the reliability and integrity of notaries are an important foundation in maintaining order and legal certainty. However, when a notary is declared bankrupt, serious questions arise about the status and validity of the deed that has been made by the notary. This problem becomes increasingly complex because bankruptcy status not only has an impact on the financial condition of notaries but also on the reputation and public trust in this profession.

Bankruptcy, as a condition in which a person or entity is unable to meet its debt payment obligations, is often seen as a financial failure³. However, in the case of notaries, the implications of bankruptcy extend beyond just financial problems. This raises doubts about the validity and legal force of the deeds that have been made. The main question that arises is whether the deeds remain the same legal force after the notary is declared bankrupt. This

¹ Patni, P. A. G., & Putro, W. D. "Peran Notaris Dalam Membuat Akta Konsen Roya Sebagai Pengganti Sertifikat Hak Tanggungan." *Jurnal Risalah Kenotariatan* 4, no.2 (2023): 10-20.

² NIM, R. J. *Analisis Konseptual Penerapan Cyber Notary Terhadap Perikatan Islam*, IAIN Kendari, 2023

³ Effyanto, I. R. (2023). Tinjauan Yuridis Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Terhadap Pelaku Wanprestasi, *Jurnal Universitas Islam Sultan Agung*, (2023): 122-130.

issue is not only about formal legal aspects, but also aspects of public trust in the notary legal system⁴.

Additional difficulties arise when considering the legal liability of a notary declared bankrupt against a deed that has been made⁵. Is the notary still responsible for the content and validity of the deed? And if there is an error or omission in the deed, what is the settlement mechanism considering that the notary has been declared bankrupt? These questions highlight the need for in-depth research to answer how the law should handle this situation.

Therefore, it is important to further examine the implications of a notary's bankruptcy on the deed that has been made. This research is expected to provide a clearer view of how the law should navigate between the need to maintain legal certainty and the protection of the parties involved in a deed made by a notary declared bankrupt. This is important not only to ensure justice and legal certainty, but also to maintain public trust in the integrity of the notary profession. In examining the validity of a deed made by a notary who has been declared bankrupt, we can refer to several relevant legal theories. One of them is the theory explained by. This study discusses the authority of notaries based on the Law on Notary Positions and how notaries obtain this authority through attribution from the government.

This theory is important because it provides an understanding of the legal basis that governs the authority of notaries, including when they are declared bankrupt. This understanding helps in evaluating how the authority can change or be affected by the notary's bankruptcy status. In addition, this theory also helps in understanding the limits of the legal responsibilities of notaries, especially in relation to the deeds they have made.

For the theory of bankruptcy law, we can refer to the theory of procedure developed in the context of bankruptcy law in the United States, as described in several sources. This theory emphasizes that the main purpose of bankruptcy law is to maximize the restoration of rights for legal rights holders in the context of debtors experiencing financial difficulties. Although the context is different, this understanding can provide perspective in assessing how the notary bankruptcy status can affect the validity and responsibility of the deed that has been made. By combining these two theories, we can build a solid framework for analyzing this complex legal issue, especially in the context of Indonesian law.

This research brings novelty in understanding the dynamics of notary law, especially related to the validity of deeds made by notaries who are declared bankrupt. An aspect of the originality of this research lies in its in-depth focus on the implications of notary bankruptcy status on legal deeds, a topic that has rarely been explored in detail in previous legal literature. This research also integrates the perspective of bankruptcy law with notary law, providing a new perspective in assessing the responsibility and authority of notaries after being declared bankrupt.

In addition, the study also reveals how current legal practices interact with notary bankruptcy issues, providing new insights into how these kinds of cases are handled in legal practice. This is important to inform broader legal and policy discussions, especially in the context of legal protection for the parties involved in deeds made by a bankrupt notary. This

⁴ Hidayat, A. R. Pertanggung Hukum Notaris Terhadap Pembatalan Akta Melalui Putusan Pengadilan Yang Berimplikasi Kepada Prinsip Kepastian Hukum (Studi Putusan Mahkamah Agung Nomor 773 PK/Pdt/2019), Semarang: Universitas Islam Sultan Agung, 2023

⁵ Rahardjo, K. M. *Prinsip Kemandirian Dan Tanggung Jawab Notaris Pada Persekutuan Perdata Notaris*, Surabaya: Universitas Airlangga, 2020.

research not only contributes to legal theory, but also to the practical application of law in society.

