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RESEARCH ARTICLE

LEGAL PROTECTION OF JOINT SECTION MANAGER OF RAJAWALI TOWER EDELWEISS CONDOMINIUM FLATS (PPRSH-KRME)

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Abstract

There is a case in the decision of the Central Jakarta District Court Number 546/Pdt.G/2014/PN-Jkt.Pst, then the level of appeal is with the decision of the Jakarta High Court Number 514/PDT/2016/PT.DKI, then the level of cassation is with the decision of the Supreme Court Number 2711K/Pdt/2017, then the final attempt at the Review level with the Supreme Court decision Number 299PK/Pdt/2019 regarding the hallway which is a joint part of the flats in the Rajawali Menara Edelweiss condominium residence is certified by PT. Jaya Nur Sukses as the developer on behalf of PT. Jaya Nur Success. Residents Association of Rajawali Menara Edelweiss Residential Flats (PPRSH-KRME) as the manager of the flat filed a lawsuit against PT. Jaya Nur Success, because he was evicted from the location which has been occupied by PPRSH-KRME as the management office. Here there is negligence and intention of PT. Jaya Nur Sukses as the developer in the certificate has elements of unlawful acts. But PT. Jaya Nur Sukses as the defendant still insists on continuing the case to the last stage in a civil case, namely review. The method used is the Legislative Approach and the Case Approach. The research results obtained are that the part that is certified is included in the joint part of the flat, which is jointly owned and is under the management of PPRSH-KRME. Evidenced by the master plan and descriptions as well as witnesses who know that the place was previously used as a management office before it was used for public facilities.

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Introduction:-

Article 28H point (1) of the 1945 Constitution of the Unitary State of the Republic of Indonesia (1945 Constitution) explains that every person has the right to live in physical and spiritual well-being, to have a home and to receive a good and healthy environment and the right to obtain health services. The increasing density of population in big cities has inspired developers to make it easier for workers who want to have a place to live close to offices, so they can save time while traveling. This has increased the construction of flats in big cities. The definition of flats according to the Law of the Republic of Indonesia Number 20 of 2011 concerning Flats as it turns out in Article 1 number (1) what is meant by Flats is multi-storey buildings built in an environment which is divided into functionally structured parts in the direction horizontally or vertically and are units each of which can be owned and used separately, especially for dwellings that are equipped with shared parts, shared objects and shared land. Juridically, flats are multi-storey buildings, which always contain a system of individual ownership and joint rights,

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which are used for residential or non-residential purposes, independently or in an integrated manner as an integrated development system. Therefore,¹

Housing development carried out by the government and developers is an effort to meet basic human needs, the construction of flats can reduce land use and make space more spacious is one alternative. Optimization of vertical land use is more effective than horizontal optimization of land. Flats that are built must be adapted to the concept of settlement and housing development which must meet the eligibility to be used as healthy, safe and harmonious housing. Ownership of an apartment unit, in addition to the right to an individual apartment, also has the right to share, common objects, and common land, which are the collective rights of the occupants and owners of the apartment. Common parts, common objects, and shared land regarding its management in accordance with the Law on Flats number 20 of 2011 requires developers to form managers of flats, namely the Association of Residents and Owners of Flats Units (PPPSRS) in article 75 numbers (1), (2), and (3)) that the development agent is obliged to facilitate the establishment of the PPPSRS no later than before the end of the transition period which is determined to be no later than 1 (one) year since the first delivery of the flat to the owner. In the PPPSRS that has been formed, the development actors immediately hand over the management of shared objects, shared shares, and shared land to PPPSRS. PPPSRS as referred to is obliged to take care of the interests of the owners and occupants related to the management of joint ownership of objects, joint shares, common land and occupancy. In building flats, Developers must separate flats from flats, shared parts, shared objects and shared land. The shared object as referred to becomes a joint part if it is built as part of an apartment building. The separation is meant to provide clarity on the flat boundaries that can be used separately for each owner. Boundaries and descriptions of shared parts and shared objects which are the rights of each flat. Boundary and description of shared land and the amount of the portion that is the right of each flat. Separation of the flats referred to, must be stated in the form of drawings and descriptions, which were made before the implementation of the construction of the flats, stated in the form of a deed of separation which was legalized by the regent/mayor. Specifically for DKI Jakarta province, the deed of separation referred to was ratified by the Governor. common parts, common objects, and common land. The shared object as referred to becomes a joint part if it is built as part of an apartment building. The separation is meant to provide clarity on the flat boundaries that can be used separately for each owner. Boundaries and descriptions of shared parts and shared objects which are the rights of each flat. Boundary and description of shared land and the amount of the portion that is the right of each flat. Separation of the flats referred to, must be stated in the form of drawings and descriptions, which were made before the implementation of the construction of the flats, stated in the form of a deed of separation which was legalized by the regent/mayor. Specifically for DKI Jakarta province, the deed of separation referred to was ratified by the Governor. common parts, common objects, and common land. The shared object as referred to becomes a joint part if it is built as part of an apartment building. The separation is meant to provide clarity on the flat boundaries that can be used separately for each owner. Boundaries and descriptions of shared parts and shared objects which are the rights of each flat. Boundary and description of shared land and the amount of the portion that is the right of each flat. Separation of the flats referred to, must be stated in the form of drawings and descriptions, which were made before the implementation of the construction of the flats, stated in the form of a deed of separation which was legalized by the regent/mayor. Specifically for DKI Jakarta province, the deed of separation referred to was ratified by the Governor. The shared object as referred to becomes a joint part if it is built as part of an apartment building. The separation is meant to provide clarity on the flat boundaries that can be used separately for each owner. Boundaries and descriptions of shared parts and shared objects which are the rights of each flat. Boundary and description of shared land and the amount of the portion that is the right of each flat. Separation of the flats referred to, must be stated in the form of drawings and descriptions, which were made before the implementation of the construction of the flats, stated in the form of a deed of separation which was legalized by the regent/mayor. Specifically for DKI Jakarta province, the deed of separation referred to was ratified by the Governor. Boundaries and descriptions of shared parts and shared objects which are the rights of each flat. Boundary and description of shared land and the

