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Rationality of Ownership Rights of Simple Flat Units Owned Above Land Management Rights

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ABSTRACT: As proof of ownership of the simple owned flat unit built on land with management rights is SHM SARUSUN. This is shows the influence of the attachment principle in land law because the ownership of the Rusunami unit includes joint land ownership. Conceptually, the owner of the SHM SARUSUN is also the owner of the common land rights. However, in reality, in cases such as the Rusunami Kebon Kacang, the ownership of the common land rights is still in the name of the developer of the flat. It turns out that the rights to the land where the flat stands are derived from the land management rights owned by the development actors. The owner of the SHM SARUSUN does not get the right to the shared land as it should, so there is no guarantee of the continuity of the rights to the land where the Rusunami stands. This paper aims to explain the arrangements regarding the ownership of Rusunami units on land with management rights and analyze the rationality of ownership rights for Rusunami units on land with management rights.

KEYWORDS: *Rationality, Ownership Right of Simple Owned Flat Unit, Land Management Rights.*

I. INTRODUCTION

Based on Article 1 point 1 of Law Number 20 of 2011 concerning Flats (UU Flats) that Flats are multi-storey buildings that are built in an environment that is divided into functionally structured parts, both horizontally and vertically and are units, each of which can be owned and used separately, especially for residential areas equipped with shared parts, shared objects, and shared land.

Flats in Indonesia are divided into 3 (three) types, i.e. as follows (Alif, 2009, p. 97):

1. Simple Flats (Rusuna), which are generally inhabited by the poor. Usually sold or rented by the National Housing Development Public Company (Perum-Perumnas).
2. Medium-sized Flats (Apartments), are usually sold or rented by Perumnas/private developers to middle to lower consumers.
3. Luxury Flats (Apartments/*Condominiums*), apart from being sold to the upper middle-class consumers, also to foreigners or by private developers.

Based on the description above, flats can be classified as public flats as referred to in Article 1 number 7 of Law Number 20 of 2011 concerning Flats (Rusun Law) that public flats are flats organized to meet housing needs for low-income people (MBR).

From the aspect of mastery, the flat unit in the rusuna can be controlled by renting or owning it. Ownership of flats on a lease basis, also known as flat rusunawa, is regulated through the relevant lease agreement so that the rights and obligations of the respective tenants and the building owner, the relationship between the tenants, management of the building parts and the operation of the equipment are shared, all of that can be regulated in the relevant lease agreement. Based on Article 45 Paragraph (5) of the Flats Law, it is regulated that the control of flat units by way of lease is carried out by means of a written agreement made before an authorized official in accordance with the provisions of the legislation.

Ownership of the flat unit is also called the Rusunami unit, which is regulated through the granting of ownership rights to the flat unit to the owner as regulated in Article 46 of the Law Paragraph (1) of the Flats Law that the ownership right to the flat unit is separate from individual to shared rights on common parts, common objects, and common land. Ownership of rusuna units intended for low-income communities (MBR), which is better known as Rusunami units, includes joint ownership of land (Betty Rubiati, Horizontal Separation Principle in Ownership of Land Rights and Building Units of Flats for Low-Income Communities (MBR), 2015, p. 97).

In general, there are two types of ownership of Rusunami units regulated in the Flats Law. First, based on Article 47 Paragraph (1) of the Flats Law that the type of ownership of flat units is on land with property rights, building use rights, or use rights on state land, building use rights or use rights on management rights land with proof of ownership in the form of Certificate of Ownership (SHM SARUSUN) flat. Second, based on Article 48 Paragraph (1) of the Flats Law, i.e. the type of ownership of flat units on state property in the form of land or waqf land by way of lease and with proof of ownership in the form of a flat building ownership certificate (SKBG) (Desak Putu). Goddess of Love, 2017, p. 7).

The proof of ownership of the flat unit in the form of a flat unit SHM SARUSUN is not the same as the proof of ownership in the form of a SHM SARUSUN which is regulated in Article 20 Paragraph (1) of the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), i.e. the right to inherit according to the strongest and fullest. However, the flat unit SHM SARUSUN is related to land rights because the flat unit consists of 2 main elements in the ownership system, i.e. (Hutagalung, 2007, p. 110): 1) Individual ownership in the form of flat units that can be enjoyed separately; 2) Joint ownership in the form of shared on common parts, common objects and land which cannot be owned individually but is jointly owned and enjoyed together. The rights to the joint share, joint objects, and joint land are calculated based on the proportional comparison value (NPP) (Harjono, 2016, p. 183). The NPP as referred to in Article 1 number 13 is a number that shows the comparison between the flat unit and the right to the joint part, mutual object, and joint land which is calculated based on the value of the flat in question against the total value of the flat as a whole when the construction actor first calculates the construction costs. as a whole to determine the selling price.

