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SUPREME COURT CIRCULAR LEGISLATION RATIO NUMBER 4 OF 2016 RELATED TO RESERVED GOOD FAITH BUYER

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Abstract

The land sale and purchase dispute in this case involves a seller who has sold the same property to two different buyers in two separate transactions. The second buyer (plaintiff) filed a lawsuit against the first buyer (Defendant II). The legal position presents a dilemma. Both buyers feel they have rights to the disputed land because they have purchased the same property from the seller. To determine the rightful buyer, the judge must consider the principle of "good faith" as the foundation for identifying the buyer entitled to legal protection. The issue is that both buyers claim to have good intentions. In order to protect parties with good intentions in an agreement, regulations are necessary to provide legal certainty. In 2016, the Supreme Court convened a plenary meeting and issued Supreme Court Circular Number 4 of 2016, which outlines the criteria for buyers with genuine intentions to purchase land. In this study, we examine the implementation of Supreme Court Circular No. 4 of 2016 in court decisions. Secondly, judges consider cases related to buyers in good faith in accordance with applicable regulations. This type of research is normative research.

Key words: *Good faith buyers, Supreme Court Circular, Legal Protection, Land Buyers.*

INTRODUCTION

Soil is one of the essential components of ecosystems crucial for the survival of mankind and plays a significant role in any development activity. In other words, land is completely inseparable from human life because it provides a foundation for standing and enables cultivation or utilization to meet life's needs. Indonesian philosophy regarding the relationship between humans and the land views the individual and society as a unified entity (Maria, 2001).

In simple terms, the notion of land in the juridical sense refers to the surface of the earth (Mohammad et al., 2018). Thus, land rights can be interpreted as rights to a specific portion of the earth's surface, which has boundaries and is two-dimensional

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in length and width. With the existence of land rights, the rights holder can benefit from the land under their authority. All actions of land rights holders will be protected by law to prevent any disturbances by others (Sedana, 2023).

In the context of social interactions, it can be generally stated that the honest or trustworthy individuals should be safeguarded, while those who are dishonest or lack good faith should face the consequences of their actions. Good faith is the most important factor in law because the behavior of members of the public is not always explicitly addressed in laws and regulations. Additionally, some regulations are based on the mutual consent of each party. Since these regulations are created by ordinary individuals, who are not infallible, it is crucial to consider good faith in legal matters (Prasetyo, 2017).

Honesty or good faith can be observed in two ways: either at the time of the establishment of a legal relationship or during the execution of the rights and obligations outlined in the legal nexus (Wirjono, 1983).

Outwardly, human life is not controlled without the laws governing it, including those in a sale and purchase agreement. The purpose of the sale and purchase agreement is to transfer property rights or goods from the seller to the buyer (Kholidah et al., 2024). The sale and purchase agreement, in addition to being consensual, is also obligatory as it defines the rights and obligations for the parties involved, namely the seller and the buyer. In many buying and selling transactions, buyers purchase goods without knowing if the seller is the rightful owner. This is because, with movable goods, there is a principle that the person in possession of the goods is presumed to be the owner (Mumek, 2017). Consequently, buyers who purchase goods in good faith may suffer losses if it later emerges that the goods did not belong to the seller (Hidayat, 2021).

Buying and selling are integral parts of daily community life. Honesty or good faith in buying and selling is an important factor. A buyer acting in good faith will

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receive reasonable legal protection, whereas those lacking good faith do not deserve legal protection (Izwar, 2022).

Land plays an important role in human life, serving as a source of sustenance and as a platform for development to be utilized for the prosperity of the people. Land is one of the basic human needs and can also be utilized for various human activities, such as areas of disadvantage and development (Qur'an, 2017).

Humans are competing to dominate and own the desired plot of land because it holds economic significance for all aspects of human life (Slamet, 2021). To create prosperity and welfare for the people, issues related to land ownership, buying, and selling require special attention in legislation (Muljono, 2013). Various historical experiences have proven that soil is closely related to the behavior of the community. In fact, soil can even cause problems when changes occur without any regulations in place.

The importance of land as a vital resource is undeniable. There is no society in the world that does not have specific norms or rules regarding its defense. As human thinking evolves, so do the systems, patterns, structures, and regulations that shape our relationship with the land.

