

Legal Reconstruction of *Grondkaart* as Ownership Evidence of Land Asset of Pt. Kereta Api Indonesia in the Inventory Process in Operation Area V of Purwokerto Based on Justice Values

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Abstract

This research analyzes the weaknesses of The *Grondkaart* Regulation As Ownership Evidence Of Land Asset Of Pt. Kereta Api Indonesia In The Inventory Process In Operation Area V Of Purwokerto in Indonesia currently and how to reconstruct the law Based On Justice Value in a constructivism paradigm where the type of research method used is normative juridical and the specifications of this research have a prescriptive analytical nature with the approach used by the author being a statutory approach. The research results found that the weaknesses of the *Grondkaart* regulation as evidence of ownership of land assets of PT. Kereta Api Indonesia in the inventory process in the operation area V of Purwokerto currently is in regard of the Types of Land Rights. According to the perspective of the various aspects of Land Rights, there are several periods of conflict between the principle of actual transfer and the principle of legal transfer, the Aspect of Government Capital Participation in the Form of Land to BUMN, Article 8 of PP Number 20 of 2021 concerning the Regulation of Abandoned Areas and Land makes the grandkaart object one of the objects of the regulation of abandoned land. Therefore the Reconstruction of the law must be done through the Construction of the *Grondkaart* Regulation as evidence in the inventory of PT. Kereta Api Indonesia Operation area V of Purwokerto assets are based on the Pancasila justice value in addition to being in accordance with religious values, divine values, justice values, and humanitarian values contained in the philosophy of the State of Indonesia. and the reconstruction proposed was namely Article 8 of PP RI Number 20 of 2021 concerning the Regulation of Abandoned Areas and Land so that Article 8 becomes Land Management Rights that are excluded from the object of regulation of Abandoned Land including: a. land Management Rights of customary law communities; b. Rights to *Grondkaart* Land; and c. land Management Rights that are Land Bank Assets.

Keywords: Legal Reconstruction, *Grondkaart*, PT. KAI, Justice Value.

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INTRODUCTION

PT Kereta Api Indonesia (Persero) abbreviated as PT. KAI is a state-owned company established based on Government Regulation No. 19 of 1998 concerning the Conversion of the Form of the Public Company (Perum) of Railways into a Limited Liability Company (Persero). As a state-owned company, the assets controlled by PT KAI are state assets, both railway and non-railway assets such as land, company houses, official buildings, and others. Article 2 of the Regulation of the Minister of Finance No. 96/PMK.06/2007 concerning Procedures for the Implementation of the Use, Utilization, and Transfer of State-Owned Goods explains that users of state-owned goods and/or their proxies for the implementation of the use of state-owned

goods are limited only to the implementation of the main tasks and functions of state ministries/institutions. Land and/or buildings that are no longer used must be returned to the manager of the goods, namely the Minister of Finance, as the State Treasurer. PT KAI land in inactive railway areas legally belongs to the state and its status becomes state land. As long as PT KAI's land assets are utilized properly, PT KAI is required to manage the land assets as well as possible.

Regulation of the Minister of Agrarian Affairs (PMA) No. 9 of 1965 concerning the Implementation of Conversion of State Control Rights, regulates the conversion of lands controlled by government agencies, including lands controlled by PT KAI which must be

converted. The conversion itself is regulated in the UUPA in the second part concerning the provisions for conversion. It is explained in the PMA above that the right to control by the state is converted into a right of use if it is used for government interests and converted into a right of management if in addition to government interests, it is also intended for other people or third parties. (Widodo, 2019)