The legal relationship between flat units and shared land in the flat ownership system often causes problems in the future. The problem concerns the holders of joint land rights when extending joint land rights. Legal certainty regarding holders of common land rights is an important aspect because this has a broad influence on all legal relations concerning land and objects attached to it, in this case the Rusunami unit (Hasan, 1996, p. 65). In land law, it is known that there are 2 (two) principles that regulate the legal relationship between land and other objects that are on it, in this case the flat building. These two principles contradict each other, i.e. what is known as the principle of vertical attachment (*verticaleaccessiebeginsel*) and the principle of horizontal separation (*horizontal scheduling beginsel*) (Hasan, 1996, p. 65).

The principle of vertical attachment is the principle that underlies land ownership and all objects attached to it as a unit that is stuck into one (Hasan, 1996, p. 65). According to Boedi Harsono (Harsono, Indonesian Agrarian Law "History of the Formation of Basic Agrarian Laws, Content and Implementation", 2008, p. 20), in the Land Laws of countries what is called the *accessie* principle or the attachment principle, buildings and plants is above and is an integral part of the land, is part of the land in question. So the right to land by itself by law includes the ownership of buildings and plants that are on the land that is acquired, unless there is another agreement with the party who built or planted it as regulated in Articles 500 and 571 of the Civil Code. Based on this, legal actions regarding land by itself because the law also covers plants and buildings that are on it.

The principle of horizontal separation is the principle that regulates that buildings and plants on the ground are not part of the land. Based on the principle of horizontal separation, ownership of land and objects on the land are separate ownership. Ownership of land is independent of the objects that are on the land, so that the owner of land rights and the owner of the buildings that are on it can be different (Sudiyat, 1981, p. 54). This principle is contained in Article 44 Paragraph (1) of the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) which reads "a person or a legal entity has the right to lease land, if he has the right to use land belonging to another person for building needs, by paying the owner a sum of money as rent."

The principle of horizontal separation of land rights, which is the original nature of rights in customary law, is maintained but adapted to the real needs of today's society. Land rights do not include ownership of the buildings on it. Buildings, plants and other objects that exist on a plot of land belong to the party who built or planted it, whether the party is the holder of the right to the land itself or not, unless there is an agreement otherwise. So legal actions regarding land do not automatically include buildings, plants and/or other objects on it, if it is not explicitly stated (Harsono, Towards Improving National Land Law in Relation to TAP MPR RI IX/MPR/2001, 2003, p. 88).

However, the application of the principles of customary law is not absolute but always pays attention to development of the times and the needs of society (Betty Rubiati, Horizontal Separation Principles in Ownership of Land Rights and Building Units of Flats for Low-Income Communities (MBR), 2015, p. 97). As also regulated in Article 3 of the LoGA that "With regard to the provisions in Articles 1 and 2, the implementation of ulayat rights and similar rights of customary law communities, as long as it is in accordance with the facts. still exist, must be in such a way that it is in accordance with national and state interests, which are based on national unity and must not conflict with laws and other higher regulations.

At present the implementation of the principle of horizontal separation allows disputes to arise. For example, land that is being executed. Execution because the owner of the land has a debt dispute which is then tied to the land with Mortgage Rights. While on the land there is a school or hospital building that is operating

and is of interest to the livelihood of many people so that it is impossible to stop its activities (Harun, 2013, p. 9).

Problems related to the application of the principle of horizontal separation are also experienced by the owner of the flat unit SHM SARUSUN whose tenure of land rights with them has expired. A concrete example of the case of extending the term of land rights with the Rusunami Kebon Kacang. The rights to the land together with them are owned by the development actors (Perum-Perumnas) and are encumbered by the land management rights of Perum-Perumnas. The legal relationship between land and flat units is influenced by the principle of horizontal separation so that the holders of flat units are not simultaneously the owners of joint land rights.

Based on the above background, the formulation of the problem studied is how are the arrangements related to the ownership of simple flats owned on land with management rights? and how is the rationality of the ownership rights of simple flats owned on land with management rights?

The topics discussed in this journal are still original, because they are not found in other journals or research that specifically discusses the rationality of property rights for flats owned on land with management rights. Some studies that can be compared with this paper are research by Abraham Yazdi Martin regarding the reconstruction of property rights from apartment units in the perspective of building law development with a focus on discussing separate registration of flat property rights with shared land; this research is based on the principle of horizontal separation. in land law. Betty Rubianty and YaniPujwati, et. al in 2015 discussed the Horizontal Separation Principle in Ownership of Land and Building Rights in Flats for Low-Income Communities (MBR) with the focus of research on analyzing the principle of horizontal separation on the form of flat ownership.

