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## Judge's Dilemma in Determining Bankruptcy Decisions: Dichotomy Between Supreme Court Circular Letter Number 3 of 2023 and Law 37 of 2004 Concerning Bankruptcy-PKPU

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### Abstract

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This study aims to examine the dilemma faced by judges in determining bankruptcy decisions, especially in the context of conflict between Supreme Court Circular Letter Number 3 of 2023 and Law 37 of 2004 concerning Bankruptcy-PKPU. The research method used is a normative research method that focuses on analyzing laws and regulations, court decisions, and related legal documents. This approach allows researchers to understand and analyze relevant legal aspects to obtain a comprehensive understanding of the judge's dilemma in determining bankruptcy decisions. In the context of normative research, the researcher conducted an in-depth study of the conflict between Supreme Court Circular Letter Number 3 Year 2023 and Law 37 Year 2004 on Bankruptcy-PKPU. This research explores how judges face the challenge of applying different regulations and their potential impact on their decisions. The analysis is conducted with reference to applicable legal principles, legal interpretations, as well as relevant cases in court practice. The results of this study are expected to contribute to clarifying the framework of thought and legal solutions to the problem of judges' dilemma in the context of bankruptcy in Indonesia. In addition, this research can also serve as a basis for stakeholders, both legal practitioners and policy makers, to consider the necessary steps to minimize legal conflicts and improve consistency and fairness in handling bankruptcy cases.

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## INTRODUCTION

Since the Amendment of the 1945 Constitution, as stipulated in Article 24 paragraphs (1) and (2), and elaborated in Law No. 48/2009 on Judicial Power, judicial power in Indonesia has been separated from executive and legislative power. The Supreme Court and the judicial bodies under it, including the general, religious, military and state administrative courts, as well as the Constitutional Court, must carry out their duties independently and free from the influence of other powers. This principle is in accordance with the concept of *trias politica*

developed by Montesquieu to prevent abuse of power by the ruler.<sup>1</sup> As an institution that plays an important role in the Indonesian judicial system, especially in the public courts, the Supreme Court has the responsibility to exercise the highest supervision over the course of the judicial process at all levels.<sup>2</sup> This aims to ensure that judges carry out their duties thoroughly, fairly and in accordance with the principles of simple, speedy and affordable justice. Nevertheless, the freedom of judges in examining and deciding cases is still guaranteed. However, sometimes there are mistakes within the Supreme Court itself, especially in the application of SEMA.

Recently, in court practice in Indonesia, there has been a dilemma faced by judges in determining bankruptcy decisions, especially in this study relating to the dichotomy between Supreme Court Circular Letter Number 3 of 2023 and Law 37 of 2004 concerning Bankruptcy-PKPU. Supreme Court Circular Letter, commonly abbreviated as SEMA, is one of the regulations issued by the Supreme Court to regulate the order in the judicial environment under it. Since 1951, the Supreme Court has routinely issued Circular Letters, commonly referred to as SEMA, as part of its regulatory function (*regelende functie*).<sup>3</sup> One of the legal bases for the formation of the current SEMA as emphasized in Law Number 12 of 2011 concerning the Formation of Legislative Regulations.<sup>4</sup> In this law, SEMA is recognized as a rule that has binding legal force, depending on the provisions of higher laws and regulations or the authority granted as stated in Article 8 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations.<sup>5</sup> Supreme Court Circular Letter Number 3 Year 2023 was issued with the intention of providing practical guidance to judges in handling bankruptcy cases. However, in practice, this circular often conflicts with the provisions set out in Law 37 of 2004 on Bankruptcy-PKPU, which is the main legal basis for regulating bankruptcy proceedings in Indonesia.

One of the most controversial Supreme Court Circulars in recent times is Supreme Court Circular No. 3 of 2023. This issue arises due to different interpretations between the

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<sup>1</sup> Tomson Situmeang, "Reposisi Pengadilan Pajak Menurut Sistem Kekuasaan Kehakiman Di Indonesia," *Honeste Vivere* 32, no. 2 (June 27, 2022): 108–122, <https://doi.org/10.55809/hv.v32i2.138>.