Along with the changes and development of human mindsets, lifestyles, and lives, there are changes in land matters, particularly in terms of ownership and control. This pertains to legal certainty and the assurance of rights to the property that is or will be owned (Faisal, 2018).

Provisions for buying and selling are governed by customary law and Law Number 5 of 1960 concerning Agrarian Principles. The law stipulates that the process of buying and selling must be conducted in a transparent manner, ensuring that property rights are transferred when the seller and buyer agree on the price and goods according to mutual understanding. One of the issues in civil law, particularly in

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buying and selling agreements, is safeguarding the interests of buyers acting in good faith. Good faith, according to Subekti, is honesty. A person in good faith places full trust in the opposing party, whom he deems honest and believes will not conceal any detrimental information that could lead to future complications.

According to Supreme Court jurisprudence, buying and selling that is carried out only as a pretense (*pro forma*) is binding only on the party who made the agreement and is not binding on a third party who buys in good faith. Good faith is one of the principles of agreement regulated in Article 1338 paragraph (3) of the Civil Code, stating that agreements must be executed in good faith. Buyers who have acted in good faith must be protected, and the trade in question must be deemed valid.

Basically, any acceptance, whether in the form of a statement of acceptance both written or oral statement, signifies the moment when the agreement comes into existence. An agreement made by one or more individuals with another individual or more will result in a legal relationship known as a contract. Therefore, it can be inferred that a contract is a form of commitment, in addition to other sources. Wirjono Prodjodikoro proposed that a contract is a legal relationship concerning property between two parties. A contract is formed when one party promises or is deemed to have promised to do something or not to do something, while the other party has the right to demand the execution of that promise (Rahim, 2022).

Each of these principles of the treaty has been explained in various ways by jurists. This is because the Civil Code itself does not provide an explanation about freedom of contract. Kartini Muljadi and Gunawan Widjaja stated that this principle finds its basis in the formulation of Articles 13-20, number 4 of the Civil Code, as long as it does not conflict with Article 1337 of the Civil Code. All DAP-AT agreements are made and administered by each individual as long as they do not violate laws, decency, and public order.

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Good faith in contracts is a legal institution (*rechtsfiguur*) derived from Roman law that was later incorporated into civil law (Utama, 2023). In its development, it has also been accepted in contract law in several countries such as the United States, Australia, New Zealand, and Canada. Although good faith is an important principle in contract law in various legal systems, it still raises a number of problems, especially those related to the abstract nature of its meaning.

An agreement is a legal relationship between two individuals or two parties. In this relationship, one party is entitled to demand something from the other party, who is then obligated to fulfill that claim. An agreement is an event where one person makes a promise to another person, or both parties make a promise to carry out something that has been mutually agreed upon. Article 1313 of the Civil Code provides the following definition of a treaty: "A covenant is an act where one or more persons bind themselves to one or more persons." A contract or agreement must meet the conditions for validity, namely offer, acceptance, consideration, and lawful purpose as specified in Article 1320 of the Civil Code. Upon meeting the four conditions of validity, an agreement becomes legally binding for the parties involved. Based on Article 1457 of the Civil Code, buying and selling refer to an agreement in which one party commits to transferring a good, while the other party agrees to pay the promised price. In the sale and purchase agreement, the rights and obligations for the parties, namely the seller and the buyer, are explained (Innaka, Antari, and Mr Sularto, 2012)(Suharnoko, 2007).

In the process of buying and selling, there is a possibility of occurrences that can harm the buyer. For example, if a buyer purchases land from someone who is not the original owner.

The original owner of the land was unaware of whether the land had been sold to another party or if a party had purchased the land from another party. Due to this lack of clarity and bad faith, it was later discovered that the land was in dispute. As a

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result, a buyer ultimately suffers losses due to these legal actions. A buyer who purchases land in good faith without complete knowledge of its history may suffer losses, highlighting the necessity for legal protection for buyers. In the context of the sale and purchase of land, good faith is primarily assessed based on whether the legal conditions of the transaction have been met. On the basis of Thus, if there is a dispute related to a good faith buyer, the judge can determine whether a buyer of the land can be considered a good faith buyer or not. Honesty or good faith can be observed in two ways: either at the time of the establishment of a legal relationship or during the execution of the rights and obligations outlined in the legal nexus (Manery, 2018).