The difference between this journal and the previous research above is that this journal discusses the ownership of Rusunami units and common land into one ownership based on the principle of attachment, and analyzes the arrangements related to ownership of Rusunami units on land with management rights.

This research is important to inform the rationality of the ownership rights of the flat unit, so that the owner knows and understands the set of rights obtained from the flat unit.

II. RESEARCH METHODS

The writing of this journal uses normative legal research methods. The research approach used in writing this journal is a statutory approach and a conceptual approach. The techniques used in collecting legal materials in legal writing are library research or document studies (*liberal research*) and legal materials analysis techniques using the syllogistic method through a deductive mindset. According to Peter Mahmud Marzuki's thoughts, normative legal research is a process that aims to find legal rules, legal principles, and legal doctrines in an effort to answer legal problems that are currently happening (Muhammad Fajar, 2015, p. 22). Normative research is basically sourced from primary and secondary legal sources, which come from laws and literature.

III. RESULTS AND DISCUSSION

Regulations Regarding Ownership of Simple Owned Flats (Rusunami Units) on Management Rights Land.

Referring to Article 1 point 7 of the Flats Law that public flats are flats organized to meet housing needs for low-income people. Ownership of public flats intended for low-income people is better known by another name, i.e. Rusunami units, including ownership of joint land rights. (Betty Rubiati, Principles of Horizontal Separation in Ownership of Land and Building Rights in Flats for Low-Income Communities (MBR), 2015, p. 97).

Based on Article 1 point 14 of the Flats Law that low-income communities, here inafter referred to as MBR, are people who have limited purchasing power so that they need government support to obtain public flat units. Therefore, in the procurement of housing, the state is obliged to meet the needs of affordable housing for MBR.

The control of simple flats by MBR can be done by owning it. Ownership rights to flat units are ownership rights to flat units that are individual or separate individuals with joint rights to shared shares, shared objects, and shared land. Therefore, in the flat building there are parts that can be owned individually or individually and separately, which are called flat units, and there are parts that are the joint rights of all the flat owners. These joint rights include joint parts, common objects, and joint land (Santoso, Registration and Transfer of Land Rights, 2015, p. 78).

Shared land rights on land with management rights (HPL) that can be built on flats are building use rights (HGB) or use rights (HP) as regulated in Article 17 letter c of the Flats Law. In connection with the case of Rusunami Kebon Kacang, the author focuses on discussing flats with shared land rights in the form of building rights (HGB) on land management rights (HPL).

As proof of ownership of the flat unit on the joint HGB land above the HPL, the flat unit SHM SARUSUN is issued. Legal certainty and proof of ownership of simple flat units are shown by the existence of flat units owned by each owner. Based on Article 41 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration (hereinafter referred to as PP Number 18 of 2021) that the flat SHM SARUSUN is an inseparable unit consisting of: a

1. copy of the land book and a letter of measurement of the joint land rights in accordance with the provisions of the legislation;
2. a drawing of a floor plan at the level of the apartment concerned showing the flat owned by the apartment; and a
3. description of the size of the share of the right to the joint share, the joint object, and the joint land for the person concerned.

A floor plan at the flat level showing the flat unit included in the deed of separation legalized by the regent/mayoras regulated in Article 26 Paragraph (4) of the Flats Law or by the Governor for DKI Jakarta Province as regulated in Article 26 Paragraph (5) of the Flats Law. Deed of separation which is proof of the separation of flats over flat units, joint parts, shared objects and land together with clear descriptions in the form of drawings, descriptions and boundaries in vertical and horizontal directions containing Proportional Comparison Value (NPP) and must request approval from local government (Febriani, 2019, p. 24). Referring to the explanation of Article 42 Paragraph (2) letter c of the Flats Law that the certainty of the ownership status of the flat SHM SARUSUN must be explained to the prospective owner who is shown based on the description legalized by the regional government.

The amount of the description of the right to joint shares, joint objects, and joint land is determined based on the Proportional Comparison Value (hereinafter referred to as NPP). Referring to Article 1 point 13 of the Flats Law that the NPP is obtained from the value of the flat in question against the total value of the flats as a whole when the construction actor first takes into account the overall construction costs to determine the selling price.

NPP itself has several meanings. First, regarding individual ownership rights to flat ownership rights and collective rights to land rights, objects and shared parts, because having a flat unit ownership right means having two types of rights, i.e. individual rights and collective rights. Second, obligations, i.e. the cost of maintaining and repairing joint ownership (land, objects and joint parts). Third, value is the basis for determining the value / amount of the mortgage burden on the certificate of ownership of the flat unit and its partial roya (Saputra, 2020, p. 125).