¹National Land Agency, Land Registration Writing Association (Jakarta, 1985)
p.61

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The land registration system applied in Indonesia has changed several times. Prior to the enactment of the UUPA and government regulation Number 10 of 1961, for Indonesia it applies where the obligatory agreement on the transfer of rights is carried out with all written evidence, maybe a notarial deed, or under the hand witnessed by a notary, and then by the head of the Land Office who is a Transfer of Title Officer (*overschrijvingsambtenaar*) and one of his employees, a deed of transfer is drawn up, only to be registered on the register in question after payment obligations have been made first. After the UUPA and Government Regulation Number 10 of 1961 came into effect, there were changes. The negative principle is adhered to so that a person can claim that his rights are more correct than what is stated in the proof of his land rights and the judge has the right to examine/decide on the case and can order the Head of the Land Registration Office to change the ownership of these rights. The theory of land registration in Indonesia adheres to a negative-positive publication theory system because it will produce letters of proof of rights that act as a strong means of proof. Strong does not mean absolute, but more than weak, so registration means that proof of ownership has been strengthened, but not absolute, which means that the registered owner is not protected by law and can be sued as referred to in the elucidation of Government Regulation Number 10 of 1961. In contrast to the positive land registration system, it includes the provision that what has been registered is guaranteed to be the correctness of the data it registers and for this purpose the government examines the truth and legitimacy of the certificates submitted for registration before it is included in the register. In a positive system, the state guarantees the correctness of the data presented. The positive system contains provisions which are the embodiment of the expression "title by registration" (with registration creates rights). Registration creates an "indefeasible title" (rights that cannot be contested) and "title register is everything" (to ensure the existence of a right, the right holder only needs to look at the land book). If the registration occurs due to the mistake of the registration official, because the person concerned has lost his rights, may claim compensation. The state provides what is called an "assurance fund". UUPA with a negative publication system contains positive elements, the state does not guarantee the accuracy of the data presented. Its use is at the risk of the party using it himself.

The principle of *nemo plus iuris*, protection is given to the actual right holder, so with this principle there is always the possibility of a lawsuit against the registered owner from a person who feels he is the real owner. This means that the registration of a person in the public register as a right holder does not prove that person is a legal right holder according to law. So the government does not guarantee the correctness of the contents of the public registers held in the registration of rights.

Legal certainty is a goal championed by legal positivism. For legal positivism, the source of formal law is in the form of statutory regulations with the principle of legality to pursue legal certainty. One of the important aspects of land law according to the UUPA is the relationship between land and objects attached to the land is so important because it involves a broad influence on all legal relations relating to land and objects attached to it.

Ownership of land in an apartment unit is joint ownership of all holders of ownership rights to an apartment unit, not individual ownership as adhered to in the principle of horizontal separation in the BAL.² If a person has the right to a part of a multi-storey building called the Right to Ownership of an Flat Unit, then that person has 2 (two) types of rights, namely:

1. Individual rights, namely ownership rights to part of the building or what is called an apartment unit.
2. Collective rights, namely rights to common objects, shared shares and common land.

Boedi Harsono explained the meaning of shared parts, common land and shared objects as follows:³

² Andy Hartono, *Ownership of Property Rights over Flats Units*, Journal Rechtsens, Vol. 2 No. 1 (2013): June. p. 7

³ Boedi Harsono, *Indonesian Agrarian Law, History of the Formation of the Basic Agrarian Law, its contents and implementation* (Jakarta, Djbatan, 2008), p.350

1. Shared parts are parts of an apartment that are owned jointly and not separately by all owners of Flats Units (SRS), used for sharing, such as: elevators, stairs, hallways, foundations, building roofs, public spaces and others. .
2. Common land is a certain plot of land on which the respective apartment building stands, which has definite status, boundaries and extent. The land does not belong to the owners of the Flat Floor Units (SRS). But like "shared share", it is also the common right of all owners of Flats Units (SRS) in the building of the flat in question.
3. Common objects are objects and buildings which are not part of the building of the flat in question, but are located on "common land" and are intended for shared use. Such as buildings for places of worship, parking lots, sports, landscaping, children's playgrounds and others. These objects and buildings are also shared property which is not separate from all the property of the Flat Unit (SRS).