<sup>2</sup> Mohammad Kamil Ardiansyah, "Pembaruan Hukum oleh Mahkamah Agung dalam Mengisi Kekosongan Hukum Acara Perdata di Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 2 (July 24, 2020): 361, <https://doi.org/10.30641/kebijakan.2020.V14.361-384>.

<sup>3</sup> Ari Iswahyuni, "Kedudukan Ancaman Pidana Minimal Dalam Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Pasca Dikeluarkannya Surat Edaran Mahkamah Agung Nomor 3 Tahun 2015," *Jurnal Panorama Hukum* 3, no. 1 (July 5, 2018): 27, <https://doi.org/10.21067/jph.v3i1.2321>.

<sup>4</sup> M. Afif Gusti Fatah, "Kedudukan SEMA Sebagai Dasar Hukum Pertimbangan Hakim," *Jurnal Transparansi Hukum* 7, no. 1 (2024): 134.

<sup>5</sup> *Ibid.*

Supreme Court Circular Letter and Law 37 of 2004. The Supreme Court Circular Letter may have certain interpretations or interpretations of several articles or provisions in Law 37 of 2004, which are not always in line with the intended interpretation in the text of the law itself. As a result, this creates confusion and uncertainty for judges in determining bankruptcy decisions, because they have to consider both sources of law.

The impact of this dilemma can be felt in the legal certainty and consistency of court decisions in bankruptcy cases. The presence of two conflicting sources of law can lead to uncertainty in court proceedings, as well as increase the risk of errors in decision making. In addition, this may also affect public confidence in the judicial system and the credibility of judicial institutions in Indonesia.

Therefore, it is important to conduct an in-depth analysis of the judges' dilemma in determining bankruptcy decisions, and find the right solution to balance compliance with the Supreme Court Circular Letter and compliance with Law 37 of 2004. Efforts to formulate clearer and more consistent guidelines in the handling of bankruptcy cases are crucial to maintain the integrity and effectiveness of the judicial system in Indonesia.

The research method used in this research is normative juridical combined with sociological research methods. Normative research method is an approach in legal studies that focuses on analyzing legal rules, doctrines, and applicable legal principles.<sup>6</sup> This research involves studying legislation, court decisions, and legal literature to understand and interpret existing legal norms.<sup>7</sup> The juridical normative method involves the analysis of relevant legislation, doctrine, and court decisions relevant to the research topic, namely the dichotomy between Supreme Court Circular Letter Number 3 of 2023 and Law Number 37 of 2004 on Bankruptcy and PKPU. This approach aims to understand the applicable legal principles and how they are applied in concrete cases. In addition, sociological research methods are used to enrich the normative analysis through interviews<sup>8</sup> Interviews were conducted with legal practitioners who are experienced in the field of bankruptcy. These interviews aimed to collect in-depth field data and provide a practical perspective on the issues discussed, so as to strengthen the research findings and provide a more comprehensive picture of the dilemmas faced by judges in determining bankruptcy decisions.

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<sup>6</sup> H. Salim H S dan Erlies Septiana Nurbaini, *Penerapan Teori Hukum Pada Penelitian Disertasi Dan Tesis Buku Kedua*, (Jakarta: Rajawali Pers, 2017).

<sup>7</sup> Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris*, (Depok: Kencana, 2018).

<sup>8</sup> Muhaimim, *Metode Penelitian Hukum*, (Mataram: Mataram University Press, 2020).

This journal examines two main issues related to legal dynamics in Indonesia. First, the position of the Supreme Court Circular Letter (SEMA) in the hierarchy of laws and regulations in Indonesia, which highlights how the SEMA serves as a guideline for judges in decision-making but often raises debates regarding its strength compared to the law. Secondly, the conflict between Supreme Court Circular Letter Number 3 Year 2023 and Law Number 37 Year 2004 on Bankruptcy and PKPU, which underscores the misalignment between the guidance provided by the Supreme Court and the legal provisions governed by the law, and its impact on the bankruptcy process in Indonesia. This research aims to provide an in-depth analysis and solution to these legal issues.

Moving on from the background of the problems described above, the researcher is interested in conducting a study with the title **“Judges’ Dilemma in Determining Bankruptcy Decisions: The Dichotomy Between Supreme Court Circular Letter Number 3 of 2023 and Law 37 of 2004 Concerning Bankruptcy-PKPU”**.

