

## Protection Of Land Rights in The Use of Land Assets of Pt. Kereta API Indonesia (Persero) By the Community



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**ABSTRACT:** The establishment of the UUPA as the basis for land tenure in Indonesia requires all former western land rights to be converted in accordance with the land rights contained in the UUPA. PT KAI has land assets based on Grondkaart as a legacy of the railroad company during the Dutch colonial era. This has led to conflicts that continue to occur between PT KAI and the community to this day, because many of PT KAI's land assets have not yet been titled. This triggers people who use land on land owned by PT KAI to register the rights to the land they have used for years. However, the land used by the community is not free state land. Rather, it is state land that is a separated state asset, so that even though PT KAI land is no longer used for railroad activities, the land is still a state right. Some conflicts that occur between PT KAI and the community are caused by the absence of certainty of land rights, therefore this research will discuss the legal force of Grondkaart and solutions related to problems that arise related to the Grondkaart problem. The results show that although PT KAI's land is still not titled, the Grondkaart which is proof of PT KAI's land tenure can be perfect proof of land tenure. Legal certainty over the use of land by the community on PT KAI land is one of the keys to resolving conflicts with a win-win solution, namely by leasing land between the community and PT KAI. Regarding the desire of some people who want ownership rights, this may be done through the approval of the finance minister.

**KEYWORDS:** Certificate; Grondkaart; Legal Certainty; PT. KAI; UUPA.

### I. INTRODUCTION

Along with population growth, the need for land is also increasing. However, the availability of land is limited. This is because in addition to land as a place to live and a source of livelihood, but land is also considered an important economic asset. It is therefore important to ensure that land management is conducted in a fair and transparent manner. In practice, however, there are still many problems regarding the certainty of community rights to land, which is often a source of conflict. This uncertainty often stems from various factors such as overlapping rights, conflicts of interest, and unclear land administration. In this case, certainty of community rights is very important so that each individual can enjoy their rights legally and fairly in terms of land utilization. Land utilization and control is divided into two parts, namely physical control and juridical control. Juridical tenure is juridical tenure based on rights supported by law and physical tenure is land tenure without rights.(Arsin Lukman, 2022)

In the relationship between humans and land related to use, control, and maintenance, a regulation is needed to regulate the relationship. Law No. 5/1960 on Peraturan Dasar Pokok-Pokok Agraria (UUPA). UUPA is the basis for land management arrangements that regulate human relations with land in Indonesia, which aims to realize the prosperity of the people. UUPA is an elaboration of Article 33 number (3) of the 1945 Constitution which reads: "The land and water and the wealth contained therein shall be controlled by the state and used for the greatest prosperity of the people." which is then stated in Article 2 paragraph (1), which reads: "On the basis of the provisions in Article 33 paragraph (3) of the 1945 Constitution and the matters referred to in Article 1, the earth, water and airspace, including the natural resources contained therein, are at the highest level controlled by the state as the organization of power of the entire people."

Article 2 Paragraph (2) of the UUPA regulates the State's Right to Control which authorizes the State as the highest wealth organization of the entire people to:

- a. Regulate and organize the allotment, use, supply and maintenance of the earth, water and space of Indonesia;
- b. Determine and regulate legal relationships between people and the earth, water and space;
- c. Determine and regulate legal relationships between people and legal acts concerning the earth, water and space.

## **Protection Of Land Rights in The Use of Land Assets of Pt. Kereta Api Indonesia (Persero) By the Community**

The provision states that the State's Right to Control does not mean placing the State as the owner of the land, but gives authority to the state, which is the highest organization of power of all the people, which aims to maximize the prosperity of the people.

Land that has a crucial function in human life certainly creates a legal relationship between humans and land that must be regulated. In the land sector, there are various problems such as land tenure problems that are not based on legal provisions which result in land not being used according to its use and not in accordance with applicable legal provisions. (Laola Subair, 2021) Some of the conflicts that occur are the control of state land managed by PT Kereta Api Indonesia (Persero) by the community. PT Kereta Api Indonesia (Persero) is a State-Owned Enterprise (BUMN) that has many land assets spread in various regions. However, PT Kereta Api Indonesia has not been able to optimize the land, causing the land to be controlled by the community.

Some cases of land tenure of PT Kereta Api Indonesia (Persero) with the community that occurred began with the existence of PT Kereta Api Indonesia (Persero) asset land that was not optimally utilized so that the land was considered by the community to be free state land that could be used by the community. The land controlled by the community is usually in the form of inactive rail lines that have not been operated by PT Kereta Api Indonesia for years.