The amount of NPP stated in the flat SHM SARUSUN is a form of basic legal certainty to guarantee ownership as well as legal protection in the form of (Winantyo, 2019, p. 592):

1. individual ownership rights over units in flats that are used alone;
2. the right to the ownership of the shared flats;
3. the right to share individual housing units; and
4. communal land rights.

Based on the NPP, the owner of the flat SHM SARUSUN is juridically the owner of the joint land in accordance with the proportion of the NPP it has, for example the price of unit X owned is Rp. 300,000,000 and the price of the apartment as a whole is Rp. 3,000,000,000, the NPP is as follows:

$$\text{NPP Formula:} \quad \frac{\text{Unit Price}}{\text{Total Unit Price}} \times 100\%$$

$$\text{NPP X:} \quad \frac{\text{Rp. 300,000,000}}{\text{Rp. 3,000,000,000}} \times 100\% = 0.1\ \%$$

The amount of 0.1% is the proportion of ownership owned by the owner of the flat unit to the joint part, joint object, and including joint land. The proportion of 0.1 is attached to the common land as it is emphasized that the ownership of the joint part is an integral right that is inseparable from the ownership of the flat unit. The unit of rights is better known as *Real Estate* (*real estate*) which is defined as *"land and all improvements made both on and to land"*, or land with all its improvements and developments. So that real estate can be interpreted as land and all objects that are integrated on it (in the form of buildings) as well as those that are attached to it (yards, fences, roads, channels, and others that are outside the building) (Untung Supardi, 2009). However, the joint ownership rights in the flat unit SHM SARUSUN are proportionate because the land rights are joint ownership.

Even though the proof of ownership of a simple flat unit on shared HGB land on HPL land is in the form of a flat unit SHM SARUSUN, the concept of ownership rights norms is not the same as the concept of SHM SARUSUN norms in the UUPA which is the strongest and most complete. The flat ownership rights above HGB over HPL have limited ownership, because HGB land on HPL land is granted for a maximum period of 30 (thirty) years, extended for a maximum period of 20 (twenty) years, and renewed for a maximum period of 30 (thirty) years as stipulated in Article 37 Paragraph (1) of PP Number 18 of 2021.

HGB land on HPL land is classified as derivative or secondary land rights, because HGB land is not directly sourced from the rights of the Indonesian Nation but is given by the HPL holder through a land use agreement (SPPT) (Silviana, 2017, p. 44) between the HPL holder and the HPL holder. HGB holders.

HGB land on HPL land can be proposed by the HPL holder himself or another party through a land utilization or use agreement with the HPL holder. As based on Article 8 Paragraph (1) PP Number 18 of 2021 that HPL which uses and utilizes all or part of the land for its own use or in collaboration with other parties, can be granted Land Rights in the form of HGU, HGB and/or HP over HPL in accordance with with the following characteristics and functions to:

a. HPL holders as long as they are regulated in a Government Regulation Government

Regulation which states that HPL holders may be granted Land Rights such as Government Regulations concerning national public companies and Government Regulations concerning Land Bank Agencies. The granting of rights in the name of the owner to the HPL holder is part of the internal authority, i.e. planning the allocation and use of land and using the land for their own purposes (Santoso, Existence of Management Rights in the National Land Law, 2012, p. 283).

In PP No. 83 of 2015 it is regulated that in the event that PERUM-PERUMNAS will build housing or flats on PERUM-PERUMNAS land with HPL status, the Company is obliged to complete HGB/HP over HPL. In the event that PERUM-PERUMNAS will extend and/or renew the HGB of Flats, the extension and/or renewal shall remain in the name of PERUM-PERUMNAS.

b. The other party, if the HPL Land cooperates with a Land utilization agreement.

The HPL holder may submit and/or use the parts of the land as intended to other parties in accordance with the provisions of the Laws and Regulations. In the event that HGB is above HPL, the subject of the rights is another party, then any extension and renewal must first obtain approval or recommendation from the HPL holder (Santoso, Use of Land with Management Rights by Third Parties, 2007).

Based on Article 1 point 7 PP Number 18 of 2021 that extension is an addition to the validity period of a right without changing the conditions for granting the right. The renewal of rights based on Article 1 point 8 of PP Number 18 of 2021 is the addition of the validity period of a right after the period ends or before the extension period ends.

Provisions regarding the period of extension and/or renewal are contained in the Land utilization Agreement. After the extension and/or renewal period ends, HGB Land returns to HPL Land.