## **THE POSITION OF SUPREME COURT CIRCULAR LETTERS (SEMA) IN THE HIERARCHY OF LAWS AND REGULATIONS IN INDONESIA**

Initially, the Supreme Court Circular Letter (SEMA) was formed based on the provisions contained in Article 12 paragraph 3 of Law Number 1 Year 1950 concerning the Structure, Powers, and Judiciary of the Supreme Court of Indonesia. The article mandates that the behavior and actions of courts and judges are supervised by the Supreme Court, which has the authority to provide warnings, warnings, and instructions deemed necessary and useful, either through individual letters or through circulars. Currently, the legal basis for the Supreme Court to issue a Supreme Court Circular Letter (SEMA) can be seen in Article 79 of Law Number 14 of 1985 concerning the Supreme Court. This article authorizes the Supreme Court to further regulate matters necessary for the smooth implementation of justice, especially if there are matters that have not been sufficiently regulated in the law. This authority is given so that the Supreme Court can resolve issues that are not regulated in detail in the law. Based on Article 79 of Law No. 14 of 1985, the Supreme Court has the authority to determine arrangements on how to resolve an issue that has not been or is not regulated in the Supreme Court law. Article 32 paragraph (4) of Law No. 3 of 2009 on the second amendment to Law No. 14 of 1985 on the Supreme Court stipulates that the Supreme Court has the authority to give instructions, admonitions, or warnings to courts in all judicial institutions under it.

However, it should be noted that regulations issued by the Supreme Court must be distinguished from regulations drafted by lawmaking bodies. Regulations issued by the Supreme Court in relation to the administration of justice are only part of the overall procedural law.

The Supreme Court has an important role as one of the highest judicial powers in Indonesia.<sup>9</sup> As the apex of the judicial system, the Supreme Court is responsible for ensuring the rule of law and justice throughout the country.<sup>10</sup> Legal products produced by the Supreme Court include court decisions, circulars, and guidelines used to direct judicial practice at lower levels. The Supreme Court also functions as a body that handles cassation and judicial review, which means it has the authority to assess and correct decisions from lower courts.

It is necessary to know what are the legal products of the Supreme Court. The legal products of the Supreme Court (MA) are as follows:<sup>11</sup>

1. Supreme Court Regulation or PERMA is basically a form of regulation that governs the provisions of procedural law. PERMA is a legal instrument that provides procedural guidance for the management of cases in court. As such, PERMA plays an important role in upholding justice and efficiency in the judicial process in Indonesia;
2. Supreme Court Fatwa is a legal opinion given by the Supreme Court upon request from a state institution. It has the force of law and is used as a guide in interpreting and applying the law in complex or controversial cases. Supreme Court fatwas are an important reference in ensuring consistency and legal certainty at the national level;
3. Chief Justice Decree or SK KMA is a decision issued by the Chief Justice of the Supreme Court regarding certain matters. SK KMA serves as an administrative instrument that regulates internal policies and operational procedures at the Supreme Court. This decision can have a direct impact on management and decision making within the Supreme Court;
4. Supreme Court Circular Letter or SEMA is a form of circular issued by the leadership of the Supreme Court to all levels of the judiciary. SEMA contains administrative directives and guidelines in the administration of justice. Although more administrative in nature, SEMA has an important role in ensuring consistency and uniformity in the implementation of judicial duties throughout Indonesia.

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<sup>9</sup> Monika Florczak-Wątor, *Judicial Law-Making in European Constitutional Courts*, 1st ed. (London: Routledge, 2020), <https://doi.org/10.4324/9781003022442>.

<sup>10</sup> Ryan D. Doerfler and Samuel Moyn, "Democratizing the Supreme Court," *California Law Review* 109 (2021): 1705–1771, <https://doi.org/10.15779/Z38TX3571X>.

<sup>11</sup> Hendra Catur Putra, "Kedudukan SEMA Dalam Sistem Hierarki Perundang-Undangan Di Indonesia," *ELQONUN: Jurnal Hukum Ketatanegaraan* 1, no. 2 (2022): 153.