Land tenure of PT Kereta Api Indonesia (Persero) based on Grondkaart as proof of ownership raises several problems such as disputes over the status of Grondkaart land ownership with local communities. The dispute is caused by claims from the community regarding the ownership of land owned by PT KAI on the grounds that PT KAI has abandoned the land for decades. This condition is also correlated with the fact that there are still some PT KAI lands that have not been transferred to management rights or usage rights. Grondkaart itself is used by PT KAI as a document to prove land ownership. However, along with the establishment of the Basic Agrarian Law which adheres to unification, all former western land rights must be converted in accordance with the provisions of the law. However, until now there are still many PT KAI land assets that have not been converted and still use Grondkaart as a document of control. For this reason, it is necessary to further investigate the legal force of Grondkaart and the consequences of former western land rights that are not converted beyond the time period and how to solve legal problems related to Grondkaart.

## **II. RESEARCH METHOD**

This research uses normative legal research method normative legal research is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues at hand (Peter Mahmud Marzuki, 2007) by collecting primary data and secondary data as basic material to be researched by searching for regulations and literature related to the problem under study. The approach is carried out using the normative juridical method. The notmative juridical approach is an approach that refers to the applicable legislation. This research intends to provide an explanation of the legal position of land tenure by PT KAI based on Grondkaart, as well as looking for how to resolve disputes that arise from Grondkaart legal problems.

## **III. RESEARCH RESULT**

### **The Legal Power of Grondkaart used by PT Kereta Api Indonesia**

To know about Grondkaart cannot be separated from the history of railways in Indonesia. The history of the development of railways in Indonesia is divided into three periods, namely the Dutch colonial period, the Japanese government period, and the period after independence. During the Dutch colonial period in Indonesia, using the railway mode to transport crops, war tools, and as a means of public transportation. For this reason, the Dutch government built tens of thousands of hectares of tracks used for railroad tracks. During the Dutch East Indies, there were two types of railways, including Staatsspoorwegen (SS) and Verenigde Spoorwegbedrijf (VS). SS is a state-owned railroad company and VS is a private railroad company consisting of 11 (eleven) companies. The growth of railroad companies in Indonesia began during the implementation of Agrarisch Wet in 1980. In the enactment of the Agrarisch Wet system, there is legal dualism that distinguishes Western Agrarian Law and Law applicable to the natives. During the Dutch colonial period, the regulation of land law in Indonesia was pluralistic in nature, which means that more than two land law systems applied in addition to Customary Law and Western Law, inter-group land law, administrative land law and swaprja land law. 7 (seven) terms applied during the Dutch colonial period include: Contingenten is a policy that obliges the natives to pay taxes on agricultural land products to the Netherlands; Verplichte Leverante is a provision that obliges the people to submit crops to the government at a price that has been determined unilaterally; Partikelir Land which is land whose initial ownership is eigendom land given to Chinese, Arab and Dutch financiers; Landrente is a land lease whose amount is determined by the government based on the type of land; Culturstelsel is a forced planting system that requires people to plant certain types of crops that follow the needs of the international market, and the results must be deposited with the government without receiving compensation; Regering Reglement is an era of liberal economics where the private sector is given space to invest, which led to the issuance of Agrarische Wet 1870; Agrarische Besluit or Domein Verklaring, namely all land without proof of ownership rights is state land. The history of railways in Indonesia was present during the implementation of Culturstelsel and Agrarische Wet, which at that time urgently needed land to support Dutch business activities such as the Railway Company.

During the Dutch government, several Dutch companies (Partikelir) offered capital offers and concession applications to the Dutch government to obtain concession licenses to build railroad lines and operate railways. Political support from the Dutch

## Protection Of Land Rights in The Use of Land Assets of Pt. Kereta Api Indonesia (Persero) By the Community

government provided to the railroad company at that time Naamlouze Venootschap Nederlandsch-Indische Spoorweg-Maatschappij (NV.NISM) in the form of providing land, providing protection and providing security in the development process in accordance with the concession contract which was ratified and approved by the Dutch government on August 28, 1862 based on Governor General Decree Number 1: The land granted to the concessionaire is used for the public interest; the granting of land is accompanied by the Right to Build (Opstal) with a certain period of time; The purchase of land that belongs to certain people or institutions is accompanied by compensation by the concessionaire if there is land affected by land acquisition. Article 7 of the concession stipulates that the concessionaire is required to submit 3 (three) copies of maps within 18 (eighteen) months after the concession takes effect in the form of: A General Map approved by the Governor General showing directions; A longitudinal profile at a scale of 1:10,000; and a cross-sectional profile of the land passed by the railroad that serves as a guideline and excavation and elevation of the land. Article 10 of the concession states further requirements that within 12 (twelve) months after the plan (article 7) is approved, the concessionaire submits to the Governor General for approval the Land Map (Grondkaart) and money files required for land acquisition. (M Hamidi, 2022)