HGB on HPL land can be extended or renewed at the request of the HGB holder if it meets the requirements and obtains approval from the HPL holder. The HPL holder is also authorized not to give approval for the extension of the HGB period on the HPL on the grounds that the HPL holder will use the land himself (Santoso, BUILDING USE RIGHTS TO MANAGEMENT RIGHTS (A Study on Acquisition of Rights and Term Extension), 2011, pp. 299- 300).

The requirements for the extension of the term or renewal of HGB over HPL, i.e. (Santoso, BUILDING USE RIGHTS TO MANAGEMENT RIGHTS (A Study on Acquisition of Rights and Extension of Term), 2011, pp. 299-300):

a. the land is still cultivated and utilized properly in accordance with with the circumstances, nature, and purpose of granting rights;
b. the conditions for granting rights are fulfilled properly by the right holder;
c. the right holder still fulfills the requirements as the right holder;
d. the land is still in accordance with the spatial plan; and is
e. not used and/or planned for the public interest.

The extension or renewal of the HGB can be granted after obtaining a certificate of proper function from the local government.

An application for an extension of the term or renewal of the HGB can be submitted after the land has been used and utilized in accordance with the purpose of granting the rights or at the latest before the expiration of the HGB period.

In the event that the term of the land rights to the Joint HGB will expire or the term has expired, then all owners through PPPSRS apply for an extension or renewal of land rights in accordance with the provisions of the legislation. Therefore, the extension or renewal of the joint HGB land is recorded on behalf of all Rusunami owners.

Holders of rights above HPL are guaranteed to obtain an extension and/or renewal of rights from HPL holders as stated in the land utilization agreement in accordance with the provisions of the legislation. This provision is made to ensure the continuity of control over Land with HGB which is generally used for residence and place of business which are the basic needs of the community. The extension and renewal of the HGB is granted at the request of the right holder. For this reason, in granting the extension and renewal of such rights, an assessment must first be made whether the HGB holder is stipulated in the decision to grant the HGB for the first time, and does not conflict with the prevailing general spatial plan.

HPL can be released if above HPL is granted with ownership rights, among others, for public housing purposes, transmigration purposes, agrarian reform, land redistribution, or government programs/other national strategic programs. Later, the recipient of the release of the HPL will submit an application for granting ownership rights to the land office (Rongiyati, 2014, p. 85).

Rationality of Ownership Rights of Simple Owned Flats (Rusunami) on Land Management Rights

The existence of high-rise buildings is not a new phenomenon in Indonesia, especially in big cities. High-rise buildings, which consist of parts that can be occupied or used privately, separated from one another, in the legal field do not pose a problem if the control is based on a lease relationship. The rights and obligations of the respective tenants and building owners, the relationship between the tenants, the management of parts of the building and the operation of the equipment used together, can all be regulated in the relevant lease agreement. Problems arise, if the users want to personally own the part of the building they use. Is this possible according to the law, because physically these parts cannot be separated and are one unit with the building (Harsono, Towards Improving National Land Law in Relation to TAP MPR RI IX/MPR/2001, 2003, p. 352).

According to Boedi Harsono, regarding private ownership of the building, in this case the ownership of the flat unit as evidenced by the flat unit, that in Indonesian law it is possible to privately own the parts, because Indonesian law uses what is called the principle of horizontal separation, i.e. the principle of customary law, which is the basis of our National Land Law. In the framework of this principle, every object which according to its form and purpose can be used as an independent unit, can become an object of personal ownership. So, the parts of a multi-storey building in this case are flats which according to their respective forms and purposes can be used independently, according to our law they can be privately owned (Harsono, Towards Completion of National Land Law in Relation to TAP MPR RI IX/MPR/ 2001, 2003, p. 353).

In addition to the ownership of certain flat units, the flat unit concerned also includes joint ownership rights over what is referred to as "shared-share", "common-land" and "joint-object". All of them are an inseparable unit with the ownership of the flat unit concerned. This provision does not mean that the National Land Law abandons the Horizontal Separation Principle, and replaces it with the *Accessie Principle* used in Western Law. On the contrary, it is the application of customary law principles to phenomena modern. In customary law, the principle applies that the construction of a house by a member of the customary law community on land with customary rights, which is a joint land, makes the land on which the building stands become the personal right of the owner concerned. Likewise, if a member of the customary law community gives a sign of ownership to a certain tree in the forest, which was not owned previously, then not only the tree becomes his property, but also the part of the land under the shade of the tree's leaves becomes his personal right. As a member of the legal community, he has the right to build a house on the shared land with the permission of his customary head. Likewise, giving a sign of ownership to trees that are in their ulayat land area (Harsono, Towards Improving National Land Law in Relation to TAP MPR RI IX/MPR/2001, 2003, p. 349).