The organizer of the construction of flats is obliged to form a manager for the occupants and owners of the flats built according to the regulations in the Law on Flats No. 20 of 2011, an update of Law No. 16 of 1985. In addition to that in Government Regulation No. 4 In 1988 there were regulations regarding the construction of flats and procedures for their ownership and transfer. Certificates of ownership of flats (SHMSRS) can be owned by individuals or legal entities. In general, SHMSRS is the same as land and building certificates, the difference is only in the color and there is a percentage of joint ownership of the land.

Flats were known before the UURS came into force, but the ownership system for the multi-storey building was a single ownership where the owner of all the buildings and the holder of land rights were the same party. Parties who use part of the building use a leasing system with the building owner.⁴With the enactment of the UURS, it is possible for residents and users of that part of the building to own a part of the building, and also a part of the land where the building stands proportionally. According to UURS, this arrangement is in accordance with the principle of horizontal separation, that is, any object which, according to its form and purpose, can be used as an independent unit, can become an object of personal ownership.⁵

The organizer of the flat construction is obliged to form PPPSRS, PPPSRS consists of owners and occupants who are authorized by the flat owner, PPPSRS is given the position as a legal entity based on this law and in Article 75 points (1), (2), and (3) that the developer must facilitate the establishment of the Association of Flat Owners and Tenants (PPPSRS) no later than before the transition period, which is no later than 1 (one) year after handover to the owner. The developer immediately hands over the management of shared objects, shared shares, and shared land to the PPPSRS, if the PPPSRS has been formed. The PPPSRS is obliged to take care of the interests of the owners and occupants related to the management of joint ownership of objects, joint shares, common land and occupancy. PPPSRS as referred to can form or appoint managers. Whereas apart from the ownership of the Flat Unit includes the owner of the Flat Unit concerned, it also includes joint ownership of common land, shared shares and shared objects. Therefore, apart from being a proof of ownership of the apartment unit, the certificate of ownership rights to the flat is also proof of the joint right to the common land, shared share, and related shared objects.⁶

The researcher in this thesis examines the problems that arise between the developer and the manager of the flats that have been appointed by the developer and occupants as administrators at the Rajawali Menara Edeweiss condominium (PPRSH-KRME) regarding the rights to a shared share. In the civil case Number 546/Pdt.G/2014/PN-Jkt-Pst., the Central Jakarta District Court has granted the lawsuitLeksi Mulyadijma and H. Muhammad Amin, who act as Chairman and Secretary representing the Association of Residents of the Rajawali Menara Edelweiss Residential Flats (PPRSH-KRME) having their address at Rajawali Selatan I Number: IB Jakarta Pusat, that PT Jaya Nur Sukses, having their address at Jalan Buni Number 22, West Jakarta, as Defendant I and the Central Jakarta National Land Agency Office (Central Jakarta BPN as Defendant II) were proven to have committed an unlawful act against the Plaintiff. The court decided to declare certificate No. 217/II/EST on behalf of Defendant I Defendant I, namely PT Jaya Nur Sukses then filed an appeal at the Jakarta High Court, but the panel of judges at the Jakarta High Court in ruling on civil case number Number: 514/PDT/2016/PT.DKI.,decided to uphold the Decision of the Central Jakarta District Court dated

⁴T. Mulya Lubis, in R. Rizka Mardia, Implementation of Law NUMBER 16 of 1985 concerning Flats (Case Study of Flats in Kaligawe Semarang). (Diponegoro Law Faculty thesis, 2010), Pg.42

⁵Boedi Harsono, Op, Cit. p. 356

⁶Boedi Harsono, 2013, Indonesian Agrarian Law, Jakarta Univ. Trisakti. P. 354

June 17, 2015 No 546/Pdt.G/2014/PN.JKT.PST which was requested for the appeal. Against this decision, next PT Jaya Nur Sukses continued its legal efforts by filing an appeal to the Supreme Court. The panel of judges at the Supreme Court of the Republic of Indonesia in their decision on case number 2711 K/Pdt/2017, decided to reject the cassation request from the Cassation Appellant PT Jaya Nur Sukses. The legal efforts made by PT Jaya Nur Sukses did not end with cassation and continued with the last resort through Judicial Review (PK). However, the Supreme Court panel of judges in Supreme Court Decision Number 299 PK/Pdt/2019 apparently decided to reject the request for review from the Petitioner for the Review of PT Jaya Nur Sukses.