The concession provision then confirms that the railway company as the concessionaire has a clear status and land acquisition. Grondkaart is a very important instrument because Grondkaart is a cross-sectional map of land that functions to show the ownership and interests of the concessionaire, because Grondkaart is made based on the results of land measurements by cadastral officials (landmater) or land officers during the colonial period, which were then legalized by the relevant agencies or agencies accompanied by complete archives that function as the basis of rights as well as an authentic source of information. The Grondkaart Interest Function refers to the interests of the utilization of land objects in the Grondkaart. It illustrates that there is dual legal power over the existence of Grondkaart which causes post-independence legislation to still recognize and use it. While the Grondkaart ownership function confirms land ownership rights marked by approval of the Grondkaart listed and authenticated by cadastral officials (Bekanda era land officers) which makes Grondkaart have legal force given by the government and has the authority to legalize land ownership and its evidence. (Pahlevi, 2022)

During the Japanese colonial period, the development of railways experienced a setback marked by the destruction of several railroad lines and the transfer of railways to other Japanese colonies such as Thailand. The government-owned and privately-owned railway companies left by the Dutch were made into one business entity under military command called Rikuyu Sokyoku on June 1, 1942. Railway arrangements and techniques are carried out in the Japanese manner by numbering the train fleet as a whole which results in the indistinguishability of train relics belonging to SS or VS. (Tim Telaga Bakti, 1977) After Indonesia proclaimed its independence, the railroad company was taken over from Japan. In 1945, Djawatan Kereta Api Indonesia (DKARI) was formed on September 28, 1945 as the first Indonesian-owned railway company. At that time there were still two railway companies, namely DKARI and VS / SS, which were colonial heritage companies which, when viewed from the nature or purpose and form, were very different. DKARI runs a train company as a means of transportation for public benefit. Meanwhile, SS / VS is a company established for economic interests during the colonial period. Then on January 1, 1950 DKRI and VS / SS were merged and formed Djawatan Kereta Api (DKA). Then based on Government Regulation Number 8 of 1953 concerning State Land Tenure, assets that originally belonged to VS / SS became state land whose control was in DKA (now PT. KAI).

### Post-Law Grondkaart Position

The Basic Agrarian Law (UUPA) is the end of the colonial land law system, which originally all forms of control over land were subject to western land law and had to be converted into land rights according to the UUPA. This includes the land controlled by PT KAI, which is a former ownership right of the Dutch government. The second part of the UUPA emphasizes the conversion of land that was originally subject to western land law to be adjusted to the UUPA or find its equivalent in the UUPA. UUPA itself only regulates eigendom rights, opstal, erfpacht, hypotheek, servituut, etc. and does not regulate the conversion of Grondkaart rights.

The Decree of the Minister of Agriculture and Agrarian Affairs of the Republic of Indonesia No. SK.8/KA/1963 on the Granting of Rights on Former Land Owned by Dutch Companies to State Companies and State Banks, states that land rights that include company assets that are Dutch property subject to nationalization are nullified by law and become state assets regulated in Agrarian Ministerial Regulation No. 9 of 1965 on the Implementation of Conversion of Tenure Rights on State Land and Provisions on Further Policy. With this regulation, land whose control is with the state is converted into a right of use as long as the right of use of the land is used alone for the interests concerned, and will become a management right if given to another party or third party. (Article 1 of Minister of Agrarian Affairs Regulation No. 9/1965).

With regard to Grondkaart land, based on Regulation of the Minister of Agrarian Affairs No. 9 of 1965, it is emphasized that government agencies that have the right of control (beheer), beheer rights are rights whose land is used for the benefit of an agency concerned. Since September 24, 1960, the right of Beheer has been transferred to the Right of Management or the Right of Use for as long as it is used, although there are still lands that do not have certificates. This is in accordance with Government Regulation No. 8 of 1953 and Minister of Agrarian Affairs Regulation No. 9 of 1965. For land that has not been titled, the process of pensertipatan must still be carried out. (Nugroho, 2021) Thus, the Grondkaart should be converted to Right of Use or Right of

## **Protection Of Land Rights in The Use of Land Assets of Pt. Kereta Api Indonesia (Persero) By the Community**

Management. In addition, referring to Government Regulation No. 24 of 1997 concerning Land Registration, and Law No. 23 of 2007 concerning Railways, PT KAI also has an obligation to register the land to be able to certify it as proof of rights.

