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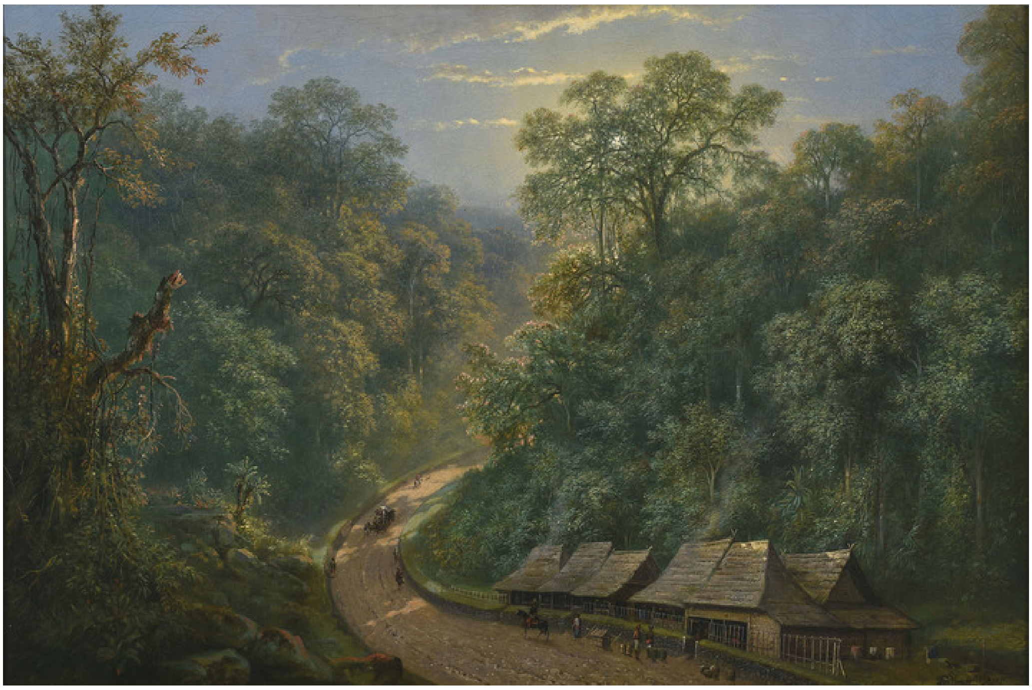
LOANED MASTERPIECES—PUBLIC SERVICE OR PERSONAL GAIN?

BY REENA DEVI



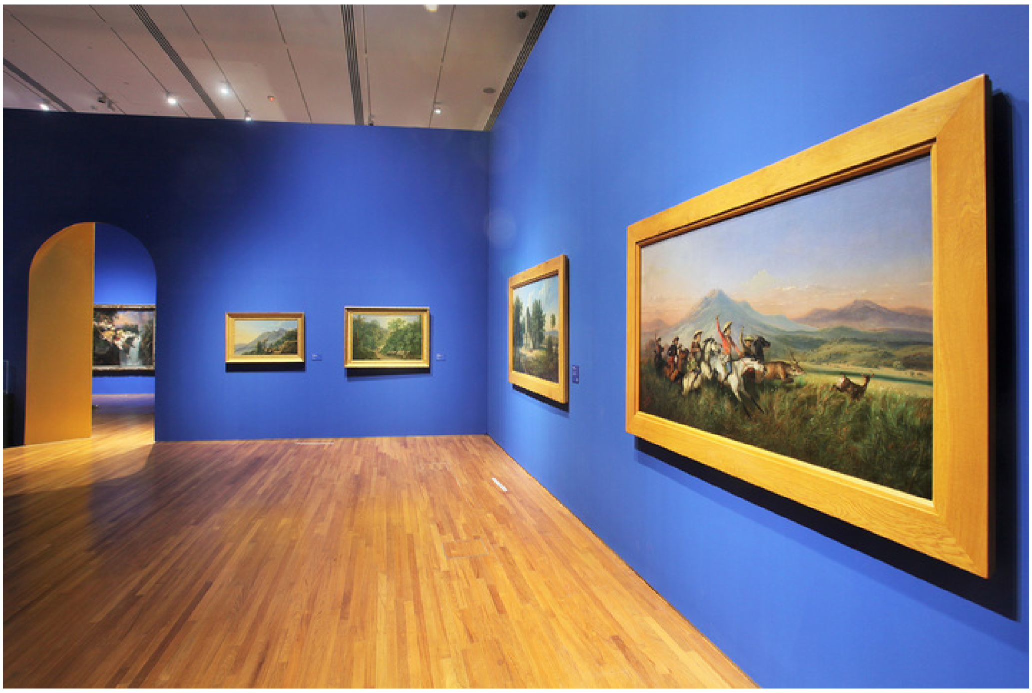
RADEN SALEH, *Mail Station at the Bottom of Mount Megamendung*, 1871, oil on canvas, 72 × 106.5 cm. Courtesy Christie's.

