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Juridical Analysis For Notaries Who Hold Concurrent Positions As Curators And Other Positions According To Law Number 2 Of 2014 Concerning Notary Positions

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Abstract : a notary is a public official who has the authority to make authentic deeds and has other authorities based on article 1 paragraph 1 of law number 2 of 2014 concerning the position of notary, and a curator is an inheritance office or individual appointed by the court to manage and settle the debtor's assets bankrupt under the supervision of a supervisory judge based on law number 37 of 2004 concerning bankruptcy and PKPU. If bankruptcy occurs in a company, the notary is in charge of making deeds including the company deed and acts as a curator in that position. This research is normative juridical research. By using a statutory approach, the sources of legal materials obtained are secondary, primary and tertiary legal materials consisting of statutory books, journals, papers. notaries are prohibited from carrying out positions outside their area of office; Leaving his/her area of office for more than 7 (seven) consecutive working days without a valid reason; Concurrently as a civil servant; Concurrently serving as a State official; Holding a position as leader or employee of a State-owned enterprise, regional-owned enterprise or private enterprise; Concurrently serving as Land Deed Drafting Official and/or Class II Auction Official outside the Notary's place of residence; Become a Substitute Notary; Carrying out other work that is contrary to religious norms, morality or propriety which could affect the honor and dignity of the notary's position. The legal consequences are receiving sanctions in the form of a written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal.

Keywords : Notary, Curator, Concurrent Positions

1. Introduction

Indonesia is a rule of law country, which means that every aspect of life, both as a nation and as a state, is always based on rules. In state life, the rule of law doctrine states that every government must build by referring to existing laws and regulations (positive law) and Pancasila values as a source of law and order values in a unitary state.¹

The notary profession is a noble profession, because the notary profession is closely related to humanity. In line with developments in the current era, the existence of a notary institution is really needed for people who need guarantees for their rights to fulfill legal certainty related to proof through authentic deeds made before a notary. A notary is a public official whose function is to provide guarantees for deeds that have been made as a legal basis for the rights to property. Notaries

¹Kaelan, Pancasila National State, Cultural, Historical, Philosophical, Juridical and Its Actualization. Yogyakarta: Paradigm. 2013.H. 656.

are appointed by the state authorities, and they are trusted to provide services for the benefit of society.²

A notary carries out and provides services to all interested parties and does not take sides against any one party. Apart from that, notaries must also be able to act fairly, honestly and with integrity in carrying out their duties. A notary also creates a law through agreements that he makes without taking sides with one of the parties with the aim that the parties can avoid disputes so that all parties can help their interests, besides that the notary also focuses on preventing disputes between the parties.³

Article 1 of Law Number 2 of 2014 concerning the Position of Notary, amendment to Law Number 30 of 2004 states the definition of a notary, namely as a public official who has the authority to make authentic deeds and has other authorities as intended in this law or based on law. other laws. Notaries have the authority to make authentic deeds, where authentic deeds according to Article 1870 of the Civil Code provide absolute proof for the parties making an agreement. The position of a notary as a public official, in the sense that the authority vested in the notary will not be given to other officials, as long as this authority is not possessed by other officials in making authentic deeds and other authorities, then that authority remains the authority of the notary. In this case, it is very important for parties who need evidence for personal interests or business interests in business activities.

A limited liability company is a company in the form of a legal entity which is a capital partnership established based on an agreement between the founding parties to carry out business activities with authorized capital, where the authorized capital is divided into shares, by fulfilling the requirements stipulated in the law. related laws and other statutory regulations.⁴ Not every business runs smoothly without any obstacles such as experiencing losses or other problems. Various problems can occur unexpectedly so that the company is unable to overcome them and unable to fulfill its various obligations, for example difficulties in paying debts and covering very large company losses, resulting in difficulties in carrying out company operations including paying employees and so on.

Article 1 paragraph (1) in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations states that bankruptcy is a general confiscation of all assets of a bankrupt debtor whose management and settlement are carried out by a curator under the supervision of a supervisory judge as regulated in the law. invite. The existence of a bankruptcy decision that can be handed down by the court to a limited liability company will not only have an impact on the legal entity of the company.

² M. Yose Rizal, Legal Consequences for Notaries Who Hold Dual Positions as State Officials Based on Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notaries. *Journal of Legal Studies*, 2019. Vol. 2 No. 1.

³ Matina Indah Amalia, Juridical Study of Notaries Who Concurrently Serve as Advocates Relating to the Law on Notary Positions. *Law Journal*, 2022. Vol. 3.No. 1. H. 66.