Regarding PT KAI's lands used by third parties to build buildings, this is a form of implementation of cooperation in the utilization of PT KAI's land assets by means of land lease. The utilization of land carried out by the community is one of the legal acts regarding land that often occurs in the community, the causal factor is that the community is experiencing an increase in the need for land supported by the increase in the rate of development in urban areas that cannot be balanced with the limited availability of land so that the community (Widodo, 2018) is willing to rent PT KAI land to build buildings. The utilization of PT KAI's land assets by the third party above is carried out legally, but it is not uncommon in everyday life that the author can find people who still occupy PT KAI's land illegally. The legal fact of the utilization of PT KAI's land also occurred in Purwokerto, the people there built buildings on land owned by PT KAI because they adhered to the *Grondkaart* which is a land map from the Dutch colonial era. The legal basis for the *Grondkaart* consists of a number of regulations made by the government at that time based on the development of legal regulations related to state land. This began with the issuance of a government decree *besluit* (decree) No. 8 dated January 19, 1864 which resulted in the status of government land (*gouvernements grond*). This status refers to land that has been released by the government and measured and made an official letter by the Cadaster (BPN during the colonial era) as belonging to the government. Thus, the status of this government land has been standardized as government property, complete with its measurement letter and Cadaster number. This status is different from free state land (*vrige staatsdomain*) which appeared in the Agrarian Law (*agrarijsche wet*) of 1870 (*Staatsblad* 1870 No. 55). The UUPA does not regulate the *Grondkaart* because it was only formalized and approved by the Dutch government to be handed over to the Indonesian government in 1961 while the UUPA was born in 1960. The position of the *Grondkaart* caused a polemic when the UUPA was enacted because although the *Grondkaart* was recognized as evidence of control, it was not included in the evidence of old rights that could be converted into one of the rights according to the UUPA (Book Two of Conversion Provisions). According to the provisions of Government Regulation Number 8 of 1953, the *Grondkaart* is not included in the group of evidence of old rights to the land because the *Grondkaart* is in-beheer (control) over the land.

PT. KAI (Persero) as one of the business entities that aims to increase profits tries to inventory the lands

controlled during the Dutch era based on the *Grondkaart*. The desire of PT. KAI (Persero) is at odds with the ownership by the community, resulting in disputes over control/ownership of the land (Sun, 2024). For example, in Operation Area 5 PT. KAI (Persero), the community controls non-active land based on a certificate of ownership, while PT. KAI claims ownership based on the *Grondkaart* (Erwiningsih, 2023). The position of the *Grondkaart* is gray because it is not regulated in detail in Government Regulation Number 10 of 1961, Regulation of the Minister of State for Agrarian Affairs Number 3 of 1961, Government Regulation Number 24 of 1997 concerning Land Registration. The absence of a definition of the legal basis and evidence in the Review of the regulation of the *Grondkaart* starting from Law Number 86 of 1958 concerning the Nationalization of Dutch-Owned Companies, Law Number 5 of 1960 concerning Basic Agrarian Principles, Government Regulation Number 40 of 1959 concerning the Nationalization of Dutch-Owned Companies, Government Regulation Number 41 of 1959 concerning the Nationalization of Dutch-Owned Railway and Telephone Companies, Government Regulation Number 10 of 1961 concerning Land Registration, Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, Regulation of the Minister of Agrarian Affairs Number 2 of 1960 concerning the Implementation of the Provisions of the Basic Agrarian Law, Regulation of the Minister of Agrarian Affairs Number 9 of 1965 concerning the Implementation of the Conversion of Land Ownership Rights and Further Provisions, Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration in conjunction with Regulation of the Head of the National Land Agency Number 8 of 2012. Article 24 of PP Number 24 of 1997 explains about proof of old rights.

The researcher bases customary law, namely that written evidence described in the article is the basis for the rights used in land registration so that it becomes the basis for issuing land title certificates. The Ministry of ATR/BPN as an organization engaged in land administration, and the absence of *Grondkaart* regulations in laws and regulations, then *Grondkaart* is more firmly a means of evidence in land registration in Indonesia. This problem was then brought to the author in a research where the problem studied are further organized into research with the following main problem:

1. What are the weaknesses of The *Grondkaart* Regulation As Ownership Evidence Of Land Asset Of Pt. Kereta Api Indonesia In The Inventory Process In Operation Area V Of Purwokerto in Indonesia currently?

2. How Is The Legal Reconstruction Of The *Grondkaart* Regulation As Ownership Evidence Of Land Asset Of Pt. Kereta Api Indonesia In The Inventory Process In Operation Area V Of Purwokerto Based On Justice Value?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the *Grondkaart* Regulation as Ownership Evidence of Land Asset of Pt. Kereta Api Indonesia in the Inventory Process in Operation Area V of Purwokerto in Indonesia Currently

Law enforcement is the most important and inseparable part of a series of legal systems. Without law enforcement (*formeel recht*), the rules of material law