Based on the background of the problems mentioned above, the researcher is interested in studying and analyzing related to the legal protection of shared parts of flats by taking the title: **"Legal Protection of Managers of Shared Parts of Residential Flats of Rajawali Menara Edelweiss Condominium (PPRSH-KRME) (Juridical Review of Supreme Court Decision Number 299 PK/Pdt/2019)"**

The unlawful act committed by Defendant I and Defendant II by issuing certificate number 217/II/EST which is a joint part of the flat clearly harmed the occupants and owner of the flat. The developer/Defendant I here has elements of intent and negligence, it can be seen that from the start it was known that the location that was certified was used for public facilities, children's playgrounds and public toilets, negligence can be seen from the developer's inaccuracy in seeing the master plan and description of the building, from the separation deed where the location is included in the joint part of the flat. If the PPRSH-KRME apartment manager does not insist on examining the master plan and description of the apartment building,

Research Problems (Constantia, 13 Pt)

Based on the brief description above, the writer wants to raise a problem formulation as follows:

1. What is the legal protection for the manager of the joint division of the Rajawali Menara Edelweiss Residential Flats (PPRSH-KRME)?
2. What are the legal considerations of judges in deciding acts against the law in issuing flat certificates in the Supreme Court Decision Number 299 PK/Pdt/2019?

Research Method (Constantia, 13 Pt)

This study uses a statutory approach and a case approach. The statutory approach method is an approach that examines all laws and regulations that are related to the legal issues being handled.⁷ In the statutory approach, researchers need to understand the hierarchy and principles of legislation, which in principle is an approach that uses legislation and regulations related to legal protection, land rights and acts against the law. The case approach method in normative research aims to study the application of legal norms or rules in legal practice. Especially regarding cases that have been decided as can be seen in the jurisprudence of cases that are the focus of research.⁸ The cases analyzed are regarding the legal protection of shared flats and the judge's legal considerations in the decision on civil case Number 546/Pdt.G/2014/PN-Jkt-Pst, the decision on civil case number: 514/PDT/2016/PT.DKI and decision on civil case number 2711 K/Pdt/2017.

Discussion (Constantia, 13 Pt)

Legal protection for the manager of the shared portion of the Rajawali Menara Edelweiss Residential Flats (PPRSH-KRME))

According to the Big Indonesian Dictionary (KBBI), legal protection is a place of refuge, acts (things and so on) protect. The linguistic meaning of the word protection has similar elements, namely elements of acts of protection, elements of ways to protect. Thus, the word protects from certain parties by using certain ways.⁹

According to Sulistyandari, legal protection is related to how the law provides justice, namely giving or regulating rights and obligations to legal subjects. Besides that, it also relates to how the law provides justice to legal subjects whose rights have been violated to defend their rights.¹⁰

⁷Marzuki Peter Mahmud, 2005. Legal Research, Jakarta. Prenada Media, page 93

⁸ Johnny Ibrahim, 2005. *Theory and Methodology of Normative Law Research*. Poor. Bayumedia Publishing, p. 321

⁹Big Indonesian Dictionary (KBBI), Second Edition, Cet.1 (Jakarta: Balai Pustaka), page 595.

¹⁰Sulistyandari, 2012, Banking Law. Legal Protection for Depositing Customers Through Indonesian Banking Supervision, Laras, Surabaya, Pg 283.

Philipus M. Hadjon argues that legal protection is protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions of arbitrariness. The theory of legal protection put forward by Philip M. Hadjon, states that legal protection is divided into two, namely:

Preventive legal protection, namely:

legal protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the intention of preventing a violation by providing signs and limitations in carrying out an obligation, this aims to prevent the occurrence of a dispute. This type of legal protection, for example, before the government establishes a rule/decision, the people can submit objections, or be asked for their opinion regarding the planned decision.

Repressive Legal Protection:

Is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given when a dispute has occurred or a violation has been committed. This type of protection is usually carried out in court.¹¹

The law in providing protection can be through certain ways, namely by:¹²

a. Making Regulations (by giving regulation), aims to:

1. Give rights and obligations.
2. Guarantee the rights of legal subjects.

b. Enforcing regulations (by law enforcement), through:

1. State administrative law that functions to prevent (preventive) the occurrence of violations of consumer rights with agreements and supervision.
2. Criminal law that functions to overcome (repressive) violations of consumer rights, by imposing criminal sanctions and penalties.
3. Civil law functions to restore rights (curative; recovery; remedy), by paying compensation or compensation.

The theory of legal protection from Philipus M. Hadjon regarding repressive legal protection and preventive legal protection will be used in analyzing the problems studied.

According to AgusPandoman, the legal relationship is the relationship between a human being and another human being, or in this case it is equated with a human being, namely a legal entity, or between a human being and a property that has rules in law with a series of legal obligations and individual rights.¹³ An unlawful act is an act or omission that results in a loss for another person without previously having a legal relationship, which obligation is directed against everyone in general and by not fulfilling this obligation, compensation can be requested.