⁴ Munir Fuady, *Limited Liability Company*. Bandung: Citra Aditya Bakti, 2017. H. 1-2

In the bankruptcy process, after the bankruptcy order is issued, there are two agencies that are very active in enforcing it. The supervisory judge is responsible for administration and supervision of liquidation, and the curator is responsible for bankruptcy liquidation. The curator in carrying out his duties must understand that his task is not only to save the bankruptcy assets that he has collected to distribute them to creditors but also to guarantee to the debtor the value of the bankruptcy assets as far as possible. The curator appointed by the court must be independent and have no conflict of interest with either debtors or creditors, this is as regulated in Law Number 37 of 2004 concerning bankruptcy and suspension of debt payment obligations, Article 15 paragraph (3). The curator's task is to manage or settle the bankruptcy estate and the curator is also obliged to ensure that all actions taken are in the interests of the bankruptcy estate.⁵

Based on article 70 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, it is stated that a curator is an individual domiciled in Indonesia, who has the special skills needed to manage or settle bankrupt assets. Special expertise is those who have passed curator and management education; registered with the ministry whose scope of duties and responsibilities are in the field of law and legislation. Registered means having fulfilled the requirements for registration in accordance with applicable regulations and is an active member of the professional organization of curators and administrators.

2. Problem Formulation

The formulation of this research is what is the position of a notary who holds the same position as curator according to Law number 2 of 2014 concerning the position of notary and what are the legal consequences for notaries who hold other positions according to Law number 2 of 2014 concerning the position of notary.

3. Research Methods

This research method was structured using a normative juridical research type. Normative juridical research is research carried out by examining library materials or secondary data as basic material for research by conducting searches of regulations and literature related to the problem being studied.⁶ By using a statutory approach.

This type of research uses 3 legal materials, namely primary legal materials, secondary legal materials, and tertiary. Primary legal materials consist of statutory regulations, official minutes, court decisions and official state documents. secondary legal materials by reading, taking notes, reviewing library materials, or searching via internet media related to Notary Position Regulations. tertiary legal material is carried out by reviewing and identifying legal dictionaries and major Indonesian dictionaries.

⁵ Serlika Aprita, Rio Adhitya, Curatorial Professional Ethics. Jember: Abadi Library, 2019. H, 69.

⁶ Suratman, Philips Dillah, Legal Research Methods, Alfabeta: Bandung, 2015. H. 51.

4. Discussion

A. Position of Notary Who Concurrently Serves as Curator According to Law Number 2 of 2014 concerning the Position of Notary

A notary in English is called a notary and in Dutch it is called a van notaris, which has a very important role in legal traffic, especially in the civil sector, because a notary is a public official who has the authority to make authentic deeds and other authorities.⁷

The notary has the authority to make authentic deeds regarding all statutory acts and/or those desired by the interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, store the deed, provide grosses, copies and quotations of the deed, all during the making of the deed nor is it assigned or excluded from other officials or other people as determined by law.

A Notary's authority has limitations as regulated in the legislation governing the position of the official concerned. The authority of a Notary in making deeds is stated in the provisions of Article 15 UUJN, where the authority of a Notary is divided into 3 (three) types, namely:

a. General Authority of Notaries

The general authority of a Notary is stated in Article 15 paragraph (1) UUJN which confirms that one of the powers of a Notary is to make deeds in general, but with limitations as long as it does not exclude other Officials determined by law, regarding deeds that must be made or authorized to make deeds. authentic regarding all actions, agreements and provisions required by legal regulations or desired by the person concerned, regarding the legal subject (person or legal entity) for whose benefit the deed was made or desired by the person concerned.

b. Notary's Special Authority

The special authority of a Notary to carry out certain legal actions is stated in Article 15 paragraph (1) UUJN, such as:

- 1) Validate the signature and determine the certainty of the date of the underwritten letter by registering it in a special book;
- 2) Record letters privately by registering them in a special book;
- 3) Make a copy and original of the letter under hand in the form of a copy containing the description as written and depicted in the letter concerned;
- 4) Validate the suitability of the photocopy with the original letter;
- 5) Providing legal counseling regarding the preparation of deeds
- 6) Make a deed relating to land, or make a deed of auction minutes.

c. Notary's Authority to be Determined Later

The authority of the Notary that will be determined later is the authority that will emerge and will be determined based on statutory regulations.

The role of the Notary's profession in bankruptcy is to make deeds for the transfer of assets, make binding deeds for material collateral, and make notarial deeds of private sales of movable goods in the process of settling bankruptcy assets.

⁷ Salim, Notary Position Regulations. Jakarta: Sinar Gafrika, 2018. H.14.

Based on Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions.