(*materieel recht*) will surely become a pile of paper (*een papierenmuur*). The ideal of a state of law in the constitution of this nation will only remain a dream. Therefore, without good law enforcement, it will be the same as causing the toleration of violations and crimes (*teggengesteld*) or toleration of the rules of law (*materieel recht*) which are made to regulate the order of community life (Toebagus, 2022). Without law enforcement, the people will surely despair of law and justice. There will be a crisis of trust in the law. A chaotic society (*chaos*), is a normless society in reality (*in het werkelijkheid*). The land used by SS before 1953 (Government Regulation Number 8 of 1953) had the status of *in beheer* land, namely part of the State Property Rights (*Domein*) land that was handed over to SS as one of the Dutch East Indies Government Work Units intended for the implementation of railway transportation activities. The land handed over "in the control (*in beheer*)" (Ferdoush, 2022) of the work unit is described in the *Grondkaart*, namely a map containing the location of the land, area, and boundaries of the land or can be called a measurement letter. The term "*in Beheer*" for land handed over to SS and not land rights, takes into account: First, SS was positioned as a state company with the same position as the Dutch East Indies Government work unit, namely the Department or Service. Therefore, SS did not have the status of an independent legal entity. As a result, SS was considered not to have its own assets, including land which was part of the state's assets. Second, the land handed over to SS still had the status of State Property Rights (*Domein*). This means that SS only physically controls the land as a location for organizing railway service and business activities. Furthermore, during the 1953-1960 period, the use of land "*under the control*" of departments and agencies was rearranged, through Government Regulation Number 8 of 1953 based on the principle that land that has been handed over under control remains in the status of State-Owned Land as stated in Staatsblad 1911 Number 110, namely the *Domeinverklaring* principle regulated by Agrarische Wet and Agrarische Besluit. After that, Law Number 5 of 1960 concerning Basic Agrarian Principles was enacted, called UUPA. The issuance of UUPA eliminated the existence of State *Domein* (Owned) Rights which were the basis for the existence of *Grondkaart* which means "*Land Under Control*" of Ministries, Agencies, or Regional Governments. As a result, "land under control" has no legal basis and its legal status becomes unclear. This is caused by: first, land under control does not have the status of land rights because it is only part of State-Owned Land, while this right has been abolished by the UUPA. Second, the UUPA itself, both in its basic principles and main provisions and its conversion provisions, does not explicitly mention and regulate "*land under control*" used by ministries, agencies, or regional governments. However, Article 58 of the UUPA provides an opportunity for the enactment of laws and regulations that are not revoked or do not conflict with the UUPA to remain in effect. First, Government Regulation Number

8 of 1953 which regulates "*Land under Control*". Therefore, land under control must be maintained, including that under the control of the Ministry of Transportation, Energy, and Public Works which is used by its work unit, namely the Railway Service (Shidiq, 2020). Second, the empirical fact that "*Land under control*" of ministries, agencies, or regional governments, either in part or in whole, is still used as a place to carry out interests or tasks assigned to each party. The principle of actual delivery states that a movable object obtained through a legitimate legal basis or legal relationship such as a sale and purchase agreement, grant, exchange, and capital participation will have its ownership rights transferred to the buyer, grantee, exchange recipient, and capital participation recipient after the actual delivery of the movable object by the first party. Meanwhile, the principle of legal delivery states that an immovable object obtained through a legitimate legal basis or relationship such as a sale and purchase agreement, grant, exchange, and capital participation will have its ownership rights transferred after a legal delivery in accordance with the provisions of laws and regulations.

If the object is in the form of fixed assets in the form of land, then the legal transfer must meet: First, with the registration of the Land with a deed of transfer made before and by the Land Deed Making Officer which will be followed by registration at the Land Office. Second, the transfer must be in accordance with the provisions of Government Regulation of the Republic of Indonesia Number 40 of 1999 concerning HGU, HGB, Right of Use and Pemenag/Ka.BPN No. 9 of 1999 concerning Procedures for Granting and Cancellation of Rights to State Land and Management Rights. The transfer of movable and fixed assets, namely land through government capital participation to PT.KAI is subject to the principle of real transfer. The adoption of the principle of real transfer in the transfer of land owned by government agencies originating from *Grondkaart* in the Train station environment has an impact on the process of separating assets, namely land from government agencies cq. Ministry of Transportation to PT. KAI as part of the object of capital participation. With the actual handover and not followed by a legal handover, the separation of wealth in the form of land must be considered never to have occurred because even though the land is physically under the control of PT KAI, legally the ownership of the land rights has never been transferred to PT KAI which physically controls it claiming itself as the owner or holder of the land rights, but on the contrary because legally the ownership rights have not been transferred, it is reasonable for the Government cq. Ministry of Transportation to still claim itself as the holder of the land rights. Therefore, the subject who has the right to land used for railway activities is still in the hands of the Government (Letter of the Director General of Railways 2012).