### **Solution to Legal Issues Related to Grondkaart**

Problems regarding land ownership by PT KAI based on Grondkaart are still being encountered. PT KAI's land asset ownership is very extensive, namely 270 million square meters, but only 135 million square meters of land assets have been certified. (CNN Indonesia, 2022) For example in Decision Dispute in Administrative Court Number 002/G/2017/PTUN.Smg Jo. Number 162/B/2017/PT.TUN.Sby Jo. Number 176 K/TUN/2018 and Decision Dispute in Administrative Court Number 019/G/2017/PTUN.Smg Jo. Number 190/B/2017/PT.TUN.Sby Jo. Number 241.K/TUN/2018. PT KAI's asset land in the Kebonharjo area is used by the community as a residential area, with the background that PT KAI's assets are considered unutilized and then utilized by residents into settlements for approximately 42 years. In 2000, a handover of rights to the use of state land controlled by PT KAI was carried out, which was contained in Minutes Number JB 306/V/c5/D IV-2000, making the PT KAI asset land the property rights of Kebonharjo residents, which was then followed by the issuance of 3,361 certificates of ownership rights to land in Kebonharjo. (Adyana Karunyabuddhi, 2024).

If analyzed more deeply, the dispute that occurred in the Kebonharjo area, the root of the problem is the uncertainty of PT KAI's land rights, which are only based on Grondkaart, which Grondkaart itself is not explicitly regulated in the UUPA. As a result, there is uncertainty of rights such as what happened in Kebonharjo, Semarang. This of course has the potential to cause similar conflicts considering that PT KAI has many assets that have not been titled. Legal uncertainty is often the root of problems in the agrarian sector. Legal certainty is things that can be determined from the law in concrete matters. (Aldila Rajab, 2020) Law Number 5 of 1960 concerning Basic Agrarian Principles in the general explanation states that the purpose of the enactment of UUPA itself is to provide a basis for legal certainty regarding land rights for all the people. (part of the general explanation of the UUPA). To obtain legal certainty, Article 19 of the UUPA, paragraph (1), states that in order to obtain legal certainty, the Government conducts land registration throughout the territory of the Republic of Indonesia in accordance with the provisions regulated by government regulations and paragraph (2), a series of land registrations, namely measurement, mapping, land bookkeeping, registration of land rights and transfers of these rights and the provision of proof of rights which are valid as authentic evidence. Ownership of a land certificate is important to provide legal certainty over a land right.

Land registration in Indonesia adheres to a negative publication system with a positive tendency, because in the provisions of Article 19 paragraph (2) letter c of the UUPA in conjunction with Article 17 paragraph (1) of PP No. 24 of 1997, in conducting land registration, the land registration officer, in this case the Land Office, conducts measurements and seeks information about the subjects and objects being registered. Officers are active, not just limited to trusting information from certificate applicants. So it can be said that the land registration system in Indonesia adheres to a negative system that has a negative tendency. (Harsono, 1999)

But in reality, the process of being able to certify land often encounters various problems. As experienced by PT KAI when they want to certify land, they experience difficulties due to physical control by the community who uses the land owned by PT KAI. Many people think that PT KAI does not have land rights because the land is not titled and only has Grondkaart evidence, not certificates according to the UUPA. However, this conception is different from the view of PT KAI, which considers that land that is still in the form of a Grondkaart still legally belongs to PT KAI.

### **Utilization of PT.KAI Assets outside Railways**

PT KAI which is a State-Owned Enterprise (BUMN) that has a role in the field of railroad transportation services and various other supporting fields. In Law Number 19 of 2003 concerning State-Owned Enterprises, SOEs are divided into two types: Persero companies that are profit-oriented and fully subject to Law Number 40 of 2007 concerning Limited Liability Companies; and Public Companies (Perum) formed by the government that functions to carry out business as the implementation of government obligations. PT Kereta Api Indonesia (Persero) according to the Letter of the Head of the National Land Agency Number 500-1255 dated May 4, 1992 is a Government agency that controls and manages state land, because PT KAI is a BUMN that may carry out business leasing assets in accordance with the agreement stipulated in the BUMN Ministerial Regulation No.PER-04 / MBU / 08/2017 concerning Guidelines for BUMN Cooperation in the context of asset utilization if it meets the terms of cooperation.

