

**STATE LAND ASSETS LEGAL PROTECTION OF INDONESIAN RAILROAD
SYSTEM BASED ON *GRONDKAART* IN SEMARANG CITY****Listyowati Sumanto*, Irene Eka Sihombing, Endang Pandamdari**

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Abstract

State land assets owned by PT. KAI (Persero) which is controlled by another party without the permission of PT. KAI (Persero) needs attention, because most of its ownership is marked with *Grondkaart*, which is a map of land during the Dutch colonial era. This paper aims to analyze the issue of how the position of *Grondkaart* in the legislation, how the legal protection of land assets of the Indonesian railways based *Grondkaart* in Semarang City. Based on the decisions of the judiciary, it was found that the court's decision gave rights to PT KAI (Persero) with the consideration that *Grondkaart* was recognized as proof of land ownership of PT KAI (Persero), although according to the National Land Law the certificate was strong evidence. PT KAI (Persero) obtains legal protection for the land it owns, because the land has been registered as a State asset, and *Grondkaart* is recognized as the basis for land ownership rights. However, by pointing out *Grondkaart*, PT. KAI (Persero) does not necessarily obtain legal certainty of land ownership, so that in practice PT. KAI (Persero) must go to court to fight for the ownership of the land. Recommendations for PT KAI (Persero) (1) To strengthen the position of PT KAI (Persero) on unregistered land, it is necessary to build a network system between PT KAI (Persero), the Ministry of Finance of the Republic of Indonesia, and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. Thus, it can be seen that the lands of PT KAI (Persero) as state assets are based on *Grondkaart*. (2) As a form of effort to save state-owned assets controlled by unauthorized parties and to create legal certainty, PT KAI (Persero) must be certified with *Grondkaart* ground.

Keywords: Legal protection; land; state assets

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INTRODUCTION

The city of Semarang is known as the center of trade and services. Vorstenlanden (Solo-Yogyakarta) in Kemijen Village by the Governor General of the Dutch East Indies Mr. LAJ Baron Sloet van de Beele on 17 June 1864 (Purwanto, 2021).

Based on historical records, along with the signing of the Dutch-Indonesian Round Table Conference (*KMB*) on December 27, 1949 which recognized the Sovereignty of the Republic of Indonesia, the Dutch colonial government handed over all government assets to the sovereign government of the

Republic of Indonesia. The legality prevailing at that time on land assets was found in the *Grondkaart* format (land card/land measurement card/land map) as the basis for proof of ownership rights, such as that of PT Kereta Api Indonesia (Persero), [hereinafter referred to as PT KAI (Persero)], as a result of the inheritance of the assets of the Dutch government Railways (Staatspoorwegen/SS).

Grondkaart is a legal product that was part of the legal system at that time, and although the legal system has changed, the legal product is still legally valid until now. The bestemming lands (designated) for the

benefit of the state are given by *Grondkaart*. The land assets of the state railway company (Staatspoorwegen) described in *Grondkaart* were handed over to Staatspoorwegen. Based on S.110/1911 jo S.430/1940 the land of *Grondkaart* is the right of beheer (control) belonging to Staatspoorwegen.

Until now there is a land dispute owned by PT. KAI (Persero) which is controlled and used by other parties. Juridically, *Grondkaart* as the base of rights has a vital function. Its position as evidence in law enforcement based on Article 1866 of the Civil Code in conjunction with Article 164 Herziene Inlandsch Reglement (HIR) [Renewed Indonesian Regulation (RIB)] - (Staatsblad 1941-44) evidence recognized in civil cases consists of written evidence, witness evidence, allegations, confessions and oaths. In the trial court, *Grondkaart* as a strong basis for rights was examined as evidence of physical possession and the basis for ownership rights. In the process, the authenticity and origin of the issuance of *Grondkaart* will be investigated which is used as proof of ownership.

With regard to land owned by PT. KAI (Persero) based on *Grondkaart*, it is necessary to pay attention to the existence of PT. KAI (Persero) which is controlled by other parties for generations without permission from PT. KAI (Persero). An example of a case that uses *Grondkaart* as evidence is PT Kereta Api (Persero) Operational Area 4 Semarang which controls PT KAI (Persero) assets controlled by other parties. During the execution of a house on Jalan Tawang Sari, Semarang by PT KAI (Persero) Daops 4 Semarang, there was tension when the legal counsel for the occupants of the house tried to block the execution. The executor then emptied the items from the house by moving them. The heavy equipment that was prepared then dismantled the house in the housing complex owned by PT KAI (Persero) (Marendra, 2021). The execution took place as a form of effort to save state assets controlled by unauthorized parties in order to

minimize potential state losses (Wintoko, 2019).