Countries whose laws use the principle of attachment solve the problem of private ownership of flat buildings by issuing laws, which allow the private ownership of parts of the intended building and other parts and the land as common property (Harsono, Hukum Agraria Indonesia "History of the Formation of the Basic Agrarian Law, Content and Implementation", 2008, p. 20). Then on the principle of attachment, the ownership of building parts individually or individually is one unit with the common land because the *"Accessie Principle"* or "Principle of Attachment" is the principle that stipulates that the buildings and plants above are one unit with the land, are " part" of the land in question. So, the right to land by itself, by law, includes the ownership of buildings and plants that are on the land that is acquired, unless there is another agreement with the party who built or planted it as this principle is regulated in Articles 500 and 571 of the Civil Code. (Hereinafter referred to as the Civil Code). Legal actions regarding land naturally include plants and buildings, because the law includes plants and buildings on it (Harsono, Indonesian Agrarian Law "History of the Formation of Basic Agrarian Laws, Content and Implementation", 2008, p. 20).

The towers are parts of the flats. The legal relationship between flat units (building parts) and shared land is one of the most important aspects of land law. Legal certainty regarding the position of objects attached to land is very important because this has a broad influence on all legal relations concerning land and objects attached to it (Betty Rubiati, Horizontal Separation Principle in Ownership of Land Rights and Buildings of Flat Units for the Community Low Income (MBR), 2015, p. 96).

In the flat unit SHM SARUSUN, the concept of the legal relationship between flat ownership and shared land is an inseparable unit. The owner of the flat unit is also the owner of the land right. This provision occurs because the ownership of the flat unit must also include joint land rights. As stated by property expert Erwin Kallo that the ownership of apartments (sarusun) in Indonesia includes land rights, this form of ownership is like a *flat* in France, not *strata title* in Singapore where the land is owned by the government (Kompas, 2020). So, based on Article 47 Paragraph (3) of the Flats Law, it is stated that the flat SHM SARUSUN is issued to every person who meets the requirements for the holder of land rights.

This flat SHM SARUSUN shows the influence of the attachment principle, because flat ownership includes joint land ownership (Betty Rubiati, Horizontal Separation Principle in Ownership of Land Rights and Building Units of Flats for Low-Income Communities (MBR), 2015, p. 96). The ownership of the flat unit and the joint ownership of the land cannot be separated as long as the flat unit is still structurally integrated with the shared object, the joint portion is firmly attached to the joint land right. The flat unit rights include the right to joint parts, common objects and joint land, all of that are an inseparable unit with the unit concerned, which gives rise to rights, obligations and responsibilities for the owner. All of them are an inseparable unit and are bound in one document which is evidence of ownership rights to the apartment units they own (Harjono, 2016, p. 97).

The principle of customary law in the phenomenon *modern of* ownership of flat units, which is proposed by Boedi Harsono, is more inclined to the principle of attachment rather than the principle of horizontal separation. This is because the flat SHM SARUSUN stipulates that the ownership between the flat unit and the land rights becomes a single unit, even though the ownership of the land rights is joint but there is a proportion of individual ownership in it.

Based on Article 67 Paragraph (1) of PP Number 18 of 2021 that the concept of registration of the ownership of Flat Units adheres to the principle of horizontal separation, i.e. the ownership rights to the Flat Units are the ownership rights to the Flat Units which are separate individuals with joint rights to the shared part, common object, and common land. The concept of ownership of the Flat Unit with proof of the flat SHM SARUSUN is the ownership right of the individual Flat Unit which becomes one unit with proportional rights to the common land. This flat SHM SARUSUN shows the influence of the principle of attachment, because the ownership of the apartment unit includes joint land ownership (Betty Rubiati, Horizontal Separation Principle in Ownership of Land Rights and Building Units of Flats for Low-Income Communities (MBR), 2015, p. 96).

Through the principle of attachment, it is possible that legal actions against flat units can simultaneously include rights to shared land. Legal actions that show that flats and land rights are one unit, i.e.:

1. Registration of flat units

   Registration of flat units is included as an object of land registration as stipulated in Article 1 point 9 of Government Regulation Number 18 of 2021 that Land Registration is a series of activities carried out by the Government continuously, continuously and regularly covering the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding plots of land, above ground space, basement and apartment units, including the granting of a letter of proof of rights for plots of Land, Upper Land Space, Underground Space which already has rights and ownership rights to the Flat Unit as well as certain rights that encumber it. Then it is further emphasized in Article 9 Paragraph (1) that the object of land registration includes:

   a. parcels of land owned with property rights, cultivation rights, building rights and use rights;
   b. land with management rights;
   c. waqf land;
   d. ownership rights to the apartment unit;
   e. mortgage right;
   f. state land.