Some of the principles that must be considered in the implementation of asset utilization cooperation in accordance with the Regulation of the Minister of BUMN No.PER-13 / MBU / 08/2017 are as follows: Cooperation is carried out by taking into account the principles of transparency, independence, accountability, responsibility, and fairness; paying attention to the principle of expediency; does not interfere with the main business activities of BUMN; cooperation is carried out for a certain period of time stated in the agreement and is not allowed to carry out the utilization of fixed assets indefinitely; cooperation prioritizes synergies between BUMN and subsidiaries of BUMN or companies affiliated with BUMN and increases the participation of national businesses; fixed assets that are cooperated are prohibited from being used by Partners, unless otherwise regulated in BUMN Ministerial Regulation No. PER-13/MBU/08/2017 dated August 21, 2017; other than organs of the persero or perum, any



## Protection Of Land Rights in The Use of Land Assets of Pt. Kereta Api Indonesia (Persero) By the Community

party is prohibited from utilizing fixed assets. PER-13/MBU/08/2017 dated August 21, 2017; other than the organs of a persero or perum, any party is prohibited from intervening in the decision-making process regarding asset utilization with due observance of legislation; the Board of Directors is responsible for the implementation of fixed asset utilization for the benefit of the company; the Board of Directors must evaluate asset utilization agreements that have not been implemented.

Utilization of BUMN assets is carried out based on the characteristics of the use of assets by the using party. Utilization of assets can be carried out by way of Bangun Guna Serah (BGS), Bangun Serah Guna (BSG), Cooperation Operation (KSO), or Business Cooperation (KSU), unless it meets certain conditions stipulated in the Regulation of the Minister of SOEs No. PER-04/MBU/08/2017 concerning Guidelines for SOE Cooperation, can be carried out by Long Term Lease. So that the problems related to the control of PT. KAI land by the community. If the community uses PT. KAI land that has not been certified, the community cannot register the land with any rights, this is because PT. KAI land is state land whose control is with PT. KAI and not free state land so that if it will release rights it must go through the process of releasing rights. Based on the letter of the Minister of Finance Number S-11/MK.16/1994 dated January 24, 1995, the lands described in the Grondkaart are basically separated State assets. Then it is confirmed in the Regulation of the Minister of Agrarian Affairs Number 9 of 1999 concerning Provisions on Procedures for Granting and Cancellation of Rights to State Land and its Management, granting rights to other parties must obtain approval from the Minister of Finance as the manager of state assets.

### IV. CONCLUSION

Grondkaart is proof of ownership of state land rights controlled by PT KAI. Land originating from Grondkaart owned by PT KAI has perfect evidentiary power in court, this is because Grondkaart based on Minister of Finance Letter No. S-11/MK.16/1994 dated January 24, 1995 can be used as evidence of control over land by PT KAI. However, in this case Grondkaart still has to be carried out in the process of land titling.

In the event that the community considers Grondkaart not as evidence of legal land tenure is. For land based on Grondkaart that has not been pensertipatan its authority is still state land whose control is under PT KAI so that the land is not state land that can be applied for ownership rights openly by people who have occupied and utilized the land for many years. To provide legal certainty for the use of land by the community on PT KAI land, a Lease Agreement can be made between PT KAI and the community that uses it. This is in accordance with the regulations on the utilization of BUMN land assets. So that state land assets are maintained and the people who use them can be given legal protection if there is legal certainty created by the lease agreement.

### V. ADVICE

Although Grondkaart in some court decisions can be perfect evidence of PT KAI's land tenure, PT KAI must immediately carry out land titling of lands that have not yet been titled. This can provide legal certainty over land ownership and prevent claims from people who have used PT KAI land for years without rights. In addition, with land titling, it can help PT KAI in managing or utilizing assets to support asset utilization activities so as to minimize the possibility of disputes or lost assets.

PT KAI Asset Land is not free state land. This means that the land is state land for which the authority to carry out management is given to PT KAI. Therefore, although some of PT KAI's land is no longer active, the land cannot be claimed by the people who use it. As for if the community wants the land because they feel they have utilized the land by building permanent buildings or the like, PT. KAI is unlikely to release these assets, because to be able to release rights must go through permission from the minister of finance.

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## Protection Of Land Rights in The Use of Land Assets of Pt. Kereta Api Indonesia (Persero) By the Community

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