On November 24, renowned Javanese modern artist Raden Saleh's oil painting, *Mail Station at the Bottom of Mount Megamendung* (1871), hammered at HKD 16.9 million (USD 2.16 million) at Christie's Hong Kong. The sale of this rare work less than a year after it had been shown at National Gallery Singapore (NGS) in the major duo exhibition "Between Worlds: Raden Saleh and Juan Luna," which closed on March 11, 2018, raises uneasy questions about private collectors deriving personal financial gain through loans to public museums.

Inclusion in a major museum exhibition and its published catalogue is typically a marker of a work's importance, and may therefore drive up its market value. This incentivizes collectors to loan pieces to museums only to put them on the market afterwards. A blackout period of two to five years from the end of an exhibition preventing sale is usually a standard clause in loan agreements between museum and lender. As Kwok Kian Chow, former Singapore Art Museum director and associate professor of Arts and Culture Management at Singapore Management University, explained to *ArtAsiaPacific*: "A blackout period is a mechanism to ensure a distance between institutional display and market transaction. The duration is a negotiated position between the institution and the loaning party."

NGS declined to comment on its contractual arrangements. However, according to an anonymous source close to the publicly funded institution, loan agreements for exhibited works typically include a one-year blackout period between the end of the exhibition and the work being put up for sale. Kwok remarked on the possibility of a truncated blackout period: "It is a judgement call on the part of the institution, although a duration of less than one year does seem to be on the short side."

Museum experts whom *AAP* spoke to noted that lenders do occasionally sell before the end of the agreed blackout period. Gauri Krishnan, museum consultant and former deputy director at Asian Civilisations Museum, Singapore, said: "[The blackout period] is a standard clause in all loan agreements, but whether the lender will abide by it or not is very hard to enforce. This is the risk in borrowing from private collections."



Installation view of “Between Worlds: Raden Saleh and Juan Luna” at National Gallery Singapore, 2018. Courtesy National Gallery Singapore.

According to a source close to the lender, listed only as “Tan Family” in the catalogue for the NGS exhibition in question, the museum was offered a chance to purchase the Saleh painting. When NGS did not do so, the lender chose to sell at public auction. Ryan Su, of WMH Law Corporation, remarked on the asymmetric relationship between lenders and museums: “Lenders may also be paid loan fees should the lender be in a stronger bargaining position (to not provide the loan), and the conditions and blackout period may also be relaxed should it be desirous for an institution to put a rare artwork on display.”

Su also raised another possible scenario where the works sold during this agreed blackout period could entitle the museum to a portion of the sales proceeds. However, this is problematic as the institution would stand to benefit from rogue acts by lenders: “In short, it would be in the institution’s financial interest for lenders to default, even if institutions appear to be divorced from the art trade,” he explained.

Dr. Matthias Weller, professor for art and cultural property law at the University of Bonn, spoke to *AAP* about the problematic situation via email: “Why should we spend public money to build up value by displaying a work, working on it theoretically or scientifically, and then the owner takes away all surplus when she/he withdraws the loan and puts it up for sale or auction?” Dr. Weller pointed out that this issue is discussed intensely in Europe, where there is no settled practice on subsequent sales of loaned works, and any such measures seem largely dependent on individual museum policies. Dr. Weller does not believe in “prohibitive legislation in this case,” however, suggesting instead “a ‘museum’s resale right,’ i.e. a participation of, let’s say one percent or perhaps more of the sales/auction price of a work that has been built up in value over a considerable time or in an important exhibition by a museum. This could be introduced as legislation. This would be entirely transparent and, I would believe, a fair and market-oriented solution.”

Fair and transparent policies with regards to loan agreements between public museums and private collections are worth pursuing considering the use of tax dollars in securing and publicly exhibiting those borrowed pieces. A publicly funded museum serving as a promotional platform for a loaned work that is then flipped at auction for a potentially boosted price is a questionable arrangement, even if largely accepted as status quo by art institutions that may feel they have limited bargaining power in the first place, or no legal recourse when blackout clauses are violated.

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ArtAsiaPacific
GPO Box 10084
Hong Kong

info@aapmag.com