Mariam Daruz Badruzaman, using the terminology "Unlawful Acts" by saying that Article 1365 of the Civil Code stipulates that any unlawful act that brings harm to someone, obliges the person because of the mistake of issuing this loss to compensate for the loss,¹⁴ Several other definitions that have been given to unlawful acts are as follows:¹⁵

1. Does not fulfill something that is his obligation other than a contractual obligation that issues the right to seek compensation.
2. An act or omission to do something that causes harm to another person.
3. Not fulfilling an obligation imposed by law, which obligation is aimed at everyone in general, and by not fulfilling this obligation, compensation can be requested.
4. A civil wrong (civil wrong) against which a damages can be sued that is not a default of contract or default of trust obligations or default of other (equity) obligations
5. Actions that harm the rights of other people created by law that do not arise from contractual relationships

¹¹Philipus M. Hadjon, 1987, Legal Protection for Indonesian People, Surabaya, PT. Build Science, p.3

¹² Wahyu Sasongko, 2007, Basic Provisions of Consumer Protection Law, Bandar Lampung, UNILA, p. 30.p. 31

¹³Agus Pandoman, 2019, Certain Legal Actions in the Agrarian Law System in Indonesia PT.Raga Utama Kreasi, page 155

¹⁴Badruzaman, Mariam Darus. 2005, Miscellaneous Business Law. Bandung: PT. alumni. p. 146.

¹⁵Munir Fuady, 2002. Unlawful Acts, Bandung PT. Aditya Bakti p. 3.

An act or not doing something that violates the law violates the rights of other people created by law and therefore compensation can be demanded by the injured party.

Articles 1365, 1366 and 1367 of the Criminal Code regarding acts against the law, must contain the following elements:

1. there is an action.
2. the act is against the law.
3. an error on the part of the offender
4. loss for the victim.
5. There is a causal relationship between actions and losses
6. negligence or carelessness.

Regarding the negligence itself, several levels are known. In general, the levels of negligence are as follows:¹⁶

1. mild negligence (slight negligence)
2. ordinary omissions (ordinary negligence), And
3. gross negligence (gross negligence)

In law, it is taught that in order for an act to be considered as negligence, it must fulfill the following basic elements:¹⁷

1. There is an act or neglect of something that should be done.
2. There is a duty of caution.
3. The prudential obligation is not carried out.
4. There is a loss for others.
5. There is a causal relationship between actions or not doing actions with losses that arise.

Land rights are tenure rights over land which contain a series of authorities, obligations and/or prohibitions for the right holders to do something about the land that is claimed. Something that is permissible, obligatory or prohibited to do, which is the contents of the tenure rights, is the criterion or distinguishing point between tenure rights over land regulated in the land book.¹⁸

Property rights are the "strongest and most complete" rights that people can have over land. Giving this characteristic does not mean that the right is an "absolute", unlimited and inviolable right as an Eigendom Right. Thus, property rights have the following characteristics:¹⁹

Hereditary

This means that the ownership rights to the land in question can be transferred by law from a land owner who dies to his heirs.

Strongest

This means that the ownership rights to the land are the strongest among other land rights.

Full

This means that the ownership rights to the land can be used for agricultural business and also for constructing buildings.

1. Switchable and assignable;
2. Can be used as collateral with encumbered Mortgage;
3. Unlimited timeframe.

¹⁶Ibid., p. 79.

¹⁷Ibid., p. 73.

¹⁸Boedi Harsono (b), Indonesian Agrarian Law History of the Formation of the Basic Agrarian Law Content and Implementation. (Jakarta: Djbaran, 2007) p.283

¹⁹ Chomzah Ali Achmad, 2002, Land Law; Granting of State Land Rights, Certificates and Problems, Jakarta: Achievements Reader, p. 5-6

According to Agus Pandoman, land registration is held to ensure legal certainty. This land registration is held to meet the needs of the community and the government.²⁰ Land registration is intended to provide certainty of rights and legal protection for holders of land rights by proving land certificates, as an instrument for structuring land tenure and ownership.²¹ Here the role of PPAT (Land Deed Making Officer) is needed, a general official who is authorized to make authentic deeds regarding certain legal actions regarding land rights or ownership rights to apartment units. Since the enactment of Government Regulation number 10 of 1961 concerning Land Registration, sales and purchases made before PPAT are cash, real and clear.²²

According to Maria SW Sumardjono, the benefits of land registration can be reaped by 3 parties, namely:²³

1. The holder of the right to the land itself is proof of his rights.
2. Interested parties, for example prospective land buyers or creditors to obtain information on the land that is the object of their legal action.
3. For the government, namely in order to support its land policy.

Ownership of land title certificates can be canceled if the decision contains legal defects in its issuance or implements a court decision that has permanent legal force. A decree on the cancellation of land rights according to Article 104 paragraph (2) of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1999 concerning Delegation of Authority for the Granting and Cancellation of Decrees for the Granting of State Land Rights, is issued if there are:

1. Administrative law defects.
2. Carry out court decisions that have permanent legal force.

The main role of a notary in managing flats is to make a binding sale and purchase agreement (PPJB). The government has regulated the matter that must be included in the PPJB along with the condition that must be met in order for the PPJB to be carried out as stipulated in the Regulation of the Minister of Public Works and Public Housing Number 11/PRT/M/2019 concerning the Preliminary Buying and Selling Agreement System. Notaries are expected to be able to help the government in minimizing problems with flats, especially if there are developers who want to sign the PPJB but have not met the conditions that have been set.

