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Violation of the Principle of Lex Superior Derogate Legi Inferiori in the Formation of Circular Letter of the Supreme Court of the Republic of Indonesia Number 3 of 2023

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Abstract

The Supreme Court of the Republic of Indonesia has issued Circular Letter Number 3 of 2023 (SEMA 3/2023), in which one of the special civil formulations has determined that petitions for bankruptcy or postponement of debt payment obligations (PKPU) for developers of apartments and/or flats does not meet the requirements as simple proof as intended in the provisions of Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UU K-PKPU). This research examines the differences in regulations in SEMA 3/2023 and the K-PKPU Law. Based on the research results, it is concluded that these differences in regulations are considered a violation of the Lex Superior Derogate Legi Inferiori Principle.

Keywords: *Lex Superior; Lex Inferior; Bankruptcy; Developer*

Introduction

The Chairman of the Supreme Court of the Republic of Indonesia (MA) stipulated Circular Letter Number 3 of 2023 concerning the Implementation of the Formulation of the Results of the 2023 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court (SEMA). The purpose of the Chamber Plenary Meeting is to maintain the unity of law application and consistency of decisions based on judicial technical and non- judicial technical issues that arise in each chamber. There are various formulations produced by the Plenary of each chamber. One of them is the Civil Chamber Plenary Formulation. In the field of Bankruptcy and Postponement of Debt Payment Obligations, the Civil Chamber formulated a provision that " *A request for a declaration of bankruptcy or PKPU against a developer (developer) of apartments and/or flats does not meet the requirements as simple proof as intended in the provisions of Article 8 paragraph (4) of the Law -Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations"*. Based on these provisions, the important point is that what does not fulfill the requirements for simple proof is only a request for a bankruptcy declaration or PKPU against an apartment and/or flat developer.

Before discussing further about SEMA 3/2023, it is necessary to know first that the formation of SEMA generally comes from the authority possessed by the Supreme Court based on Article 79 of Law

no. 14 of 1985 concerning the Supreme Court (UU MA), where this provision gives the authority to the Supreme Court to exercise *rule making power*. This authority aims to give authority to the Supreme Court to regulate matters that are not specifically regulated in the Supreme Court Law. In a limited way, SEMA has regulated its content material, namely regulating matters that have not been regulated in the Supreme Court Law. The position of SEMA in the legal system regulations in Indonesia can be classified as policy rules *(bleidsregel)*, this is because SEMA is only addressed to judges, clerks and other positions in the court. (Cahyadi, 2014: 12) .

SEMA is generally addressed only to judges, clerks and other positions in the Court. However, in judicial practice in Indonesia, SEMA has regulated matters technically related to procedural law in Indonesia. One example is SEMA 3/2023, in which one of the formulations of the special civil chamber regulates the procedural law regarding bankruptcy or PKPU applications against developers, which determine that simple proof does not meet. In fact, based on the provisions of Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UU K-PKPU), applications for bankruptcy or PKPU declarations are carried out with simple proof.

Legislative regulations in Indonesia have been clearly regulated in Law (UU) Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations (UU Establishing Legislative Regulations). Article 7 of the Law on the Establishment of Legislative Regulations has determined that the Hierarchy of Legislative Regulations in Indonesia is as follows; 1945 Constitution, MPR Assembly Decrees, Laws/Government Regulations in Lieu of Laws, Government Regulations, Provincial Regional Regulations, Regency/City Regional Regulations. There are other laws and regulations that are not included in this hierarchy, such as regulations issued by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, Ministers, agencies, institutions. , or a commission of the same level established by Law or the Government by order of the Law, the Provincial Regional People's Representative Council, the Governor, the Regency/City Regional People's Representative Council, the Regent/Mayor, the Village Head or the equivalent. Based on the provisions of Article 8 paragraphs 1 and 2), its existence is recognized and has binding legal force as long as it is ordered by higher laws or regulations or is formed based on authority. The question then is what if there are differences between the arrangements specified in SEMA and those regulated in the Act? Based on these regulatory differences, it is important to discuss violations of the principle of *Lex Superior Derogate Legi Inferiori* in the formation of Circular Letter of the Supreme Court of the Republic of Indonesia Number 3 of 2023.

Research Methods

This research uses normative juridical research methods using secondary legal data. The process of obtaining secondary legal data is based on literature searches (Sonata, 2014:18) . The analytical approach used is descriptive analytical by describing the problems being studied, then looking for answers to the research problems being studied.