   Therefore, pursuant to Article 47 Paragraph (2) of the Act towers that for the provision of SHM SARUSUN can only be given to any qualified person holding the titles together on the flat concerned.

2. Imposition of Rights Guarantees of SHM SARUSUN

   By having SHM SARUSUN, consumers can make collateral for debt with encumbered mortgage rights (Kerti, 2018, p. 41), as stated in Article 46 Paragraph (1) of PP Number 13 of 2021. The legal act of guaranteeing the flat SHM SARUSUN shows that the main object of this guarantee is the proportion of ownership the right to shared land which becomes an integral part of the ownership rights to the apartment unit (Hutagalung, 2007). Mortgage rights can also be charged on land and flats to be built as collateral for credit repayment (Aguw, 2017, p. 103), which is intended to finance the implementation of the construction of flats that have been planned on the land in question, and whose credit is granted regularly. Gradually in accordance with the implementation of the construction of the flats. In addition, to increase the ability to build flats, housing development providers can be given construction credit with the imposition of Mortgage on land and buildings that are still to be built, the credit limit of which has been

approved and can be paid in stages in accordance with the value and results of the development development (Serfian to Dibyo Purnomo, 2011).

The provisions for charging a flat SHM SARUSUN with mortgage rights are also based on Article 27 of Law Number 4 of 1996 that the provisions of the Mortgage Law also apply to the imposition of security rights on flats and ownership rights on flat units. In this case, the object of the credit guarantee and bound by the mortgage is the flat unit, the joint part, the joint object and the joint land. The share of joint ownership which is the object of the guarantee and is tied to the mortgage is the proportion of individual ownership in accordance with the NPP amount stated in the flat SHM SARUSUN.

The proportion of shared land is included as an object of collateral and is tied with mortgage rights because in the flat SHM SARUSUN it is stated the proportion of individual ownership of joint land. Contrary to the imposition of security rights on Building Ownership Rights on flat units with proof of ownership in the form of SKBG for flat units, because in the SKBG for flat units, only the proportion of individual ownership of shared parts and shared objects is stated. Therefore, the flat SKBG can only be used as credit guarantees with a fiduciary duty as regulated in Article 48 of the Flats Law that the flat SKBG can be used as debt guarantees with a fiduciary duty in accordance with the provisions of the legislation in this case Law Number 42 of 1999 concerning Security Fiduciary.

The concept of encumbering the flat SHM SARUSUN which includes the proportion of shared land rights and the flat unit is also in line with the results of the BPHN seminar in 1977, that "Although our land law adheres to the principle of horizontal separation, but because the application must be in accordance with and can accommodate the realities and needs of the community. Juridically, there is no objection that mortgages, whether using mortgage regulations or *credit verband*, are imposed on land with ownership rights, building use rights, business use rights and buildings, tools that are clearly attached because their nature, purpose and use are a unity. with the building, and the plants that have been and will be standing/growing on it, as long as the buildings and plants belong to the owner of the land and this is expressly stated in the deed" (Hasbullah, 1992, p. 80). The results of the seminar showed that it is common However, the principle of attachment can affect the loading of the flat SHM SARUSUN. The

3. Transfer of ownership of SHM SARUSUN

Transfer of ownership of flat units is generally the same process as the transfer of rights to land and building certificates. If the flat SHM SARUSUN is transferred through a sale and purchase, the proportion of the rights to the joint land is also sold.

For comparison, the concept of transition SHM SARUSUN in Indonesia have in common with the concept of transfer of flats owned*(mansion)*in Japan, the flat belongs to *(Mansion)* has certificates respectively, if the sale must be sold each with ground-joint, with a certificate *shikici*(common property) owned by each (Martin, 2020, p. 308). It's just that in Indonesia there is no certificate of joint ownership owned by each, but there has been a proportion of joint ownership in the flat SHM SARUSUN owned by each flat owner, i.e. the amount of NPP.

From the description above, it can be seen that the concept of ownership of the flat unit SHM SARUSUN is irrational as proof of ownership of the Rusunami on HPL land. This is because the construction of Rusunami on these derivative or secondary land rights shows the influence of the principle of horizontal separation. Problems easily arise because there are two rights inherent in a plot of land, i.e. primary rights and secondary rights (Devina Maya Ganindra, 2017, p. 230). The SHM SARUSUN of flat unit is no longer valid when the secondary right expires and the primary right holder wants to cultivate the land himself while there is a Rusunami building on it.