Grondkaart land is included in the state treasury or State Property. Meanwhile, according to Government Regulation of the Republic of Indonesia Number 71 of 2016 concerning State Capital Participation and Administration in State-Owned Enterprises and Limited Liability Companies, it can be seen that state property is one of the assets in state capital participation in BUMN. Every state capital participation originating from the APBN must be stipulated by Government Regulation. As a result, the state capital that is handed over will change status to become BUMN capital, which was originally owned by the state will change status to become an asset owned by BUMN. According to Government Regulation of the Republic of Indonesia Number 2 of 2014 in conjunction with Government Regulation of the Republic of Indonesia Number 28 of 2020, the Government's capital participation in BUMN is a form of transfer of BMN ownership from the Government to BUMN. Then, capital participation causes a change in the status of the parties so that the Government becomes the shareholder of the capital invested in BUMN. In essence, the transfer of BMN ownership through capital participation from the government to BUMN, in addition to changing the status of asset ownership from originally owned by the state to owned by BUMN, also changes the status of the state which was originally the owner of the asset to become a shareholder in BUMN. Based on the Stipulation of the Government Regulation concerning State Capital Participation (Government) and the Signing of the Minutes of Handover of Goods, the process of State Capital Participation to PT KAI has been completed or ended. Therefore, the government already has the status of a shareholder in PT.KAI whose share size has been determined by the Minister of Finance, and the government already has the right to receive dividends from the profits of PT KAI's business activities, and PT KAI already has the right to physically control and utilize goods, both movable and immovable, including land as a supporter of the implementation of railway transportation business activities. This means that PT KAI is only authorized to utilize the land included as capital, and is not yet authorized as the holder of land rights (PMA No. 9 of 1965).

2. Legal Reconstruction of the *Grondkaart* Regulation as Ownership Evidence of Land Asset of Pt. Kereta Api Indonesia in the Inventory Process in Operation Area V of Purwokerto Based on Justice Value

The position of *Grondkaart* in land law in Indonesia can be seen in Law Number 5 of 1960 (UUPA) which is the basis of land law in Indonesia, there are no provisions governing the use of *Grondkaart* as evidence of land ownership. According to the provisions of Law Number 5 of 1960 concerning Basic Agrarian Principles, Government Regulation Number 24 of 1997 concerning Land Registration, and Government Regulation Number 8 of 1953 concerning State Land Ownership, since Indonesia's independence, the law has ordered that all land rights regulated in laws and regulations before 1960

or those that have existed since the colonial era must be registered with the National Land Agency, both physical data and legal data. *Grondkaart* is a legal product of the past that is permanent until now, its validity is recognized by law. *Grondkaart* is a type of document that explains the legal and perfect ownership status of land objects so that it can be used as evidence in the case, it is considered as perfect written evidence as an authentic deed.

For PT. KAI land is occupied by another party that is not based on cooperation with PT. KAI, so that no land certificate is issued in the name of the other party, before first obtaining permission/approval from the Minister of Finance.

For PT. KAI land that is utilized through cooperation with a third party (Pahrazi, 2024), a certificate must be issued in the name of PT. KAI. If the utilization of PT. KAI land is carried out in cooperation with a third party, and then a certificate of land management rights is issued for PT. KAI's asset land, while for the third party, a Building Use Rights or Usage Rights certificate is issued above the Management Rights. With the issuance of Management Rights in the name of PT. KAI, even though Building Use Rights are issued above it in the name of a third party, the Management Rights remain/are valid, so that PT KAI's asset land will always be protected.

The land acquisition carried out by PT. Kereta Api Indonesia continues to take methods that pay attention to humanitarian values. This means that the Government does not directly forcibly demolish the houses or land they live in. In addition to providing an opportunity or grace period for residents to vacate the land or house they live in first, PT. Kereta Api Indonesia also does not immediately close the possibility of providing compensation or relocation by considering the concrete situation and conditions in the field. Especially those who have lived there for generations and have obtained these rights including carrying out obligations imposed by the state such as paying Land and Building Tax (PBB).