In a scientific study, the first important step is formulating the research problem. This is because a problem formulation serves as a guide for studying and finding answers about a particular thing or object. In essence, before determining the title of a study, a researcher must first formulate a problem. This process involves identifying and understanding the issues that have arisen, which must then be solved in order to achieve the research objectives.

The problem formulation is essential for clarifying the issues to be studied. It provides crucial guidance for discussing the problem being investigated. To facilitate research and align with the focus of the study. Based on the background description provided above, the problem can be formulated as follows, How is the implementation of SEMA Number 6 of 2016?

RESEARCH METHOD

The research aims to provide insights into the implementation of SEMA Number 6 of 2016 and its implications for land rights, buying and selling agreements, and good faith in Indonesia. The findings are expected to contribute to policy discussions and reforms aimed at enhancing legal protection and promoting fairness in land transactions. Conduct an extensive review of existing literature, including legal texts, scholarly articles, and relevant jurisprudence, to gain a comprehensive

understanding of land rights, buying and selling agreements, good faith, and the provisions of SEMA Number 6 of 2016. Analyze the specific provisions and regulations outlined in SEMA Number 6 of 2016, along with relevant laws and customary practices related to land transactions, to evaluate their alignment with principles of good faith and legal protection for buyers.

RESULTS, DISCUSSION AND ANALYSIS

History of SEMA Law

Initially, SEMA was established based on the provisions of Article 12(3) of Law Number 1 of 1950 concerning the Composition, Authority, and Judiciary of the Supreme Court of the Republic of Indonesia. The Supreme Court is a judicial body that has the power to oversee the judicial bodies subordinate to it. For the benefit of the Department, the Supreme Court reserves the right to issue warnings, notices, and instructions to courts and judges as it deems necessary and useful through separate letters or circulars. However, since the legislation at that time was still limited, the SEMA itself underwent a slight change in function during its development. The SEMA was no longer just a supervisory tool but expanded to include regulation, control, etc.

SEMA itself can be broken down into policy rules (lead rules) when considering its users, as SEMA is typically presented to judges, clerks, and other court personnel. However, not all SEMAs can be categorized as a "rule of thumb" when examining the depth of content. For example, in SEMA No. 3 of 1963, the Supreme Court overturned some provisions of BW.

Another feature of policy restrictions is that they are not directly legally binding, but they are legally relevant. Political regulation allows the executive authority of the state to exercise governmental power. The use of the description itself

must be attributed to government authorities; otherwise, there is no room for any regulation (Philipus, 2002).

SEMA Manufacturing Mechanism

The power to implement the SEMA rests with the Chief Justice and the Vice President of the Supreme Court. However, the Chief Justice at the time of drafting may seek a legal opinion from the Deputy Chief Justice on the contents of the SEMA prepared according to their respective fields. For example, when it comes to the protection of whistleblowers and judicial staff, the chief justice consults with the chairman of the young criminal justice committee. Afterwards, the young chairman of the Criminal Law Department provided a legal opinion. The Chief Justice will then decide on the Rules/SEMA. Therefore, the final decision rests with the Chief Justice of the Supreme Court and is based on the ecological opinion of the Chief Justice (Irwan Adi, 2013).

SEMA as a form of regulation based on Article 79 of Law No. 14 of 1985 concerning the Supreme Court.

As explained in its initial preparation, the Supreme Court Circular Letter was issued based on the provisions of Article 12(3) of Law Number 1 of 1950 concerning the Composition, Authority, and Justice of the Supreme Court of Indonesia. The content explains that the Supreme Court is a judicial body with the power to oversee other judicial bodies within its jurisdiction. For the benefit of the Department, the Supreme Court reserves the right to issue warnings, notices, and instructions to courts and judges as it deems necessary and useful through separate letters or circulars. From this statement, we can understand the purported role of the Supreme Court Circular in the field of judicial supervision.

This article describes the function of the legislative power of the Supreme Court, through which the Court may issue rules for resolving non-legal cases. Of course, this authority is actually derived from the provisions of Article 10 of Law Number 48 of 2009 concerning Judicial Power. According to this article, a judge has the right to uphold the principle that a case cannot be overruled when there is no precedent or when the law is ambiguous.