The curator is the party who is given the task of managing bankruptcy assets. The curator's authority is a right, in the sense of the power granted by law to carry out the duties (obligations) assigned, the curator's authority is relatively heavy, the principle is that he has the authority to manage bankruptcy assets or settle them. bankruptcy estate, whose duties are independent of the parties.

Based on the provisions of article 1 number 5 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, it is stated that a curator is an inheritance authority or an individual appointed by the court to manage and settle the assets of a bankrupt debtor under the supervision of a supervising judge.

The Association of Indonesian Curators and Administrators (IKAPI) explains that in order to create curators with integrity, it is appropriate for members of the curator association to always be honest, trustworthy and not sacrifice public trust for personal gain. The main task of the curator is to manage and settle the bankruptcy estate. The curator has the obligation to carry out the duties of managing and/or settling the bankruptcy estate. The purpose of bankruptcy is to pay the rights of creditors that they should receive according to the level of their claims.⁸

When a company is declared bankrupt by the commercial court, the party authorized to manage and distribute bankruptcy assets (bankruptcy boedel) is the curator or also known as the Inheritance Property Office (BHP). Article 1 number 5 of the Law. No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy Law), defines a curator as an Inheritance Property Office or an individual appointed by the Court to manage and settle the Bankruptcy Debtor's assets under the supervision of a Supervisory Judge in accordance with this law.

The Heritage Center is a curator, so all of the curator's powers are regulated in Law no. 37 of 2004 is also the authority of the Heritage Center. There are differences in several other duties between curators and BPH, which are explained in Permenkumham No. 7 of 2021 concerning the Organization and Work Procedures of the Inheritance Property Hall, namely managing and resolving issues of guardianship, guardianship, assets whose owners are declared absent (afwezigheid), and inheritances that are not managed (onbeheerde nalatenschap); registration of registered wills, opening and reading of secret/closed wills; making a certificate of inheritance rights; Settlement of third party money administration; preparation of program plans, budgets, facilitation of bureaucratic reform, management of information technology and public relations, administrative and personnel matters, management of financial affairs, state and household property as well as evaluation and reporting of BHP; other duties based on statutory provisions.

Apart from being regulated in Article 15 of the UUJN, there are also authorities which are confirmed in other laws and regulations (outside the UUJN), in the sense

⁸ Devi Eriyanti and Fully Handayani Ridwan, The Role of Notaries in Legal Certainty of Power of Attorney Deeds for Sale and Purchase Objects in Bankruptcy. USM Law Review Journal, 2022, Vol 5 No. 1.

that the relevant laws and regulations state that legal acts must be made by means of a Notarial Deed.

In the case of a General Meeting of Shareholders (GMS), basically it returns to the essence of the Notary itself, that the Notary can only make a deed based on the request or will of the interested party. So, in relation to the GMS, because it is not regulated in detail regarding the Notary's participation in a GMS being mandatory or not, the Notary can only make a deed based on a request from the party, which in this case is a Limited Liability Company through the Board of Directors.

If the Notary at the time of the GMS is held, it turns out that the Notary was not invited or summoned to participate in witnessing the proceedings of the GMS, then the Notary can only exercise his authority or position when the Deed of Minutes of Meeting made at the GMS has been completed and submitted to the Notary to make a Deed of Statement Meeting Decisions in the Partij Deed or Party Deed category. However, if the Notary is invited/summoned to attend the GMS of a Limited Liability Company, then the Notary acts as a Notary who directly witnesses the legal action in the form of a meeting held by the Limited Liability Company and for which the Notary can make a Deed of Minutes of Meeting in the category of Relaas Deed or Official Deed .⁹

According to the form and procedures stipulated by law, there are 2 (two) types/forms of notarial deeds, namely:

Party/Partij Deed: Made before a notary, a statement made based on the notary's presence, the signatures of the parties are absolute, the Deed can be challenged. If there is a party who does not sign then a Surrogaat can be carried out.

Official/Relaas Deed: Made by a notary, made based on what is seen, heard and witnessed directly by the notary. The deed can only be declared fake. If there is a party who cannot sign or refuses to sign, just explain it at the end of the deed with state the reason.

The role of a Notary in a GMS can basically be seen to be based on the wishes of the interested parties. That when viewed based on his position, a Notary can act in his position:

- a. As a Notary who makes deeds based on information from the parties or.
- b. A notary who makes a deed based on what he sees and witnesses directly.