There are two rights to an apartment unit, which are individual and collective in nature and are inseparable. The legal subject who can own an Flat depends on the type of land rights on the common land where the Flat is built. The type of land rights for Flats depends on what type of rights are requested by the Flats Development Organizer to the Government before the start of the Flats construction, and then will determine who can own the Flats units that stand on the land.²⁴

In connection with the notion of ownership rights to flat units (HMSRS). Boedi Harsono explained as follows: "Not land rights, but related to land. The right to own an apartment unit, which is individual and separate, which also includes the right to joint ownership of what is called "shared shares, common land and common objects". Everything is an inseparable unit with the ownership of the apartment unit. The parts that can be owned and used separately are called Flat Units. Flats must have a means of connecting to public roads, without disturbing and may not go through other Flats."²⁵

According to UURS article 46, the right to ownership of a flat is the ownership right to a flat that is individual in

²⁰ Agus Pandoman, 2019, *Certain Legal Actions in the Agrarian Law System in Indonesia*, Yogyakarta, PT Raga Utama Kreasi, p.144

²¹ Adrian Sutedi. 2017. *Certificate of Right to Tanah*. Jakarta: Sinar Graphics, p. 59

²² Ananda Yunnne Pangerti Ningtyas and Liza Priandini. The Role of Notaries and Ppat in Optimizing the Implementation of Flats in Indonesia. PALAR (Pakuan Law Review) Volume 08, Number 01, January-June 2022, page 122

²³ Maria SW Sumardjono, 1997. Legal Certainty and Legal Protection in Land Registration. Presented at the National Seminar on New Policy on Land Registration and Related Taxes, Jakarta, p. 131

²⁴ Martina, Implications of Joint Land Title Certificates in the Name of Development Organizers for the Extension of Joint Land Rights for Flats (Thesis: University of Indonesia Faculty of Notary Masters Study Program, Depok, 2010), p.13

²⁵ Boedi Harsono, Loc City, Pg 338

nature, separate from joint rights to shared shares, common objects and common land, which is calculated based on the NPP. And in Article 47, it is stated as proof of ownership of the flat on land with ownership rights, building use rights, or usufructuary rights on state land, building use rights or usufructuary rights over land with management rights is issued as SHM sarusun, which is a unit that does not integral consisting of:

1. a copy of the land book and measurement letter for joint land rights in accordance with the provisions of the laws and regulations;
2. pictures of floor plans at the level of the respective flats showing the flats owned; And
3. an explanation regarding the amount of the right to share, joint objects, and common land for the person concerned.

Flat units, hereinafter referred to as sarusun, are flat units whose main purpose is to be used separately with the main function being a residential area and having a means of connecting to a public road. Flats Unit has joint and individual parts, as for these parts:²⁶

1. Individual Ownership Rights over Flats Units are called Ownership Rights over Flats Units (HMSRS) which are individual or used separately.
2. Shared rights in the joint section are parts of the Flat that are owned jointly and not separately by all SRS owners and intended for shared use, such as: Elevators, stairs, hallways, foundations, building roofs, public spaces, and others.
3. Shared rights in common land are a certain plot of land on which the respective Flats are built, of which the status of rights, boundaries and extent are certain. The land does not belong to the owners of the SRS on the ground floor. But like the "shared share" it is also the joint right of all SRS owners in the respective Flats building.
4. Shared rights in shared objects are objects and buildings that are not part of the building of the Flats in question, but are located on 'common land' and are intended for shared use, such as places of worship, parking lots, sports, landscaping, children's play area, and more. These objects and buildings are joint property that is not separate from all SRS owners.
5. Occupants are individuals who live in Flats units.
6. Residents Association is an association whose members consist of residents.
7. The Management Body is the body in charge of managing Flats.
8. Deed of Separation is proof of separation of Flats from Flats units, shared parts, common objects and common land with a clear description in the form of drawings, descriptions and boundaries in the vertical and horizontal directions containing proportional comparison values (NPP).
9. Separation of Right to Flat Units means that the development organizer is obligated to separate Flats from Flats units, which includes common parts, common objects, and common land, with a clear description in the form of drawings, descriptions and boundaries in the vertical direction and horizontally with necessary adjustments in accordance with the fact that is done by making a deed of separation.
10. Flat Ownership Limit:
 - a. Bounded wall
 - b. Not limited by walls (imaginary boundaries)

Government Regulation Number 4 of 1988 article 20 concerning Flats states:

"The shared parts in the form of public spaces, stairwells, elevators, hallways, must have a size that meets the requirements and is regulated and coordinated to provide convenience for residents in carrying out daily activities both in relations with fellow residents and other parties, with paying attention to harmony, balance and integration.

The case in civil case Number 546/Pdt.G/2014/Pn-Jkt-Pst, that the plaintiff (PPRSH-KRME) sued PT. Jaya Nur Sukses as the developer/developer of the Rajawali Menara Edelweiss Condominium as the defendant and the Central Jakarta National Land Agency Office (Central Jakarta BPN) as Defendant II.