This research aims to answer two main problems related to the bankruptcy status of notaries and their influence on the deeds that have been made. First, this study will explore how the validity of deeds made by notaries who are declared bankrupt is maintained or influenced. This includes a legal analysis of whether the deed is still valid and reliable as valid legal evidence.

Second, this study aims to understand the responsibility of notaries who have been declared bankrupt for deeds that have been made before their bankruptcy. This includes an assessment of what happened with the notary's legal and ethical responsibility for errors or omissions in the deed. The main objective of this research is to generate new insights that can aid in the creation of better legal policies and practices in the future.

Through in-depth and comprehensive research, this study aims to make a significant contribution in understanding and handling problems related to the authority of notaries who are declared bankrupt against the validity of the deed that has been made. This research seeks to offer a new perspective and improve understanding of how current law governs and addresses the consequences of situations in which notaries go bankrupt. This research aims to provide a basis for improving the legal practice and ethics of the notary profession, as well as ensuring integrity and reliability in the drafting of deeds.

METHODS OF THE RESEARCH

The approach in this study is qualitative, focusing on an in-depth analysis of regulations, legal cases, and notary practices in the context of bankruptcy. The qualitative approach was chosen because it allows for a broader and deeper understanding of the legal and social contexts affecting this issue. This research is descriptive and analytical, with the aim of explaining and analyzing legal phenomena related to the authority of a notary who has been declared bankrupt and the validity of the deed that has been made. Data for this study will be collected through a comprehensive literature review, including relevant laws, regulations, jurisprudence, and academic literature. In addition, this research will involve interviews with legal experts and notary practitioners to gain practical insights and interpretations of applicable law. Data analysis will be carried out through the content analysis method, where the collected data will be categorized, interpreted, and analyzed to draw conclusions relevant to the research objectives. The ethical aspects of this research will be guaranteed by maintaining the confidentiality and anonymity of the sources and ensuring all data and findings are obtained in an ethical and responsible manner, to enrich the analysis, the research will also integrate case studies, selecting real examples of situations in which the notary is declared bankrupt and its implications for the deed that has been made. This case study was selected based on its relevance and significance to the research problem, as well as its ability to provide concrete insights. The use of case studies will provide a practical dimension and empirical reality that supports broader theoretical and legal analysis. In addressing ethical issues, the study will adhere to all ethical guidelines of the study, including obtaining consent from all participants involved in the interview and ensuring that all data collected and analyzed is conducted in a responsible and ethical manner. Confidentiality and privacy of information will be a top priority. This research will not only provide valuable legal insights, but it will also be conducted in a manner that meets the highest ethical standards.

RESULTS AND DISCUSSION

The authority of a notary in the making of a deed is an important aspect of the legal system⁶. Notaries are tasked with ensuring the authenticity of documents, preventing legal disputes, and ensuring the conformity of the deed with the applicable legal provisions⁷. When a notary is declared bankrupt, serious questions arise regarding the validity of the deed that has been made. This is because public trust in the integrity and ability of notaries is a key factor in determining the validity of the deed⁸.

Notaries in the context of bankruptcy are considered to no longer have the legal capacity to carry out their duties effectively. This can affect the assessment of the validity of the deed that has been made⁹. According to the law in some jurisdictions, bankruptcy status can limit or even revoke the authority of a notary, especially in terms of credibility to carry out legal duties related to financial assets. This raises the question of whether a deed made before bankruptcy is still considered valid.

However, on the other hand, there is an argument that a deed made before the notary is declared bankrupt remains valid as long as it is made in accordance with the legal procedures in force at the time of creation. The basis of this argument is that the notary bankruptcy status does not change the legal facts that existed at the time of the deed's creation. Therefore, the validity of the deed should not be questioned just because of a change in the notary's financial status. An in-depth analysis of the applicable legal regulations and the interpretation of related jurisprudence is needed to determine the extent to which the notary bankruptcy status affects the validity of the deed. These considerations are essential to ensure legal certainty and protect the rights of the parties involved in the deed. This research seeks to provide clarification on this issue by analyzing various relevant cases and regulations.

A. Real Case Study of a Bankrupt Notary

Research results by NurJanah¹⁰, Analyze the legal impact of an authentic deed made by a notary after being declared bankrupt. This study uses a juridical normative method, with data sourced from secondary data. The results of this study show that notaries who are declared bankrupt based on court decisions that have permanent legal force will experience dishonorable dismissal.