In order to regulate Abandoned Land, in the early reform period, Government Regulation Number 36 of 1998 concerning the Issuance and Utilization of Abandoned Land was issued, which was followed up by a Decree of the Head of the National Land Agency Number 24 of 2002 concerning Provisions for the Implementation of Government Regulation Number 36 of 1998 concerning the Regulation and Utilization of Abandoned Land.

However, in its implementation, these regulations have not been able to be implemented effectively because many things can no longer be used as a reference in resolving the regulation and utilization of Abandoned Land so it was later replaced by Government Regulation Number 11 of 2010 concerning the

Regulation and Utilization of Abandoned Land and was last amended by Government Regulation of the Republic of Indonesia Number 20 of 2021 concerning the Regulation of Abandoned Areas and Land.

In its implementation, Government Regulation of the Republic of Indonesia Number 20 of 2021 concerning the Regulation of Abandoned Areas and Land is considered ineffective in accommodating the problems faced in the implementation of the regulation and utilization of Abandoned Land. These problems include those related to objects, warning periods, procedures for removing land that has been utilized from the database of land indicated as abandoned, and so on.

To anticipate the emergence of broader problems, the government through legislative and executive institutions must issue regulations that aim to synchronize and provide legal certainty regarding the regulation of PT. Kereta Api Indonesia assets.

Based on the description above, the provisions of the amendment to Article 8 of Government Regulation of the Republic of Indonesia Number 20 of 2021 concerning the Control of Abandoned Areas and Land, are a must for synchronization and providing legal protection for assets owned by PT. Kereta Api Indonesia which can be used for the advancement of transportation. So based on the philosophical, sociological and legal foundations, namely through the Construction of the *dronkaart* Regulation as evidence in the inventory of assets of PT. Kereta Api Indonesia Operation Area V *Purwokerto* based on the values of Pancasila justice in addition to being in accordance with religious values, divine values, justice values and humanitarian values contained in the philosophy of the State of Indonesia. and the construction carried out by the promovendus, namely Article 8 of PP RI Number 20 of 2021 concerning the Control of Abandoned Areas and Land so that Article 8 becomes Land Management Rights that are excluded from the object of Abandoned Land control include: a. land Management Rights of customary law communities; b. Rights to *Grondkaart* Land; and c. land Management Rights that become Land Bank Assets.

CONCLUSION

1. The weaknesses of the *Grondkaart* regulation as evidence of ownership of land assets of PT. Kereta Api Indonesia in the inventory process in the operation area V of Purwokerto currently consists of; Weaknesses of the Legal Structure, including a), Lack of Synergy, Synchronization, and Cooperation between PT. Kereta Api and the National Land Agency. b). Aspect of the Subject of the Rights Holder. After independence, there were four periods: c). Dispute over the status of ownership of the *Grondkaart* land between PT.KAI and the local community; d). Dispute between the Directorate General of Railways and PT. KAI is

regarding the development of the TOD area. Weaknesses of Legal Substance include Aspects of Types of Land Rights. According to the perspective of the various aspects of Land Rights, there are several periods of conflict between the principle of actual transfer and the principle of legal transfer, the Aspect of Government Capital Participation in the Form of Land to BUMN, Article 8 of PP Number 20 of 2021 concerning the Regulation of Abandoned Areas and Land makes the grandkaard object one of the objects of the regulation of abandoned land. Weaknesses of Legal Culture include: The existence of Default in the lease, The absence of a relocation concept from PT Kereta Api Indonesia

2. Reconstruction of the *Grondkaart* regulation as evidence of ownership of land assets of PT. Kereta Api Indonesia in the inventory process in the Operation Area V Purwokerto area based on the value of justice, namely through the Construction of the *dronkaart* Regulation as evidence in the inventory of PT. Kereta Api Indonesia Operation area V of Purwokerto assets are based on the Pancasila justice value in addition to being in accordance with religious values, divine values, justice values, and humanitarian values contained in the philosophy of the State of Indonesia. and the reconstruction proposed was namely Article 8 of PP RI Number 20 of 2021 concerning the Regulation of Abandoned Areas and Land so that Article 8 becomes Land Management Rights that are excluded from the object of regulation of Abandoned Land including: a. land Management Rights of customary law communities; b. Rights to *Grondkaart* Land; and c. land Management Rights that are Land Bank Assets

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