According to the study by researchers, PT Kereta Api Indonesia (Persero) Semarang Operational Area 4 has a fairly large area of land that has been controlled and used by community members and legal entities without permission, some are even inhabited with the permission of PT. KAI (Persero) Operational Area 4 Semarang, especially the housing for employees who have died, but are still used by their heirs, resulting in disputes arising. On the other hand, the fact is that PT. KAI (Persero) has not yet certified its land, but only uses a guide in the form of *Grondkaart*, namely a map of the land of the Dutch colonial era. *Grondkaart* can be converted through a land registration application in order to obtain a certificate according to its designation or needs from PT. KAI (Persero). This is the capital to save state-owned land assets from illegal occupancy and control by other parties.

The formulation of the problem in this research are: (1) what is the position of *Grondkaart* in the legislation? (2) how is the legal protection of land assets of the Indonesian railway state based on *Grondkaart* in Semarang City?

METHOD

This study uses a qualitative approach with a case report study method. By making use of case study research, researchers will gain specific expertise or insight into the problem they have chosen to explore, which is usually contemporary. Case study research allows researchers to examine phenomena in their context. Case studies are empirical investigations in the sense that they are based on knowledge and experience, or in a more practical sense, they require the collection and analysis of data (Creswell, 2017). In addition, a literature review is also included in this study. A literature review article provides a complete assessment of the relevant literature and provides examples of previous studies to build a knowledge

framework (Paul & Criado, 2020). The literature review provides a theoretical framework as the basis for the study.

RESULTS AND DISCUSSION

A. *Grondkaart's* position in the Laws and Regulations

Article 2 of the Republic of Indonesia Government Regulation No. 8 of 1953: The ownership of the land described in *Grondkaart* belongs to the Railway Department (now PT KAI Persero) because the land has been handed over to control based on the ordinance contained in the Staatsblaad (Ushmani, 2018).

In Article 1 of Law no. 86 of 1958 concerning the Nationalization of Dutch-Owned Companies located in the Territory of the Republic of Indonesia stated: "Dutch-owned companies located in the territory of the Republic of Indonesia which will be stipulated by Government Regulation shall be subject to nationalization and declared to be fully and independent property of the Republic of Indonesia". Based on PP No. 40 of 1959 and PP No. 41 of 1959, all of Verenigde Spoorwegbedrijf's assets were legally owned by the Railway Department which was now changed and renamed PT KAI (Persero). For fixed assets (land) a Decree of the Minister of Agriculture and Agrarian Affairs No. SK.8/Ka/1963 was issued concerning the Granting of Free Land Rights Owned by Dutch Companies to State Companies and State Banks, dated February 28, 1963. In 1992, Law no. 13 of 1992 concerning Railways, which was later replaced by Law Number 23 of 2007 concerning Railways. With the enactment of these laws and regulations, the assets of Staats Spoorwegen and Verenigde Spoorwegbedrijf, the land has the status as land under the control of the railroad company and PT KAI (Persero) land is a separated State asset, so it is subject to Law Number 1 of 2004 concerning the Treasury. State and Government

Regulation Number 6 of 2006 concerning Management of State/Regional Property as amended by Government Regulation Number 38 of 2008 concerning Amendment to Government Regulation Number 6 of 2006 concerning Management of State/ Regional Property shall remain valid as long as it does not conflict with or has not been replaced with new regulations based on this Government Regulation.

According to the historian, Professor of the Faculty of Cultural Sciences, Universitas Indonesia, Marihandono (2008) *Grondkaart* is a term used to indicate a mapped landscape based on the results of land measurements by the authorized institution at the time of publication. *Grondkaart* is a legacy of the Dutch East Indies government in the form of products of past legal objects that are permanent and final.

Inside the *Grondkaart* contains a cross-sectional image of the land above which there are boundaries of the land. In each *Grondkaart* there is an ratification carried out by the relevant officials and the *Grondkaart* itself is made based on a land survey certificate by the cadastral (now the National Land Agency). So *Grondkaart* is an image or map of land measurements made for the purposes of Government Agencies. The function of the Meebrief *Grondkaart* is a final result that does not need to be followed up with a Decree on Granting Rights by the Government (Hermawan, 2020). According to Marihandono (2008), *Grondkaart* can be a valid evidence to show land ownership on the basis of State Administrative Law and material law. An example of State Administrative Law was the issuance of Government Decree (Gouvernement Besluit) No. 3 of 1890 which stated that there were five parties involved in making *Grondkaart*, namely the Regional Head according to the location of the land, a cadastral officer to measure and make a

land survey, two government officials related to the project. to be built, and the holder of the land rights. Thus *Grondkaart* can be referred to as proof of the location of government land which shows the boundaries of the land and is considered as the basis for proof of government land ownership rights. Each *Grondkaart* also contains the words "This *Grondkaart* was made and approved by a decree/decreet of the Governor General or Director" (gemaakt of goedgekeurd door het besluit of beschikking van den Gouverneur Generaal/ Directeur van) (Dwina, 2020).