A notary bankruptcy declaration based on a court decision has legal consequences for the validity of the deed it makes. An authentic deed made by a notary who is declared bankrupt loses its authenticity, so it only has the power of evidence like a deed under hand. This case highlights the importance of distinguishing between the personal bankruptcy of notaries and their professionalism in making deeds. Even though the notary is financially bankrupt, the deed made previously still needs to be checked in terms of compliance with applicable legal procedures. This case analysis provides a deeper understanding of how notary bankruptcy affects public trust in the validity of the deed made. The study provides the

⁶ Chastra, D. F. Kepastian Hukum Cyber Notary Dalam Kaidah Pembuatan Akta Autentik Oleh Notaris Berdasarkan Undang-Undang Jabatan Notaris. *Indonesian Notary* 9, no.2 (2021): 17.

⁷ Putri, V. N., & Valentina, R. A. (2022). "Perlindungan Hukum Terhadap Notaris/PPAT Terkait Dokumen Palsu Melalui Card Reader." *PALAR (Pakuan Law Review)* 8, no.2, 500–514.

⁸ Arisaputra, M. I. "Kewajiban Notaris Dalam Menjaga Kerahasiaan Akta Dalam Kaitannya dengan Hak Ingkar Notaris." *Perspektif* 17, no. 3 (2012): 173–183.

⁹ Diyantari, N. A. Perlindungan Hukum Bagi Notaris Yang Diberhentikan Dari Jabatannya Akibat Pailit. *Jurnal Undaris*, (2023): 18-25.

¹⁰ Nurjanah, D. N. Legal Consequences of Authetic Dead Made by Notary After Declared Bankruptcy, *Authetica* 6, no.1, (2023): 1-11.

basis for further consideration of existing legal regulations and practices, to ensure legal certainty and protect the rights of the parties involved.

B. Comparison with Similar Cases Abroad

In many countries, notaries are considered public officials with significant legal and ethical responsibilities¹¹. For example, in France, notaries have a key role in legal proceedings, and their bankruptcy can greatly affect public confidence in the documents they create. The civil law legal system such as in Germany also gives an important role to notaries, where their financial status can affect the legitimacy of legal documents¹². On the other hand, in common law countries such as the United States, the role of the notary is more limited and the notary's personal financial status does not affect the validity of the legal document too much¹³.

These differences show how the legal and cultural context affects the arrangement against notaries and the impact of their bankruptcy. It also illustrates how different legal systems seek to strike a balance between the integrity of legal documents and the personal rights of notaries. From this comparison, it can be seen the importance of considering the local context in dealing with the issue of a bankrupt notary. Studying approaches from different countries can provide a new perspective in strengthening notary practice and bankruptcy law in Indonesia, while maintaining legal certainty and protecting the parties involved in notary deeds.

C. Effect of Bankruptcy Status on the Validity of the Deed

The validity of a deed made by a notary who has been declared bankrupt is a complex legal issue. In general, deeds made by notaries before they are declared bankrupt are still considered valid and valid¹⁴. This is based on the principle that the deed is made when the notary still has full legal authority. However, there are concerns about the validity of the deed after the declaration of bankruptcy. This is often related to public trust in the integrity of notaries. While the deed may still be legally valid, declining public trust can affect perceptions of the document's reliability.

Additional considerations arise in cases where notaries may have created deeds during periods when they were experiencing financial difficulties. This is where a thorough investigation is important to ensure that there are no elements of fraud or negligence affecting the validity of the deed. Therefore, a case-by-case assessment is needed to determine the validity of the deed made by a notary who is declared bankrupt. It is important to consider all relevant legal and factual aspects to determine whether the deed is reliable as a valid legal document.

D. Responsibilities of Post-Bankruptcy Notaries for Deeds That Have Been Made

Notaries have significant legal responsibilities in the drafting of deeds, which requires adherence to strict legal and ethical standards¹⁵. When notaries are declared bankrupt,

¹¹ Luciana, K.P., Risnain, M., & Amiruddin A. "Kedudukan Dan Pertanggung Jawaban Hukum Notaris Pengganti Dalam Menjalankan Tugas Notaris Yang Diangkat Menjadi Pejabat Negara" *Jurnal Unizar Law Review (ULR)* 5 no.1 (2022): 11-18.