As for the bankruptcy of a person or legal entity, it can be said to be bankrupt if it meets the requirements specified in Article 2 paragraph (1) of the Bankruptcy Law. There are at least two bankruptcy requirements whose proof is simple, namely that there are two or more creditors and debts that are overdue or overdue and can be collected. Bankruptcy is a general confiscation of all assets of a bankrupt debtor whose management and release are carried out by a curator under the supervision of a supervising judge.¹⁰

To be able to become a curator, you must first fulfill the provisions of article 70 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and

⁹ Merdi Aditya Putra and Siti Hajati Husein, The Role of Notaries and the Validity of GMS Deeds Conducted Electronically. *Journal of Legal Studies*. 2022. Vol VI. No. 1.

¹⁰ Fitria Dewi Navisa, Application of Actio Paulina as Legal Protection for Creditors in Bankruptcy, *ADIL Indonesia Journal*. 2020. Vol. 2 No. 1.

Postponement of Debt Payment Obligations, including individuals domiciled in Indonesia who have the special skills needed to manage or settle assets. bankrupt, and registered with the ministry whose scope of duties and responsibilities are in the field of law and statutory regulations.

The explanation of the article states that the special skills referred to are participants who have taken and passed curator and administrator education, then registered with the ministry (Kemenkumham) in terms of fulfilling all registration requirements in accordance with applicable regulations and are also active members of the professional organization of curators and administrators.

If a notary wants to act as a curator, there is a statement that does not allow a notary to act as a curator because the person appointed as curator is a special official or one whose profession is an advocate. State officials are obliged to take leave while holding office as State officials and are obliged to appoint a replacement notary who will accept the protocol. After no longer holding office as a State official, the notary can resume his duties as a notary.

Until now there is no statutory regulation that specifically states that notaries are prohibited from acting as a curator profession, however, if a notary becomes a part of a PT, then the PT goes bankrupt then the notary cannot become a curator because he is afraid of taking sides, whereas A notary is obliged to act in a trustworthy, honest, thorough, independent, impartial manner and safeguard the interests of parties involved in legal actions based on article 16 UUJN.

B. Legal Consequences for Notaries Who Hold Other Positions According to Law Number 2 of 2014 concerning Notary Positions

Determining what dual positions should not be held concurrently by the Notary office holder is not a difficult thing to answer. In article 17 of law number 2 of 2014 concerning notary positions, it is stated that notaries are prohibited from: Carrying out positions outside their area of office; Leaving his/her area of office for more than 7 (seven) consecutive working days without a valid reason; Concurrently as a civil servant; Concurrently serving as a State official; Concurrently serving as an advocate; Holding a position as a leader or employee of a business entity; state-owned, regionally owned enterprises or private enterprises; Concurrently serving as Land Deed Drafting Official and/or Class II Auction Official outside the position of Notary; Become a Substitute Notary; Carrying out other work that is contrary to religious norms, decency or propriety which may affect the honor and dignity of the notary's position;

The Code of Ethics of the Indonesian Notary Association is all the moral rules determined by the Indonesian Notary Association which apply to and must be obeyed by each and all members of the Association and all people who carry out their official duties as Notaries, including Temporary Notary Officials, Substitute Notaries and Special Substitute Notaries.

Based on Article 3 of the Code of Ethics of the Indonesian Notary Association, it is stated in essence that: Notaries and other people who hold and carry out the position of Notary are obliged to: have good morals, morals and personality; respect and uphold the honor and dignity of the office of Notary; carry out actions which are

generally referred to as obligations that must be obeyed and implemented, including but not limited to the provisions contained in the laws and regulations governing the position of Notary.

In connection with the prohibition on holding multiple positions for Notaries as regulated in Article 17 UUJN No. 2/2014, also regulated in the Code of Ethics of the Indonesian Notary Association; So in this case it can be said that a violation of the prohibition against holding multiple positions for Notary office holders is also a violation of the Code of Ethics of the Indonesian Notary Association.

If a notary holds a dual position with a job or profession that is clearly prohibited by the UUJN, then the consequence is that the notary must receive sanctions as determined by article 17 paragraph (2) UUJN, these sanctions are in the form of a written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal.

Apart from administrative sanctions, there are also civil sanctions in the form of compensation for costs, compensation and interest, which are the consequences that the notary will receive if the authentic deed he makes only has the power of proof as a private deed or the deed becomes null and void. Civil sanctions are witnesses imposed for errors that occur due to breach of contract, or unlawful acts. The sanctions applied are in the form of reimbursement of costs, compensation and interest where all of these sanctions can be imposed on the notary based on the demands of the parties who feel disadvantaged because the deed in question only has the power of proof as a private deed or the deed becomes null and void.¹¹

In carrying out his office, a notary must comply with his function, authority and obligations. In carrying out this authority, it is necessary to supervise the Notary. Supervision is not only aimed at complying with the code of ethics but also has a broader aim, namely so that Notaries in carrying out their official duties fulfill the requirements set by laws and regulations for the protection of the interests of the community they serve. If during the supervision a violation of multiple positions or other violations is found, sanctions must be imposed according to those regulated by the UUJN.