Given the slow development of domestic law, this is crucial for the Supreme Court as a judicial body within the separation of powers system in Indonesia. Unlike the administrative judiciary, which can exercise the principle of freedom of discretion, the Supreme Court is bound by the principle of legality. Therefore, it must rely on legal regulations to address legal loopholes when handling cases (procedural law). Thus, Article 79 of Law Number 14 of 1985 becomes very important.

Another aspect that requires additional research is the presence of multiple Supreme Court Circulars that include legal provisions concerning Article 79 of Law Number 14 of 1985. Some provisions of laws and regulations. In fact, it will be problematic if the SEMA that repeals the provisions of the law remains in force after Law No. 12 of 2011 comes into effect. However, in practice, the existence of SEMA has been nullified by regulations that supersede or are integrated into laws and regulations that pertain to SEMA.

SEMA's Position in the Hierarchy of Laws and Regulations

A product of legislation must have a uniform formal form. This actually makes it easier for regulatory users to understand whether the rules fall under laws, political regulations, or consumer products. In practice, the grouping of rules and basic rules (the rules that insult) often appears distorted when viewed solely from a formal

perspective. This approach makes it more objective to distinguish legal norms as regulatory or regulatory forms.

Based on Law Number 12 of 2011 concerning Lawmaking ("Law Number 12 of 2011"), the Supreme Court Circular ("SEMA") can be classified as a regulatory form issued based on the authority of the Court. Institutions were established. Articles 7 and 8 of Law 12/2011 state:

Article 7, (1) The types and hierarchy of laws and regulations consist of: (a) the Constitution of the Republic of Indonesia of 1945; (b) Provisions of the People's Consultative Assembly; (c) Government Acts/Regulations in Lieu of Acts; (d) Government Regulations; (e) Presidential Regulations; (f) Provincial Bylaws; and (g) District/City Bylaws. (2) The legal force of the laws and regulations is determined according to the hierarchy mentioned in paragraph (1).

Article 8, (1) Types of laws and regulations other than those referred to in Article 7, paragraph (1), include regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Financial Audit Agency, the Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions of the same level established by law or the Government by order of the Law, the Provincial People's Representative Council, Governor, Regional People's Representative Council of Regencies/Cities, Regents/Mayors, Village Heads, or the same level; (2) The laws and regulations as referred to in paragraph (1) are recognized for their existence and have binding legal force as long as they are ordered by higher laws and regulations or formed based on authority.

The establishment of SEMA itself is based on the power of the Supreme Court ("MA") to request information and give directions to courts in all of the following jurisdictions. By reviewing existing applications, SEMA has become a guideline for carrying out the oversight role of the Supreme Court.

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SEMA itself is a legal entity and is not above the law. SEMA binds only the judiciary. Law, on the other hand, is the supreme legal norm under the 1945 Constitution of the Republic of Indonesia ("1945 Constitution") and is binding on all Indonesian citizens (Constitution of the Republic of Indonesia of 1945).

Revision of the Law. In addition, changes and repeals of the law can only be accomplished in two ways :

1. By the House of Representatives ("DPR"), in cooperation with the President, new laws can be enacted or existing laws can be amended. This corresponds to the principle of reverse actus, which is applicable to countries. State administrative law is the principle that a state administrative agency or official who issues a state administrative order automatically has the power to revoke it (Philipus M. Hadjon and Tatiek Sri Djatmiati, 2009).

In Indonesia, the authority to form laws rests with the President and the House of Representatives. According to Article 20, paragraph (2) of the 1945 Constitution: "Every draft law is discussed by the House of Representatives and the President for mutual approval".

2. Through judicial review of a law, the Constitutional Court ("MK") makes decisions. Article 9, paragraph (1) of Law 12/2011 states: "In the event that an act is suspected to be contrary to the 1945 Constitution of the Republic of Indonesia, the test is carried out by the Constitutional Court."

Thus, the issuance of Supreme Court Circular No. 3 of 1963 regarding the Interpretation of the Burgerlijk Wetboek as not being a statute ("SEMA 3/1963") that you are referring to does not affect the applicability of Article 1238 of the Civil Code. This is even though SEMA 3/1963 states that (p). 1) N/A "In light of the fact that the Burgerlijk Wetboek, created by Dutch colonists, was intentionally designed as a replica of the Burgerlijk Wetboek in the Netherlands and was initially applied to the Dutch population in Indonesia, the question arises as to whether, in the context

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of an independent Indonesia breaking free from Dutch colonization, it is still appropriate to consider the Burgerlijk Wetboek as equivalent to a law that is officially enforced in Indonesia. In other words, the question is whether the colonial Burgerlijk Wetboek should be officially repealed before its enforcement as a law in Indonesia.