¹² Soemadji, R. T. N., Hoesin, H. S. H., & Putra, M. F. M. Peran Notaris Dalam Legalitas Perseroan Pemegang Saham Tunggal Untuk Pembangunan Ekonomi Nasional. *Palar (Pakuan Law Review)*, 3 no. 2 (2021): 55-65.

¹³ Putri, I. A. *Urgensi Penerapan Cyber Notary Dalam Pelayanan Jasa Notaris Berdasarkan UUJN*, Surabaya: Universitas Surabaya, 2021.

¹⁴ Purwaningsih, E. "Penegakan Hukum Jabatan Notaris Dalam Pembuatan Perjanjian Berdasarkan Pancasila Dalam Rangka Kepastian Hukum." *Adil: Jurnal Hukum* 2 no. 3, (2011): 323-336.

¹⁵ Serena, M. A., Saly, J. N., Sugiarto, I. R., Rambu, R. V., Wisuta, R., Pasyah, R. A., & Yulianto, H. Pertanggung Jawaban Notaris Terhadap Pelanggaran Kode Etik Terkait Pemalsuan Akta Otentik. *Jurnal Ilmiah Wahana Pendidikan* 9, no. 20, (2023): 353-360.

questions arise about how this status affects their responsibility for the deed that has been made. In general, these liabilities persist even if they go bankrupt, provided that the deed is made in accordance with the applicable legal procedures.

A declaration of bankruptcy can raise doubts about the notary's ability to carry out his duties with integrity. However, deeds made before the declaration of bankruptcy tend to remain valid unless there is evidence of fraud or violation of the law. This shows the importance of the separation between the notary's personal financial condition and their professional performance. Challenges arise when there are allegations of errors or omissions in the deed made by the notary. This situation requires careful handling and often legal review to determine the validity of the deed. The fundamental question is whether the error is directly related to the notary's financial status or is a separate issue. Therefore, the legal responsibility of notaries for deeds made before they were declared bankrupt is still very relevant. A case-by-case legal assessment is key to determining how these responsibilities are applied, taking into account all relevant factors to ensure legal fairness and certainty.

E. Impact on Third Parties in Deeds Made by a Bankruptcy Notary

When a notary is declared bankrupt, the legal consequences affect not only the notary himself but also the third party involved in the deed made¹⁶. These third parties may face uncertainty regarding the legal status of the transactions or agreements they have entered. There are concerns that a notary bankruptcy declaration may raise questions about the validity and reliability of the deed. This may cause third parties to have difficulties in certifying their legal rights or in demanding the implementation of the obligations contained in the deed.

Third parties, in some cases, may have to seek the annulment or re-ratification of the deed in a court or other legal institution to ensure that their rights are protected. This process can be complicated and requires additional time and resources. The importance of transparency and effective communication from a bankrupt notary to all parties involved is key in managing this impact¹⁷. Providing accurate and timely information to third parties can help in reducing uncertainty and ensuring that their rights are not compromised.

F. Application of Notary and Bankruptcy Law Theory to Cases

Notaries in the context of law and bankruptcy, legal theory provides a framework for understanding and evaluating the responsibilities and authority of notaries. This is especially important in cases where the notary is declared bankrupt. This theory underlines that notaries must adhere to strict legal and ethical standards in the drafting of deeds, a responsibility that persists regardless of their financial condition. The bankruptcy theory, on the other hand, helps explain the impact of bankruptcy on a person's ability, including a notary, to carry out his or her professional responsibilities. Bankruptcy can cast doubt on the notary's capacity to create a valid deed, but this does not automatically invalidate the validity of a deed that has been previously made, as long as the correct procedure has been followed. Applied to concrete cases, this legal theory underlines that notary professionalism and compliance with the law at the time of deed creation are key¹⁸. While they may experience personal financial issues, this does not have to affect the integrity or validity of

¹⁶ Maylaksita, A, "Problematisasi Interpretasi Pengaturan Kepailitan Terhadap Jabatan Notaris di Indonesia", *Lex Renaissance* 4, no.1, (2019): 126-145.

¹⁷ Adrian Sutedi, S. H. "Buku pintar hukum perseroan terbatas" Raih Asa Sukses (2015): 86-100.