This it can be said that within the Supreme Court itself, the Supreme Court Circular Letter (SEMA) is placed below the Supreme Court Regulation (PERMA) both formally and substantively. This is due to the PERMA formation process which tends to be more complete and formal than the SEMA formation process.<sup>12</sup> PERMA can regulate and cancel SEMA, and SEMA can be made based on the provisions contained in PERMA. For example, PERMA No. 1 of 1969 has invalidated SEMA No. 6 of 1967.<sup>13</sup> In this context, PERMA has a higher and more binding position than SEMA. PERMA has stronger legal force and can regulate various aspects related to administration and procedures in the Supreme Court. Although SEMA has an important role in the internal regulation of the Supreme Court, its existence is still dependent on the provisions stipulated by PERMA.

In examining the position of SEMA in the hierarchy of laws and regulations in Indonesia, it is previously necessary to know what is the legal basis for the regulation of the hierarchy of laws and regulations in Indonesia. Based on Article 7 paragraph (1) of Law Number 12/2011 on the Establishment of Laws and Regulations, the hierarchy of laws and regulations in Indonesia is stipulated as follows:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Law / Government Regulation in Lieu of Law;
4. Government Regulation; Presidential Regulation;
5. Provincial Regional Regulation;
6. Regency/City Regional Regulations.

From this hierarchy, it is clear that the highest normative basis in the formation of laws and regulations in Indonesia is the 1945 Constitution. Therefore, all laws and regulations in Indonesia must be in accordance with the provisions contained in the 1945 Constitution normatively.<sup>14</sup> In addition to the hierarchy of laws and regulations as confirmed in Article 7 paragraph (1) above, there is also another hierarchy of laws and regulations confirmed in Article 8 paragraph (1) which regulates other types that include regulations issued by various state institutions, such as the People's Consultative Assembly, the House of Representatives, the

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<sup>12</sup> Mahadi Abdullah et al., "Analisis Perkawinan Beda Agama Di Kota Semarang: Sebuah Telaah Setelah Dikeluarkannya SEMA Nomor 2 Tahun 2023," *Jurnal Hukum Dan Kewarganegaraan* 1, no. 4 (2023).

<sup>13</sup> *Ibid.*

<sup>14</sup> Geofani Milthree Saragih, "Pancasila Sebagai Landasan Filosofis Pembentukan Peraturan Perundang-Undangan Di Indonesia," *JUPANK (Jurnal Pancasila dan Kewarganegaraan)* 2, no. 1 (2022): 19.

Supreme Court, and others. However, in order to have binding legal force, Article 8 paragraph (2) requires that these regulations must be ordered by higher laws and regulations or formed based on clear authority.<sup>15</sup> However, there are problems in the application of Article 8 paragraph (1), especially related to the recognition of all types of regulations formed by state institutions or officials as laws and regulations, even though not all of these institutions have the authority to make regulations that are binding in general.<sup>16</sup> For example, regulations issued by judicial bodies such as the Supreme Court and the Constitutional Court should not fall under the category of laws and regulations, as judicial bodies should only carry out judicial functions without having legislative authority.<sup>17</sup>

SEMA is a legal product issued by the Supreme Court to provide direction to judges and law enforcers in carrying out their duties in the judicial environment. Although SEMA does not have binding legal force like statutory regulations, it has significant influence because it is considered as an interpretation and explanation of existing regulations.<sup>18</sup> Legal products issued by the Supreme Court do not have the same nature as laws. When the law does not cover or regulate a certain matter, the Supreme Court has the authority to issue policy regulations based on its authority. It is important to remember that the Supreme Court Circular Letter (SEMA) has a policy nature only, and does not have the formal form of legislation. In issuing SEMA, the Supreme Court considers various factors, but keep in mind that SEMA does not have the same legal force as a law.<sup>19</sup> SEMA, when viewed from the recipient or subject of its use, can be categorized as a policy rule (*bleidsregel*), because it is generally addressed to judges, clerks, and other officials in the court environment. Therefore, the Supreme Court will not interfere with or exceed the regulation of the rights and obligations of citizens in general, nor will it regulate the nature, strength, means of proof, assessment, or division of the burden of proof. The authority of the Supreme Court in issuing SEMA focuses more on the administration of