Research Results and Discussion

1. Simple Proof in Bankruptcy Law and Postponement of Debt Payment Obligations in Indonesia

With regard to simple evidence in bankruptcy petitions against certain debtors, it is regulated in Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law). The text of Article 8 paragraph (4) is " *The application for declaring bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt as intended in Article 2 paragraph (1) have*

been fulfilled." The explanation of this Article is " *What is meant by "simply proven facts or circumstances" is the fact that there are two or more creditors and the fact that the debt is overdue and unpaid. "Meanwhile, the difference in the amount of debt claimed by the bankruptcy applicant and the bankruptcy respondent does not prevent the decision to declare bankruptcy*."

Meanwhile, Article 2 paragraph (1) of the Bankruptcy and PKPU Law reads " *A debtor who has two or more creditors and does not pay in full at least one debt which is due and collectible, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors"*. From these two articles it can be seen that the purpose of simple proof is regarding the granting of a request for a bankruptcy declaration which can be granted if it is simply proven that the debtor has two or more creditors and that there is a debt that has matured and has not been paid without regard to the amount of the debt. So this simple proof is an important principle in Bankruptcy Law. However, the Bankruptcy Law and PKPU do not provide a clear and detailed formulation regarding simple evidence, thus opening up space for further interpretation. Judges have wide discretion to interpret simple evidence in resolving bankruptcy cases, this is due to the lack of clarity in the indicators of simple evidence, can it be said that if no objections are submitted to the evidence it can be said to be simple? And if there is a refutation, can it be said that the proof is not simple?

According to Rio Christiawan, proof of debt in a commercial court begins with formal proof, namely a debt and receivable agreement because without this agreement, a formal debt and receivable dispute cannot be resolved through the commercial court, either through PKPU or Bankruptcy. Furthermore, Rio explained that the nature of simple evidence in PKPU or Bankruptcy cases is the recognition of debt and receivable agreements from both creditors and debtors. So based on this explanation, debt and receivable agreements that are denied or not recognized by creditors and debtors do not fulfill the characteristics of simple proof (Christiawan , 2020: 54) .

Proving the existence of debts and receivables between creditors and debtors cannot be proven simply. So further proof is needed through the District Court to determine whether debts and receivables have actually occurred. In the first decision, the case could not be proven simply because the Respondent denied having a debt to the applicant, while in the second decision, it was not clear what type of debt the Respondent had so it did not fall into the simple proof category. However, it is actually difficult to see what are indicators that debts and receivables have occurred that can be proven simply. In the end, of course, it is returned to the Judges to interpret Article 8 paragraph (4) of the Bankruptcy Law and PKPU.

In connection with the decision of the Chief Justice to issue the SEMA, of course the question is why and what is the basis for requesting a bankruptcy or PKPU declaration against the developer. apartments and/or flats are not considered to fulfill the requirements as simple evidence? Unfortunately, the basis, reason or explanation regarding this matter was not stated in the SEMA, so it is very difficult to know what the Civil Law Chamber based on in issuing this formulation. Of course, only the people involved in the Plenary Meeting of the Civil Law Chamber were the ones who came up with this provision.

In principle, circular letters only apply internally to the institution that makes them. As is generally known, circular letters are not included in the hierarchy of statutory regulations regulated in the Law on the Establishment of Legislative Regulations. Circular Letters are only policy regulations, according to Bagir Manan, that policy regulations are not included in statutory regulations, even though they show the characteristics or symptoms of being statutory regulations (Soebroto , 2023:13) . The issuance of SEMA No. 3 of 2023 provides guidelines for Commercial Court Judges to reject applications for declaration of bankruptcy or PKPU against developers of apartments and/or flats. This is because the application does not meet the requirements as simple proof. So the consequence of SEMA is that applications for bankruptcy or PKPU declarations against apartment developers can no longer be submitted to the Commercial Court, but rather to the District Court as usual.

However, this provision can create new problems for judges in implementing it, is this provision intended for all parties who will submit a bankruptcy or PKPU application to an apartment developer? Or is it aimed at protecting consumers who are often disadvantaged when apartment developers go bankrupt? If it is intended for all parties, of course many parties will feel disadvantaged by this provision, especially if there is a debt and receivable agreement which according to the Judges can be proven simply. Of course the next question is whether the Judges must be bound by SEMA? Bearing in mind that judges have the freedom to examine and decide on a case without being influenced by any authority, including the chief judge of a higher court does not have the right to intervene in matters of justice that he or she carries out. This will create a dilemma for the Judges in examining and deciding cases, on the one hand the Judges have freedom in their duties of administering justice and on the other hand the Judges as civil servants under the auspices of the Supreme Court are bound by the Circular issued by the Chief Justice of the Supreme Court.