As for the juridical, the flat SHM SARUSUN is issued for proof of individual ownership of the Rusunami unit as well as proportional ownership of the common land. The purpose of determining the type of flat ownership with the proof of flat unit SHM SARUSUN is to distinguish the type of flat ownership from the flat unit SKBG proof.

This irrationality is the cause of the absence of a guarantee for the continuity of the rights to the common land as a place for the Rusunami to stand, as happened in the Rusunami Kebon Kacang.

In the case of Rusunami Kebon Kacang, the joint HGB land is held in the name of PERUM-PERUMNAS as the holder of the HPL. PERUM-PERUMNAS ownership of joint HGB land is irrational with the type of ownership of simple flat units that have been stipulated in the Flats Law, i.e. SHM SARUSUN flat units. The ownership of the flat unit which is proven by the ownership of the flat unit is a unitary ownership of the flat unit, the joint part, the common object, and at the same time the joint land. The purpose of determining the type of flat ownership with the proof of flat unit SHM SARUSUN is to distinguish the type of flat ownership from the flat unit SKBG proof.

According to PERUM-PERUMNAS, the HGB certificate has expired. The HGB certificate also cannot be extended and transferred to the name of PPPSRS Kebon Kacang, because the Perumnas Regulation prohibits the HPL and HGB certificates belonging to PERUM-PERUMNAS from being transferred to another party, even though the owner has paid for the unit in full, including the joint rights used to build the RSKK. PERUM-

PERUMNAS policies and PERUM-PERUMNAS regulations contradict the considerations of the Constitutional Court Judge in the Constitutional Court Decision Number 85/PUU-XIII/2015, which states that according to the Court, ownership of flats is related to land law, which stipulates that those who have owned or purchased flats "obviously" if using cash, buying and selling one unit is legal and must be protected. In this case, the payment has been made before the authorized official and the object of sale and purchase has been handed over to the buyer and a certificate (SHM SARUSUN) has been issued, so that the owner can be said to be the owner of the apartment unit as well as joint land and joint buildings (Soemarwi, 2020).

The PERUM-PERUMNAS policy is based on Article 9 Paragraph (5) that in the event that PERUM-PERUMNAS will extend and or renew the HGB of Flats which from the beginning of its construction on behalf of PERUM-PERUMNAS, the extension or renewal remains in the name of the Company. The legal considerations taken by PERUM-PERUMNAS are also in line with Article 13 Paragraph (1) PP Number 18 of 2021 which stipulates that Land Rights over HPL in collaboration with other parties can be encumbered with mortgage rights, transferred, or released. Land Rights over HPL, in this case HGB above HPL, which can be relinquished to other parties if the HGB is in the name of another party or given to another party through cooperation in the use of land on HPL land. As for the case of the KebonKacang flats, the initial construction of the flats was built on a joint HGB in the name of PERUM-PERUMNAS.

Based on the description above, it shows that the principle of attachment is more rational to regulate the legal relationship between the flat unit and the right to the common land. The concept of norms contained in related regulations also tends to unite ownership of flat units with ownership of land rights. In the case of the KebonKacang Flats, the HGB certificate should have been transferred to the name of the KebonKacang PPPSRS as the proxy for all SHM SARUSUN voters. Through the principle of attachment, the owner of the flat SHM SARUSUN is also the owner of the joint land HGB.

IV. CONCLUSIONS AND RECOMMENDATIONS

Regulations regarding ownership of flat units are regulated under Article 47 Paragraph (1) of the Flats Law and further regulated in Article 41 of PP Number 18 of 2021. This arrangement does not guarantee that the owner of the flat SHM SARUSUN is also the owner of the right to the joint land because of Government Regulation Number 83 of 2015 mandates that the joint HGB land cannot be transferred to another party so that the owner of the flat unit SHM SARUSUN cannot simultaneously be the owner of the joint HGB land. Therefore, the owner of the flat unit does not get collateral for the ownership of the land and buildings that they have paid for.

The concept of ownership of the flat unit SHM SARUSUN is irrational as a proof of ownership of the Rusunami on the land with management rights. This is because the construction of Rusunami on land with Management Rights is influenced by the principle of horizontal separation so that there is a separation between ownership of Rusunami units and ownership of the proportion of shared land. As for the juridical, the flat unit SHM SARUSUN is a proof of ownership that is inseparable from the joint part, the joint object, and especially the joint land. The legal relationship between flat ownership and proportionate ownership of common land is based on the principle of attachment; this is evidenced by the existence of several legal actions that combine ownership of flat units with proportionate ownership of common land.

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