In connection with this, it is an idea that regards the Burgerlijk Wetboek not as a statute but rather as a document describing only an unwritten group of laws (WIJAYA, 2008).

In 1963, SEMA 3 stated that the Supreme Court had considered Article 1238 of the Civil Code. It is concluded that the execution of the agreement can only be pursued before a judge if it is preceded by a written settlement and is no longer valid. 2).

However, based on the above discussion, SEMA 3/1963 essentially lacks the authority to amend or repeal a law like the Civil Code. Therefore, Article 1238 of the Civil Code remains valid and binding.

Another important issue is determining the position of the Supreme Court Circular in our legal hierarchy. Determining the place of SEMA in the hierarchy of laws and regulations is theoretically difficult. The reason for this difficulty is that there are no standard rules to refer to. Before discussing SEMA's position in the legal and regulatory hierarchy, it is best to first understand SEMA's position in the Supreme Court. Judging from its formal structure and content, SEMA is actually inferior to PERMA, which is more comprehensive and serves as a form of regulation. From the information gathered from the inventory table, the SEMA can be established based on the Supreme Court's order, and the presence of PERMA can supersede the Supreme Court's order. B. SEMA No. 6 of 1967. Cancelled with PERMA No. 1 of 1969.

Legal Protection According to Experts

According to Satjito Rahardjo, "legal protection is an effort to protect a person's interests by allocating human rights power to them to act in the context of their interests."

According to CST Kansil, "legal protection is any legal remedy that must be provided by law enforcement officials to offer a sense of security, both mentally and physically, from interference and various threats from any party." According to Philipus M. Hadjon, "legal protection is the safeguarding of dignity and honor, as well as the acknowledgment of human rights possessed by legal subjects based on the general provisions of the law or as a set of regulations or rules that can protect other interests."

According to Muktie, A. Fadjar, "legal protection is a narrowing of the meaning of protection, focusing solely on protection provided by law." The protection provided by law is also related to the existence of rights and obligations, in this case those possessed by humans as legal subjects in their interactions with fellow humans as well as their environment. As a subject of the law, man has the right and obligation to perform a legal act.

According to Setiono, "legal protection is an act or effort to protect society from arbitrary acts by rulers that are inconsistent with the rule of law, to realize order and tranquility so as to allow man to enjoy his dignity as a human being."

According to Hetty Hasanah, "legal protection is any effort that can guarantee legal certainty, in order to provide legal protection to the parties involved or those who take legal action."

Principles of Legal Protection

The principle of legal protection of government actions is rooted in the concept of recognizing and safeguarding human rights. Historical evidence from the West indicates that the development of ideas concerning the recognition and protection of

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human rights aimed to limit and define the responsibilities of both society and the government (Junaidi et al., 2023).

The dominant aspect of the Western concept of human rights is that it emphasizes the existence of rights and freedoms inherent in human nature. These rights are considered inherent to the individual, above the state and all political organizations, and are deemed absolute and inviolable. Due to this concept, the Western notion of human rights is frequently criticized for being individualistic. With the emergence of social, economic, and cultural rights, there is a tendency to dilute the individualistic nature of Western concepts (Fitri, 2013).

In formulating the principles of legal protection in Indonesia, the foundation is Pancasila, which serves as the ideology and philosophy of the state (Sumadi, 2015). The conception of legal protection for the people in the West is rooted in the concepts of *Rechtsstaat* and the "Rule of Law". By using the Western conception as a framework for thinking with a foundation on Pancasila, the principle of legal protection in Indonesia is the recognition and protection of human dignity derived from Pancasila (Aswandi & Roisah, 2019).

The principle of legal protection against government acts is based on and derived from the concept of recognizing and safeguarding human rights. Historically, in the Western context, the development of ideas concerning the recognition and protection of human rights aimed at imposing limitations and obligations on both society and the government (Firi Hidayat, 2013).