The existence of SEMA to some extent reduces the discretion or freedom for Judges to interpret the meaning of "simple evidence" as intended in the provisions of Article 8 paragraph (4) of the Bankruptcy Law and PKPU. However, Judges should not have an obligation or attachment to always be guided by SEMA, considering that SEMA is not at the same level or above the Law. So SEMA does not have the legal power to overturn the Act. Therefore, the existence of SEMA No. 3 of 2023 can provide guidelines for Judges to examine cases of applications for bankruptcy or PKPU against apartment and/or flat developers. Even so, judges still have *the freedom of judgement* to examine and decide a case based on the law without always having to refer to the SEMA. (Dedy Kurniadi, 2023)

2. Violation of the Principle *of Lex Superior Derogate Legi Inferiori* in the Formation of Circular Letter of the Supreme Court of the Republic of Indonesia Number 3 of 2023

In the legal system in Indonesia, there is *the principle of lex superior derogate legi inferiori* , which means that lower regulations must not conflict with higher regulations (Purba, 2024:15) . Use of the principle *of lex superior derogate legi inferiori* The aim is that the vertical laws and regulations as regulated in the hierarchy of laws and regulations of the Republic of Indonesia do not conflict but are harmonious and complementary. The higher rules are general and the lower rules are specific so that the lower rules are complementary to the higher rules (Purwadi, 2013: 89) .

The existence of the principle of *lex superior derogate legi inferiori* in the legal and regulatory system in Indonesia to prevent norm conflicts. Norm conflict is a situation where one statutory regulation has the substance of a rule that conflicts with other statutory regulations. Norm conflicts can occur between vertical legislation and horizontal legislation (Irfan, 2020: 308) . Norm conflicts that occur horizontally, such as differences in regulations regarding the same regulatory object in several laws. Meanwhile, vertical norm conflicts are differences in regulation of the same object between those regulated in the law and the regulations below it.

In the context of this discussion, there has been a deviation from the rules as determined by the Supreme Court through SEMA No.3/2023, which in the special civil chamber section determines that *"Applications for declaration of bankruptcy or PKPU against developers (developers) of apartments and/or flats do not meet the requirements as simple proof as intended in the provisions of Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations."* These differences in arrangements are considered a violation of *the principle of Lex Superior Derogate Legi Inferiori.*

The Supreme Court has determined that Bankruptcy or PKPU petitions submitted against apartment and/or flat developers *do* not meet the requirements as simple evidence. It is felt that this rule really makes a difference in the legal subjects that can be submitted for bankruptcy or PKPU as regulated in the K-PKPU Law. In the K-PKPU Law there is no distinction between the requirements for subjects that can be filed for bankruptcy or PKPU for which the proof is simple. When viewed from another

perspective, the regulations issued by the Supreme Court also violate the principle of *equality before the law* (Azhar, 2018) , which means that all legal subjects have equal status before the law. The principle *of equality before the law* is a guarantee of the equal position of every legal subject before the law, so that law enforcement is indiscriminate and non-discriminatory (Lutfiyah, 2021: 518) .

The question then is, what is the background to the publication of SEMA No. 3/2023, even though practically there is no legal vacuum that exists in terms of the K-PKPU Law or the Law regulating the Supreme Court. In fact, SEMA No. 3/2023 has provided requirements that make it increasingly difficult to apply for bankruptcy or PKPU against apartment and/or flat developer *companies.*

On the other hand, if this rule is seen from the legal interests of consumers of apartment and/or flat *developer companies, of course these rules are very difficult when the apartment and/or flat developer company* commits actions that fall within the realm of bankruptcy law or PKPU. This shows that SEMA No. 3 of 2023 contains several serious problems, especially in terms of consumer protection for apartment and/or flat *developer companies.*

SEMA No. 3/2023, if viewed from the principle of *Lex Superior Derogate Legi Inferiori*, then it can be said that SEMA has content that is actually contrary to the regulations in the K-PKPU Law, this is of course a violation of the principle of *Lex Superior Derogate Legi Inferiori*. If it is left to its implementation, it does not rule out the possibility of debate in law enforcement in Indonesia, especially in court trials regarding issues related to bankruptcy applications for apartment and/or flat *developer companies.*

Conclusion

SEMA 3/2023 in the special civil chamber section determines that applications for bankruptcy or PKPU declarations against apartment and/or flat developers *do* not fulfill the requirements as simple evidence as intended in the provisions of Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. This difference in regulation is considered a violation of *the principle of Lex Superior Derogate Legi Inferiori*, which principle has determined that the lower rule in this case is SEMA No. 3/2023 must not conflict with higher regulations, namely the K-PKPU Law.

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