Whereas based on the evidence available, Defendant I arbitrarily expelled the plaintiff from the location normally used as the management office, because that part had been certified in the name of Defendant I. After reviewing the master plan and analysis it turned out that what was certified was the hallway part whose designation is for the public, means that it is included in the category of shared part, which is included in the management of PPRSH-

²⁶Ridwan Halim, SH in <http://wrumaisah.wordpress.com/2011/09/23penregistran-hakmilik-atasunit-flat-in-dki-jakarta/> accessed July 25, 2022.

KRME. And at the time of handing over management of the plaintiff also never received data regarding the certificate whose location is now occupied by the plaintiff. Which means that Defendant I and Defendant II have committed unlawful acts in the process of certifying certificate Number 217/II/EST. And to strengthen the claim,

- 1) witness Harun works at a subsidiary of PT. Jaya Nus Sukses knows that previously the area was a public area, for children's play facilities, which is now being used as an office, that in that area there are 2 hindran boxes, a prayer room, fentir, public toilets, and a sports venue, and to his knowledge these are areas general.
- 2) witness Aris Setiawan, before working at PPRSH-KRME, the witness worked at a subsidiary of PT. Jaya Nur Success. The witness knew that the disputed location was formerly a children's playground, and was also used as a meeting place for the annual meeting of associations. The witness knew about the photos (exhibits 7A and 7B), the photos were in the context of a seventeen pictorial competition, which was held in a park in this area which is now an office and previously a children's playground. That there are also 2 hindran oxen, prayer room, fentir, and sports venues. It is true that this place used to be an open space for the public, and its function was changed to become an office in 2012. And the children's playground was moved to the room under the lobby piygroon. This was moved because according to management the playground was at risk of falling due to its position above the swimming pool. no closed area for children. The witness knew that the area was free of charge, and all public areas were free of charge. The witness stated that those who have the right to manage are associations. And the witness knows that the common area is a shared right for the public interest.

However, Defendant I insisted that what was certified was correct, because it was a decision of the State Administrative Officer (Defendant II) which contained legal actions for state administration based on the applicable laws and regulations, which were concrete, individual and final which gave rise to legal consequences for a person, or civil legal entity, and said that the plaintiff's lawsuit was vague and unclear, that the plaintiff could not distinguish between "shared parts" and "joint objects". Whereas PPRSH-KRME is only as a manager, has no right to cancel certificates issued by Defendant II/BPN. Defendant II also maintained that the issuance was in accordance with the Technical Description of the Edelweiss Tower Residential Flats which had been approved by the Governor of DKI Jakarta.

PPRSH-KRME according to law has the right to manage and use common shares, common objects, and common land for the benefit of occupants based on the provisions of Law Number 20 of 2011 concerning Flats and Government Regulation Number 4 of 1988 concerning Flats. Regulation of the State Minister for Public Housing Number 15/PERMEN/M/2007 concerning the Procedures for Establishing Associations of Owned Simple Flats Residents.

The judge's legal considerations in deciding an unlawful act in issuing an apartment certificate in the Supreme Court Decision Number 299 PK/Pdt/2019.

Defendant I (PT. Jaya Nur Sukses) in the exception stated that the issuance of the disputed certificate was in accordance with the decision of the State Administrative Officer which contained legal actions for state administration based on the applicable laws and regulations, and that referred to Article 53 point (1) Law Number 5 of 1985, it is proven that the Central Jakarta District Court does not have the authority to try the a quo case, because it is the absolute authority of the State Administrative Court. That the lawsuit is lacking in parties, that the plaintiff's lawsuit does not meet the Claim Requirements, because there is no clear causal relationship with the losses suffered, and the lawsuit should be rejected or not accepted, because it does not meet the requirements of an Unlawful Action lawsuit.

The exceptions of Defendant I and Defendant II were decided by the Panel of Judges with an interlocutory decision on September 9, 2014, and were declared rejected. During the trial, facts were discovered whose truths cannot be denied by the parties so that the law applies that the object of the dispute is the Second Floor of the Rajawali Menara Edelweiss Condominium, which is located on Jalan Rajawali Selatan I/IB, Gunung Sahari Village, Sawah Besar District, Central Jakarta City. , Province of the Special Capital Region of Jakarta, which is now occupied as the Management Office of the Residents Association of the Rajawali Menara Edelweiss Residential Flats. Whereas the problem in this case is that the Plaintiff argued that Defendant I arbitrarily certified the joint parts based on certificate Number 217/II/EST, namely the SELASAR SPORT CENTER/FITNES ROOM section and the PUBLIC TOILET section, it is clear that Defendant I's actions contravenes and violates Article 75 point (3) of Law Number 20 of 2011 concerning Flats and Article 68 letters a,b,c, Government Regulation Number 4 of 1988 concerning Flats, which basically authorizes PPRSH to carry out inspections, maintenance and repair of flats, as well as

supervising occupant orderliness and the use of shared objects, shared parts according to their designation and provide regular reports to occupants.