From this explanation, it can simply be said that essentially, every acceptance, whether in written or oral form, signifies the birth of the agreement. An agreement made by one or more individuals with another individual or more will give rise to a legal relationship called a contract. Therefore, it can be concluded that a contract is a source of commitment, in addition to other sources. Wirjono Prodjodikoro proposed that a contract is a legal relationship concerning property between two parties. Where

one party promises or is deemed to have promised to do or not do something, while the other party has the right to demand the fulfillment of the promise (Philipus M. Hadjon).

Forms of Legal Protection

According to Philipus M. Hadjon, there are two kinds of legal protection facilities, namely:

1. Preventive Legal Protection Facilities

This preventive legal protection includes providing legal entities with the opportunity to raise objections or comments before a government decision. The goal is to prevent fights from breaking out. Preventive legal protections entail significant funds for government actions that promote freedom. When implementing preventive legal protections, the government is advised to proceed with caution in decision-making. Not in Indonesia Special Rules for the Protection of Prevention Laws.

2. Means of Protection of Repressive Law

Repressive legal protection aims to resolve conflicts. Handling the legal protection of the General Court and the Indonesian Administrative Court falls into this category of legal protection. The principle of protection of the National Code of Ethics is based on and derived from it. The concept of recognition and protection of human rights originated from the West, based on historical developments. It emerged in response to the constraints and expectations imposed by society and government. The second basic principle of legal protection against sovereign acts is the rule of law. Related to the recognition and protection of human rights, it is a priority and can be prioritized in alignment with the objectives of the country's legal system.

Implementation of good buyer protection protected by Law

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that SEMA has been followed by several court decisions to affirm the existence of good buyer protection under the Act based on :

- **PN SLEMAN Decision Number 61/Pdt.G/2020/PN Smn, Dated October 20, 2020**

Plaintiff:

RAHEDY PRIHATONO, S.E, M.M.

Defendants:

1.ALEXANDER WONG THE GREAT STUMP NEGORO

2.PT. SHAKTI TOP FINANCE

Intervention:

Arief Nurachmad

- **Subject of Things :**

- Considering that the intent and purpose of the suit of the Original Plaintiff/Intervention Defendant I is essentially regarding unlawful acts committed by the Original Defendants on the object of dispute, i.e., land and buildings with Certificate of Property Rights Number: 731-Karangwaru, Situation Picture Number: 2408/1989, dated July 7, 1989, covering an area of 196 m² (one hundred and ninety-six square meters) located in Blunyahrejo, Karangwaru Village, Tegalrejo District, Yogyakarta City, DIY Province;

- Before delving further into the subject matter of the case, it is essential to first address the formalities of the aforementioned suit;

- Considering that in the Defendant Origin II's response, the mention of a fuzzy suit or obscure libel was made so that the Panel of Judges would review the original Plaintiff's suit first;

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- Considering that in the posita and petitem of the original plaintiff's suit, it is stated that the Original Defendants have committed unlawful acts. It was revealed that, apart from the Original Defendant I, no advance notification was given that the object of sale and purchase of Title Certificate Number: 731-Karangwaru, covering an area of 196 m², located in Blunyahrejo, Karangwaru Village, Tegalorejo District, Yogyakarta City, D.I Yogyakarta Province, has been used as collateral for debts owed to Defendant II Origin. Additionally, the object of sale and purchase was not handed over to the Original Plaintiff, even though the Original Defendant I had received a payment from the Original Plaintiff in the amount of Rp. 900,000,000 (nine hundred million rupiah) was sold without going through a public auction;

- After examining the lawsuit filed by the Plaintiff in posita number 3 related to evidence T-6, the Panel of Judges found that the legal relationship between the Original Plaintiff and the Original Defendant I was initially a receivable debt. This was later followed by the agreement outlined in the Affidavit.