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<sup>15</sup> Bayu Dwi Anggono, "Tertib Jenis, Hierarki, Dan Materi Muatan Peraturan Perundang-Undangan: Permasalahan Dan Solusinya," *Masalah-Masalah Hukum* 47, no. 1 (January 30, 2018). <https://doi.org/10.14710/mmh.47.1.2018.1-9>.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> Fernando Situmorang, Ramlani Lina Sinaulan, dan Mohamad Ismed, "Kajian Hukum Tentang Kedudukan SEMA Nomor 1 Tahun 2022 Atas Undang-Undang Kepailitan Nomor 37 Tahun 2004" *Jurnal Perspektif* 22, no. 2 (2023): 120.

<sup>19</sup> Raihan Andhika Santoso, Elan Jaelani, and Utang Rosidin, "Kedudukan dan Kekuatan Hukum Surat Edaran Mahkamah Agung (Sema) Dalam Hukum Positif Indonesia," *Deposisi: Jurnal Publikasi Ilmu Hukum* 1, no. 4 (October 9, 2023): 8, <https://doi.org/10.59581/deposisi.v1i4.1392>.

justice and solving practical problems that arise in the judicial process, while still paying attention to the principles of justice and applicable legal provisions.

The Supreme Court, as the organizer of judicial power and the judiciary in Indonesia, is responsible for various judicial environments, in accordance with the provisions set out in Article 18 of Law No. 48/2009 on Judicial Power. The judicial spheres under the responsibility of the Supreme Court include general courts, religious courts, military courts, and state administrative courts. Along with the times and the demand for effective supervision of court behavior and performance, the Supreme Court then established Circular Letters as one of the instruments to provide direction, guidance and guidelines to courts and judges. The main objective of the establishment of SEMA is to ensure consistency, fairness, and quality of decisions produced by courts throughout Indonesia.

The discussion of the position of the Supreme Court Circular Letter (SEMA) in the hierarchy of laws and regulations in Indonesia involves a deep understanding of the legal system and the hierarchical structure of applicable legal norms. Constitutionally, Indonesia adheres to a positive legal system that recognizes the existence of several levels of legislation governing the life of the nation and state.<sup>20</sup>

As previously stated, at the top of the hierarchy of laws and regulations is the 1945 Constitution of the Republic of Indonesia (UUD 1945).<sup>21</sup> The 1945 Constitution has the highest position and is the basis for the formation of other laws and regulations. Every legislation made must be in accordance with the provisions contained in the 1945 Constitution. Then, under the 1945 Constitution there are laws (UU) which are products of the legislative body, namely the House of Representatives (DPR) which are promulgated by the President. Laws are the type of legislation that has the highest legal force at the national level and must be followed by all parties in Indonesia.<sup>22</sup>

However, the Supreme Court Circular Letter (SEMA) has a different position in the hierarchy of laws and regulations. SEMA is not a product of the legislature nor is it a law. Instead, it is a legal instrument issued by the Supreme Court to provide practical guidance to

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<sup>20</sup> Darmoko Yuti Witanto and Arya Negara Kutarawingin Putra, *Diskresi Hakim* (Jakarta: Alfabeta, 2013).

<sup>21</sup> Maria Farida Indrati Soeprato, *Ilmu Perundang-Undangan, Dasar-Dasar dan Pembentukannya* (Yogyakarta: Kanisius, 2006).

<sup>22</sup> Jimly Ashiddiqie and Ali Safa'at, *Teori Hans Kelsen Tentang Hukum* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006).



judges in carrying out their duties. The content of SEMA is more interpretative and explanatory of the application of the law, but does not have the binding force of a law.