Based on the drawings of the building, the building permit that has been approved by the City Planning Office of DKI Jakarta as well as the Explanation document, it turns out that the room that Defendant I claimed as his own based on certificate Number 217/II/EST of 1997, turned out to be included in the joint section as stipulated in Article 20 PP Number 4 of 1988, so according to law Defendant I is not entitled to certify the joint portion. Therefore Defendant I has been proven to have committed an Unlawful Act against the Plaintiff. Based on the results of a local inspection where the object of the dispute contained public facilities, namely hydrants and a sports center/sport center, prayer room, Defendant II should have carried out a thorough examination of the documents both Building Drawings, Building Permits, including the use of shared spaces, shared parts, prior to issuing a certificate in the name of Defendant I, which should be in the Plaintiff's Management as the Manager of PPRSH-KRME. The act of Defendant II who had issued a certificate on behalf of Defendant I for a joint share was an unlawful act, because it was detrimental to PPRSH-KRME/Plaintiff. Based on the Deed of Separation of Residential Flats made by Defendant I, dated October 16, 1997 which was ratified by the Governor of DKI Jakarta Number 1911 Year 1997 dated December 2, 1997 in the Description section, especially Joint Rights, there is a SELASAR section, which is an open roofed space (no walls) on the side or front of the house, based on the apartment building/master planning drawings in the Plaintiff's office,

Based on Ministerial Regulation Number 15 of 2007 article 25 junto Articles of Association of PPRSH-KRME articles 25, 26,27 it has been stipulated that each apartment unit ownership must be reported to the Plaintiff in this case PPRSH-KRME as the Manager, apparently based on the data available to the Plaintiff not there is an owner on behalf of Defendant I based on certificate Number 217/II/EST. That the use of the SELASAR section as an office by the Plaintiff has received approval from the Tenant/Owner and is based on a shared share, and it is the Plaintiff who is authorized as regulated in Article 20 of Government Regulation Number 4 of 1988 concerning flats which reads: shared part in the form of space for the public , stairs, elevator, SELASAR, must have a size that meets the requirements and is regulated and coordinated to be able to provide convenience for residents in carrying out daily activities both in relations with fellow residents in carrying out daily activities both in relations with fellow residents, and with other parties by taking into account the harmony and cohesiveness. And article 75 number (3) of Law Number 20 of 2011 which reads "PPPRS as referred to in number (1) is obliged to take care of the interests of the owners and occupants relating to the management of joint ownership of objects, shared shares, common land and occupancy." Whereas upfront it has been stated that Defendant I and Defendant II's actions to issue a certificate Number 217/II/EST were an unlawful act, therefore the certificate in the name of Defendant I was declared to have no legal effect on the object of the dispute. Based on Government Regulation Number 4 of 1988 concerning Flats article 62, 63, 64, 67 that the management of flats includes operational activities in the form of maintenance, repair, and construction of environmental infrastructure, as well as social facilities, shared shares, shared objects, and land together. The management of the apartment units is carried out by the occupants or owners in accordance with the Statutes and Bylaws stipulated by the Residents Association. Management of Flats and their environment can be carried out by a Management Body appointed or formed by the Residents' Association. The organizer of the construction of an apartment is obliged to manage the apartment in question for a period of at least three months and a maximum of one year since the establishment of the occupants' association at the expense of the construction organizer. Since the handover of management based on the Deed of Handover, since then the Plaintiff has been managing the apartment including the sharing of shared parts and shared objects as stipulated in Article 20 of Government Regulation Number 4 of 1988 concerning Flats.

Based on the considerations above, the Plaintiff is legally entitled to manage and use the common parts, common objects, common land based on Law Number 20 of 2011 concerning Flats, Government Regulation Number 4 of 1988 concerning Flats and Regulation of the State Minister for Public Housing Number 15/PERMEN/M/2007 concerning Procedures for Establishing Associations of Residents of Owned Simple Flats. And certificate Number 217/II/EST on behalf of PT. Jaya NurSukses was declared to have no legal force. The decision has permanent force and has reached the stage of review by the judges of the Supreme Court.

Conclusion(Constantia, 13 Pt):-

The plaintiff/Manager of the shared part of the flat gets legal protection because Certificate Number 217/II/EST is declared to have no legal force over the object of the dispute which is a joint part and is included in the management of the PPRSH-KRME/Plaintiff. Defendant I (PT. Jaya Nur Sukses) and Defendant II (Central Jakarta BPN) were

declared to have committed an unlawful act on the issuance of the 217/II/EST certificate. And declared entitled to manage the object claimed by Defendant I with certificate Number 217/II/EST.

Judge's legal considerations because it is in accordance with the development master plan, and the explanation showing that the object of the dispute is included in the joint part of the Rajawali Menara Edelweiss condominium flat.

Suggestions(Constantia, 13 Pt):-

Before claiming the land/soil within the scope of an apartment, the plans and drawings should be examined first, whether they are in accordance with the master plan. Because every housing development must have a master plan, so it can't be arbitrary. And the function must be adjusted according to what has been planned. We cannot change it by ourselves without having to change the existing master plan. Better in doing something should pay attention according to what has been determined, and do not let the action harm others. Done intentionally or unintentionally remains an unlawful act. The public/people's interests should take precedence over private/individual interests.

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