- Considering that the evidence of letter T-6 on the Affidavit, made by the Original Plaintiff with the Original Defendant I on Saturday, July 7, 2018, contains an acknowledgment and promise from the Original Defendant I to the Original Plaintiff:

1. I will try to pay off my loan at Top Finance Yogyakarta using a piece of land and a building with SHM Certificate No. 731 located in Blunyah Rejo Karangwaru Village, Tegalorejo District, Yogyakarta Municipality, DI Yogyakarta Province. Due to my unfavorable business situation, my loan is currently in arrears and is at risk of being auctioned off. That's why I try not to be

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auctioned off and aim to pay it off immediately. The effort I will make is to pay a minimum of Rp.50,000,000 (fifty million rupiah) starting this month until it can be fully paid off;

2. If I cannot stop the auction, I will return the amount of Rp. 2,000,000,000 (two billion rupiah) as compensation to Mr. Edy Prihatono, SE. MM. The refund can be processed once I receive income from the sale of a vacant plot of land owned by my family. The plot is fully authorized to me and is located in the Kuningan area at Jln Prof Satrio, Kuningan, South Jakarta. It covers an area of 2.7 hectares (27,000 square meters). The estimated processing time for the sales results is expected to be obtained by me in 2018, after which I will promptly pay it to Edy Prihartono's brother;

3. If I cannot pay or return the amount, then my heirs are obligated to pay it off to the Mr. Edy Prihatono SE. MM;

- Considering that the Panel of Judges determined that the receivables (as stated in number 3) and the agreement (evidence T-6) for the sale and purchase are distinct entities. In cases of debt receivables and agreements, if one party breaches the agreement, the aggrieved party can initiate a civil lawsuit based on default, as per Article 1243 of the Civil Code ("KuhPer"). However, the original Plaintiff's claim was primarily based on an unlawful act (Article 1365 of the Penal Code);

- Considering that the original plaintiff in their lawsuit may combine the allegations of tort and contract, it is essential to expressly and clearly outline the separation. Although there are still many legal experts who argue that the merger of default and tort is

theoretically unjustified, it is beneficial to separate the tort suit from default. However, the panel of judges held that, according to the principles of speedy, simple, and cost-effective trials, if default must be combined with tort, it must be clearly outlined and strictly separated what constitutes default and what constitutes the unlawful Act;

- Considering that the allegations in the original plaintiff's lawsuit did not clearly and unequivocally outline the legal relationship between the parties, including the existence of accounts receivable, which was then followed by the affidavit/promise of Defendant Origin I to the original plaintiff, and the original plaintiff did not claim that the original Defendant I or other Origin Defendants had defaulted;

- Considering that the posita and petitum arguments of the original Plaintiff's suit are vague or obscure, it is unclear due to the unknown intent and purpose of the original Plaintiff's suit;

- Considering that the suit of the Original Plaintiff is vague or obscure libel, it must be declared inadmissible (niet ontvankelijk verklaard) based on the aforementioned considerations;

- It is not considered that since the complainant has met the criteria of a good faith buyer, even though it is later discovered that the land was purchased from an ineligible person (an ineligible seller), the land that has been purchased by a good faith buyer cannot be contested by anyone. As per Supreme Court Circular No. 7 of 2012, in the Civil Chamber Meeting Result item IX, it is stated that: "Protection shall be afforded to a good faith purchaser even if it is later known."

- **Decision of PT YOGYAKARTA Number 5/PDT/2021/PT YYK**,
Dated April 5, 2021 — Comparator/Plaintiff: RAHEDY PRIHATONO, S.E,
M.M. Represented by: Fitri Bintari Megawati, S.H.

Appellant/Defendant I : ALEXANDER WONG AGUNG STUMP
NEGORO Represented By : Zaky Fazrurahman Iskandar, S.H.

Appellant/Defendant II : PT. SHAKTI TOP FINANCE

Comparable/Intervention I : Arief Nurachmad Represented By :
LINGGA DWI HUMANTORO, S.H, et al.

• **Sitting Matters :**

- Reading the deed of appeal statement made by the Clerk of the Sleman District Court stating that on November 3, 2020, the Original Plaintiff/Intervention Defendant I/Comparator has filed an application for his case to be decided by the Sleman District Court dated October 20, 2020 No. 61/Rev.G/2020/PN Smn to be examined and decided in the appellate level court;

- Reading the minutes of notice of appeal statement made by the Substitute Bailiff at the Sleman District Court stating that the appeal has been duly and thoroughly notified /submitted to the original Defendant I/Intervention Defendant II/Appellate I on November 6, 2020, and to the original defendant/Intervention Defendant III/Appellate II on December 11, 2020, and to the Interventional Plaintiff/Co-Defendant on December 15, 2020;

- Reading the Letter of Appeal Memory filed by the Original Plaintiff/Intervention Defendant I/Comparator dated November 17, 2020 and the said Memory of Appeal letter has been carefully notified to the parties of the Original Defendant I/Intervention Defendant II/Appellate Defendant I on November