¹⁸ Saputra, M. R. W. *Peran Notaris Dalam Membuat Keabsahan Pendirian Perseroan Terbatas Pasca Disahkannya Undang-Undang Cipta Kerja*, Semarang: Universitas Islam Sultan Agung, 2023.

the deed that has been previously drafted. Therefore, in the case of a notary declared bankrupt, it is very important to analyze each case based on the prevailing legal theory. This ensures that decisions regarding the validity of the deed are made with thorough consideration of all relevant legal and practical factors, as well as taking into account the ethical responsibilities of the notary.

G. Roles and Responsibilities of Notaries in the Current Legal Context

The role of the notary in the contemporary legal system is very important and complex. They are not only responsible for creating authentic deeds, but also have to ensure that all elements in the deed are in accordance with applicable law. These responsibilities include adherence to strict legal standards and ensuring the authenticity and correctness of the contents of deeds, which are key in legal transactions and underlie public trust in the legal system. Notaries are tasked with verifying the identity and wishes of the parties in a legal transaction, as well as ensuring that the documents they create meet all legal and procedural requirements¹⁹. They act as guarantors of the validity and reliability of legal documents, ensuring that transactions are carried out in a transparent and fair manner to avoid possible fraud or misunderstandings.

Notary cases that are declared bankrupt, it is important to distinguish between personal financial issues and their professional performance. Although they may face personal financial issues, the quality and integrity of their work in creating the deed must remain intact. Public trust and legal certainty depend heavily on the ability of notaries to carry out their duties in a way that is not affected by their personal circumstances. The role of notaries in modern society and the legal system is crucial. They hold a great responsibility in ensuring the legitimacy of legal transactions, and therefore, their integrity and professionalism must always be maintained to the highest standards. They are an important pillar in maintaining legal certainty and public trust in the legal process.

Recommendations for Improving Notary Practice and Bankruptcy Law, in order to strengthen notary practices and optimize bankruptcy law, there are several main recommendations that need to be considered: 1) Implementing Stricter Procedures for Notary Financial Monitoring: The importance of implementing stricter procedures in notary financial monitoring cannot be ignored. This could include periodic audits of notaries' financial records and the obligation for notaries to report their financial condition on a regular basis to the regulatory body. The goal is to detect early potential financial problems that could lead to bankruptcy, so that preventive measures or interventions can be taken early; 2) Strengthening Notary Education and Training: The development of an ongoing training program for notaries is another important step. The focus must be on risk management aspects and understanding of legal obligations. This education and training will equip notaries with the knowledge and skills necessary to effectively manage their personal and business finances, as well as understand their legal responsibilities; 3) Bankruptcy Law Reform: There is a need to review bankruptcy laws, particularly in terms of protection for third parties involved in deeds made by notaries. These reforms should include the establishment of clear and fair procedures for dealing with notary bankruptcy, taking into account the impact on all parties involved; 4) Increasing Transparency and Public Awareness: Finally, increasing transparency and public awareness of notary

¹⁹ Pardede, F.H, Legal Statement of Deed of Inheritance Made by a Notary Who Does Not Include All Heirs in the Distribution of Inheritance. *Indonesian Journal of Advanced Research* 2, no.5 (2023): 435-448.

practices is key. This could be through the development of an online platform that provides information about the status and work history of notaries. Public information campaigns are also important to provide a better understanding to the public about the rights and responsibilities of notaries. Through the implementation of these recommendations, it is hoped that there will be significant improvements in notary practices and bankruptcy law regulations. These measures aim to increase public trust in the notary profession and ensure legal certainty in legal transactions.

CONCLUSION

Validity of Deeds by a Bankruptcy Notary: Deeds made by notaries before they are declared bankrupt are generally considered valid and enforceable. The condition of a notary bankruptcy does not automatically invalidate the validity of the deed that has been made, unless there is evidence of fraud or violation of the law. **Post-Bankruptcy Notary Responsibilities:** Despite going bankrupt, notaries are still responsible for the deeds they have made. Integrity and compliance with legal procedures at the time of making the deed are key factors in determining the validity of the deed. **Socio-Economic Impact of Notary Bankruptcy:** Notary bankruptcy has a wide impact, not only on the notary himself but also on public trust and economic stability. This emphasizes the importance of effective regulation and support for notaries. This conclusion shows that despite the challenges faced by bankrupt notaries, the legal and ethical aspects of the notary profession remain an important factor in maintaining legal trust and certainty in society.

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