Although SEMA does not have the same legal force as the law, in practice, court decisions often refer to SEMA as a reference or guideline for legal interpretation. This is because SEMA is the result of consolidated views and legal interpretations from the Supreme Court as the highest judicial institution in Indonesia. SEMA is a guideline for judges under the Supreme Court in carrying out the functions of guidance and supervision, as stipulated in Article 32 paragraph (4) of Law Number 14 of 1985 which has been amended by Law Number 3 of 2009 concerning the Supreme Court.<sup>23</sup> SEMA is issued by the leadership of the Supreme Court, either directly by the Chief Justice of the Supreme Court or as a result of a meeting of the criminal, civil, state administrative, or military chambers. The content of SEMA contains instructions on the administration of justice.<sup>24</sup>

Thus, SEMA can be considered as a legal instrument that plays an important role in providing direction and guidance for judges in carrying out their duties. However, it is still important to remember that SEMA does not have the same binding force as the law, so its use must be based on careful consideration and in accordance with applicable legal principles.

### **CONFLICT BETWEEN SUPREME COURT CIRCULAR LETTER NUMBER 3 OF 2023 AND LAW 37 OF 2004 REGARDING BANKRUPTCY-PKPU**

The conflict between Supreme Court Circular Letter (SEMA) Number 3 Year 2023 and Law 37 Year 2004 on Bankruptcy-PKPU creates complexity in the handling of bankruptcy cases in Indonesia. SEMA Number 3 Year 2023 was issued by the Supreme Court with the intention of providing practical guidance for judges in handling bankruptcy cases. On the other hand, Law 37 of 2004 is the main legal umbrella that regulates the entire bankruptcy process and postponement of debt payment obligations. One of the contradictions that arises between SEMA No. 3 of 2023 and Law 37 of 2004 is related to the interpretation and interpretation of the provisions in the law. Although SEMA aims to provide guidance to judges, in practice, the interpretation of SEMA is often inconsistent with the interpretation provided for in Law 37 of

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<sup>23</sup> Bintang Ulya Kharisma, "Surat Edaran Mahkamah Agung 9SEMA) Nomor 2 Tahun 2023, Akhir Dari Polemik Perkawinan Beda Agama?," *Journal of Scientech Research and Development* 5, no. 1 (June 29, 2023): 480, <https://doi.org/10.56670/jsrd.v5i1.164>.

<sup>24</sup> *Ibid.*

2004. This creates a situation where judges are faced with confusion in applying the correct law, especially in the context of conflicting provisions between SEMA and the law.

In the Supreme Court Circular Letter Number 3 Year 2023, especially in the section of the Civil Chamber Law Formulation, there is an assertion that is different from the provisions of Law Number 37 Year 2004 on Bankruptcy and Suspension of Debt Payment Obligations. In point 2, the SEMA states that the application for bankruptcy declaration or postponement of debt payment obligations (PKPU) against apartment or flat developers does not qualify as simple proof, in accordance with Article 8 paragraph (4) of Law Number 37 of 2004 on Bankruptcy. However, this is contrary to the provisions in Article 8 paragraph (4) of Law Number 37 of 2004 which emphasizes that a request for a bankruptcy statement must be granted if there are facts or circumstances that are proven simply that the requirements to be declared bankrupt have been fulfilled.

The difference between the Supreme Court Circular and the provisions in Law Number 37 of 2004 gives rise to a conflict that requires in-depth analysis. As stated in the law, a bankruptcy declaration request must be granted if there is simple evidence that the bankruptcy conditions have been met. However, the Supreme Court Circular clarifies that such a request cannot be accepted simply, affirming a difference in approach to interpreting bankruptcy conditions.

This conflict creates complexity in law enforcement in the field of bankruptcy. While Law Number 37 of 2004 provides a clear framework for the bankruptcy declaration process, the Supreme Court Circular changes that approach, leading to uncertainty in handling bankruptcy cases. Further study and legal clarification are needed to understand the implications of this interpretation difference on judicial practice, as well as to ensure consistency and fairness in law enforcement in Indonesia.

Additionally, conflicts can also arise regarding the hierarchy of legal norms. Law Number 37 of 2004 holds a higher position in the hierarchy of legislation compared to the Supreme Court Circular. However, in practice, the influence of the Supreme Court Circular on court decisions is often significant. This can confuse judges in determining the correct decision, whether to follow the Supreme Court Circular or comply with the provisions set forth in the law.