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19, 2020, and to the parties of the Original Defendant II/Intervention Defendant III/Appellate II on December 8, 2020, and to the Interventional Plaintiff/Co-Defendant on December 15, 2020;

- Reading the letter of Counter Memory Appeal filed by the Intervention Plaintiff/Co-Appellant dated November 30, 2020 and the said Counter-Memory Appeal letter has also been duly notified in a thorough manner to the original Plaintiff/Intervention Defendant I/Comparator on December 7, 2020, and to the Origin Defendant/Intervention Defendant;

- Reading the letter of Counter Memory Appeal filed by Defendant Origin I/Defendant Intervention II/Appellate I dated December 2, 2020 and the letter of Counter Memory Appeal has also been duly notified in a thorough manner to the party of the Original Plaintiff/Defendant of Intervention I/Comparator on December 7, 2020, and to the party of the Intervention Plaintiff/Co-Defendant on December 2, 2020, and to the parties of Defendant II / Intervention Defendant III / Appellate II on December 2, 2020;

- The minutes of notification of examination of the case file (inzage) No. 61/Rev.G/2020/PN Smn made by the Substitute Bailiff at the Sleman District Court have given an opportunity to the original Plaintiff/Intervention Defendant I/Comparator on November 9, 2020, and to the original Defendant I/Intervention Defendant II/Appellate I on November 6, 2020, and to the original Defendant/Intervention Defendant III/Appellate II on December 11, 2020, and on the part of the Interventional Plaintiff/Co-Defendant on December 15, 2020;

• In its consideration "relating to the object of the promised land, among other things: The seller is a person who is entitled to or has rights to the land that is the object of sale and purchase, in accordance with their proof of ownership; The land/object being traded is not in confiscated status; The land/object being traded is not in the status of collateral or dependent rights; For certified land, it has obtained information from BPN and a history of legal relations between the land and the certificate holder; MA opinion on criteria."

CONCLUSION

Based on the results of the analysis of PT SURABAYA Decision Number 432/PDT/2020/PT SBY, dated August 24, 2020 and PT YOGYAKARTA Decision Number 5/PDT/2021/PT YYK, April 5, 2021, there are several conclusions as follows:

1. The procedure for the sale and purchase of land rights is conducted in good faith, as outlined in the study based on PT SURABAYA Decision Number 432/PDT/2020/PT SBY. It states that Pelawan, having met the criteria as a good faith buyer, cannot have the land contested by anyone, even if it is later discovered that the land was bought from an unauthorized seller. Thus, as per Supreme Court Circular No. 7 of 2012 in the Civil Chamber Meeting Results in item IX, it is stated that: "Protection shall be afforded to a good faith purchaser even if it is later known," which applies to transactions involving the sale and purchase of land under customary law. Trades that are not made before the PPAT remain valid as long as they meet the cumulative material requirements. The good faith of the buyer is related to the thoroughness of the buyer in verifying the physical and legal data of the land being sold. This is important not only to avoid any potential flaws in the buying and selling process but also to ensure the integrity of the land rights.

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2. Legal protection has been granted to buyers who acted in good faith in land sale and purchase disputes, as per the decision of PT YOGYAKARTA Number 5/PDT/2021/PT YYK. In this case, Rahedy Prihatono, S.E, M.M., is the beneficiary of this protection. Represented by: Fitri Bintari Megawati, S.H., as the Complainant/Plaintiff. This is based on several legal arguments. First, in his consideration, the Plaintiff has to take into account several factors related to the land being promised, including: the seller's entitlement or rights to the land as evidenced by proof of ownership; ensuring that the land is not confiscated or under collateral/dependent rights; verifying information from the National Land Agency (BPN) and the legal history between the land and the certificate holder for certified land; and considering the Supreme Court's opinion on criteria

Suggestion

In the future, legislation will be enacted to clarify the role and function of the Supreme Court circular. This is to help the public understand the legal position and authority of SEMA as stipulated by the Supreme Court. A Supreme Court circular, functioning as an order but governing procedural matters, and an SEMA, also acting as an order, shall promptly be converted into an official order of the Supreme Court. Regarding the function of legislative power, the unification of legal products will be sought under Article 79 of the Supreme Court Law.

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