According to UUJN provisions, the institution authorized to impose administrative sanctions is the Supervisory Council in accordance with its authority. For the Regional Supervisory Council, based on UUJN provisions, it does not have the authority to impose sanctions on Notaries, for this reason the Regional Supervisory Council has the authority and obligation to make and submit a report to the Regional Supervisory Council, because the Regional Supervisory Council has the authority to impose sanctions in the form of verbal or written warnings and Other authorities relating to sanctions include proposing sanctions against Notaries to the Central Supervisory Council, in the form of temporary dismissal from 3 (three) months to 6 (six) months or dishonorable dismissal.

¹¹ Wanis Aisyah Oktavia, Anita Afriana, Tien Norman Lubis, Position of Deeds and Legal Consequences of Notaries Who Hold Multiple Positions. *Acta Diurnal Journal of Notarial Law*. 2019. Vol 3 Number 1

A A. Andi Prajitno firmly stated that: "Positions may be held concurrently:¹²

a. Land Titles Registrar

The UUJN regulates the provisions regarding the dual position of Notary and PPAT in the provisions regarding the prohibition of notaries, namely the prohibition of notaries holding concurrent positions as PPAT who are domiciled outside their area of office. Based on government regulations regarding PPAT position regulations, it is clearly stated that a PPAT can hold the same position as a notary with the provision that the PPAT must have the same position as a notary.

b. Class II Auction Officer

A notary can become a class II auction official at the location where the notary serves. What is prohibited in the UUJN is if a notary doubles as a class II auction official outside his/her area of office.

c. Mediator

The mediator's task is to resolve disputes between the parties impartially and with a win-win solution. When compared to a notary, in carrying out the office of a notary, he is also impartial, formulating the wishes of the parties in making an authentic deed in accordance with the provisions of the legislation to avoid disputes in the future.

The notary's position as a mediator does not require a long time and is only temporary. When the mediation process is complete, his or her duties as a mediator are completed so that it does not interfere with the notary's position and profession. Managing the implementation of his or her position is determined by good time management.

d. Teacher/Lecturer

A notary who doubles as a lecturer does not give rise to injustice either among other notaries who do not double as lecturers, or lecturers who do not double as notaries. Everything will be done and placed according to its respective portion. Notaries who double as lecturers can even make contributions, including having a balanced approach and understanding between the world of legal science and the world of legal practice in reality, between *das sollen* and *das sein*.

Of course, this means that the teacher/lecturer is not a teacher/lecturer who has the status of a civil servant (Article 17 letter c UUJN).

5. Conclusion

- A. The position of a notary as a curator is that there is no prohibition as long as there are no statutory regulations prohibiting a notary from acting as a curator. To act as a curator, you must fulfill the requirements of article 70 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and PKPU as outlined that someone who is domiciled in Indonesia and has special expertise in managing or settling bankruptcy assets and is registered with the ministry whose scope of duties and responsibilities are in the field of law and statutory regulations.

¹² A A. Andi Prajitno., Practical Knowledge About What and Who Are Notaries in Indonesia?. Surabaya: Putra Media Nusantara. 2010. H. 78.

However, if a notary is part of a PT, then the PT is declared bankrupt, the notary cannot act as a curator for fear of taking sides with the PT, this is contrary to the regulations on the position of notary which must be independent and impartial.

- B. The legal consequences for a notary holding a dual position with a job or profession which is clearly prohibited by the UUJN, the consequence is that the notary must receive sanctions as determined by article 17 paragraph (2) UUJN, these sanctions are in the form of a written warning, temporary dismissal, dismissal with respect, or dishonorable dismissal.

Prohibition against notaries, namely carrying out positions outside their area of office; Leaving his/her area of office for more than 7 (seven) consecutive working days without a valid reason; Concurrently as a civil servant; Concurrently serving as a State official; Concurrently serving as an advocate; Holding a position as leader or employee of a State-owned enterprise, regional-owned enterprise or private enterprise; Concurrently serving as Land Deed Drafting Official and/or Class II Auction Official outside the position of Notary; Become a Substitute Notary; Carrying out other work that is contrary to religious norms, morality or propriety which could affect the honor and dignity of the notary's position. The positions that a notary may hold concurrently are serving as Land Deed Maker (PPAT) and class II Auction Officer in the same position, Mediator, Teacher/Lecturer, Curator.

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