The impact of the conflict between the Supreme Court Circular Number 3 of 2023 and Law Number 37 of 2004 is legal uncertainty and confusion in the judicial system. Parties

involved in bankruptcy cases may feel unsure about the final outcome of the judicial process, as judicial decisions can be influenced by different interpretations of the law. Moreover, the gap between the Supreme Court Circular and the law can also undermine public trust in the judicial system and legal justice in Indonesia.

In the hierarchy of legislation in Indonesia, Supreme Court Circulars (SEMA) are subordinate to laws. This principle asserts that a regulation cannot invalidate legislation that is superior to it in the hierarchy.<sup>25</sup> Thus, as a legal product subordinate to laws, Supreme Court Circulars (SEMA) do not have the authority to repeal laws. This is because repealing a law requires a higher legal process and must be done by regulations that are equal to or above the level of laws.

The existence of Supreme Court Circulars (SEMA) as legal instruments subordinate to laws ensures that their role and authority are limited in regulating certain aspects within the legal system. Although SEMA holds significant persuasive power in providing interpretative guidance to judges and law enforcement officials, it is still acknowledged that its position in the hierarchy of legislation is beneath laws. Therefore, it is important to understand that SEMA has limitations in its applicability and cannot override provisions of the law. Despite offering useful guidance and interpretation, SEMA must still align with higher-level legal provisions within the Indonesian legal system.

According to Andrey Sitanggang, it cannot yet be predicted whether Supreme Court Circular Number 3 of 2023 will truly come into effect, as its status is still new and has not been widely implemented.<sup>26</sup> In some cases where Supreme Court Circulars (SEMA) are enforced, it doesn't always have an immediate administrative impact. The legal process continues, and cases are not automatically declared null administratively. In principle, each case must be examined before a decision is made. The presence and application of Supreme Court Circular Number 3 of 2023 in the future will greatly depend on the conditions and specific details of each related case.

To address this conflict, efforts to harmonize between Supreme Court Circulars (SEMA) and Law Number 37 of 2004 are needed, either through revising SEMA or revising the law itself. Additionally, better legal training and education for judges can help improve their

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<sup>25</sup> Gerhard Mangara and Tazqia Aulia Al-Djufri, "Urgensi Pembaharuan Kitab Undang-Undang Hukum Perdata di Indonesia," *Rewang Rencang : Jurnal Hukum Lex Generalis* 3, no. 4 (2022): 279.

<sup>26</sup> Interview conducted by researchers on April 13, 2024.

understanding of the appropriate legal application in handling bankruptcy cases. Thus, it is hoped that conflicts between SEMA and the law can be minimized, thereby achieving legal certainty and justice in the bankruptcy judicial system.

According to Andrey Sitanggang's viewpoint, the implementation of Supreme Court Circular Number 3 of 2023 remains uncertain due to its new status and lack of widespread application. In some cases where Supreme Court Circulars (SEMA) are enforced, their impact may not occur directly in the administrative process, and each case must still be thoroughly examined before a decision is made. To address the conflict between SEMA and Law Number 37 of 2004, efforts for harmonization through revisions to both SEMA and the law are necessary. Improved legal training and education for judges are also crucial to enhance their understanding of the correct legal application in handling bankruptcy cases. Thus, it is hoped that conflicts between SEMA and the law can be minimized, thereby achieving legal certainty and justice in the bankruptcy judicial system.

## **CONCLUSION**

The conflict between Supreme Court Circular (SEMA) Number 3 of 2023 and Law Number 37 of 2004 on Bankruptcy and PKPU creates complexity in handling bankruptcy cases in Indonesia. SEMA provides practical guidance for judges, but often interpretations diverge from the law. The main difference lies in the interpretation of bankruptcy conditions. This causes confusion for judges in applying the correct law and creates legal uncertainty for involved parties. In the hierarchy of legal norms, Law Number 37 of 2004 holds a higher position than SEMA, but SEMA's influence is often significant in judicial practice. The impact is legal uncertainty and confusion in the judicial system, damaging public trust in legal justice. Although SEMA has persuasive power in providing interpretative guidance, its position in the hierarchy of legislation is beneath the law. Therefore, harmonization between SEMA and Law Number 37 of 2004, as well as better legal training for judges, is needed to address this conflict and improve legal certainty and justice in the bankruptcy judicial system in Indonesia.

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