Based on the Decisions of the Supreme Court of the Republic of Indonesia Number: 2505 K/Pdt/1989 and Number: 1262 K/Pdt/2014 which became the Jurisprudence of the Supreme Court, the existence of *Grondkaart* is proof of rights. Based on the Letter of the Minister of Finance Number: S.11/MK.16/1994 dated January 24, 1995, it was confirmed that the land that was decomposed in *Grondkaart* was declared as state land which was separated as fixed assets of PERUMKA (now PT. KAI (Persero)).

In the Decision of the Review Back No: 125 PK/Pdt/2014" stated that the use of *Grondkaart* as new evidence (novum) in the case according to the law of evidence and the existing legal basis was appropriate. It is appropriate that in the level of review at the Supreme Court, the judge wins PT. KAI (Persero) for the land dispute (Santosa, 2017). That the legal force of *Grondkaart* is only an indication that the land is state property and must be confirmed by a court decision. PT. KAI (Persero) is entitled to the land of *Grondkaart*, but according to the prevailing laws and regulations, PT. KAI (Persero) is required to register *Grondkaart* as management rights or usufructuary rights in order to obtain a certificate, so that proof of ownership rights can be used as proof of true and strong land ownership (Chandra et al.,

2017). The importance of the National Land Law policy that has a positive influence on the efforts of PT. KAI (Persero) to increase the optimization of assets owned because *Grondkaart* is not proof of land ownership, but according to Land Law, *Grondkaart* is the basis for beher rights over state land by a certain subject, namely PT KAI (Persero) (Silvianna, 2020). Whereas there is an overlapping dispute over land rights on the same piece of land, a Certificate of Building Use Rights has been issued on the land of State assets whose control has been given to PT. KAI (Persero) with evidence of *Grondkaart*. The consideration of the Bandung High Court Judge Number 209/PDT/2019/PT.BDG, the legal force of *Grondkaart* PT KAI (Persero) is recognized as evidence of land ownership (Intansari, et al, 2022}. *Grondkaart's* position is currently recognized as a certificate of land ownership PT KAI (Persero).

Although *Grondkaart* can be used as proof of control over the railroad land, the results of this study recommend a concept to prevent the loss of assets in the form of land controlled by PT KAI through land certificates. Against people who have occupied land owned by PT KAI (Persero), it is recommended to be compensated based on the value of the building on the land, or be relocated in the form of vertical housing (Flating Houses) (Sumanto et al., 2022).

B. Legal protection of Indonesian railway land assets based on *Grondkaart* in Semarang City

According to Setiono, legal protection is an action or effort to protect the public from arbitrary actions by the authorities not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as human beings (Setiono, 2004). Legal protection is an activity to protect individuals by harmonizing the relationship of values or

rules that are manifested in attitudes and actions in creating order in the social life between human beings (Muchsin, 2003). Legal protection is the protection of the dignity and worth, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness (Hadjon, 1987). Legal protection means providing protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law (Rahardjo, 1993).

Several decisions regarding land ownership disputes and buildings on land owned by PT KAI in Semarang are:

Decision Number 1819 K/Pdt/2017 (ownership dispute between 23 plaintiffs (Raliah, et al) against center of PT KAI in Bandung Cq. Kadaop IV.

Decision No. 518 K/Pdt/2018 (ownership dispute between Mrs. Yohanna De Meyyer against PT. KAI (Persero) Operational Area IV PT KAI), in which the decision is to reject the appeal from Cassation Petitioner Ny. Yohanna De Meyyer, because PT KAI has controlled the disputed land and buildings continuously by paying PBB annually, so that PT KAI's control of the disputed land and buildings is in accordance with the provisions of Article 10 and Article 19 of Government Regulation Number 10 of 1961 jo. Article 3 and Article 4 of Government Regulation Number 24 of 1997 concerning Land Registration, for which PT KAI has the right to be granted a land title certificate.

Decision Number 176 K/TUN/2018 (PT KAI Persero against the Head of the Land Office of Semarang City and AAF Sukani, et al), in which the Supreme Court ordered the cancellation of 50 certificates of Ownership in the name of AAF Sukani, et al which were issued on land owned by PT KAI based on based on the *Grondkaart* (Land Map) which was formerly owned by Semarang–Joana Stoomtram-Maatschappij, NV The Dutch private

railway company incorporated in Verenigde Spoorwegbedrijf (VS.) Based on Law Number 86 of 1959 the assets of Verenigde Spoorwegbedrijf were nationalized into state assets and based on PP Numbers 40 and 41 of 1959 the use was handed over to the Railway Department (DKA) now PT KAI (Persero). In this case PT KAI Persero (Plaintiff) has a direct interest due to the issuance of Certificate of Ownership on behalf of 50 people from the issuance of the State Administrative Decree.

Decision Number 241 K/TUN/2018 (PT KAI against the Head of the Land Office of the City of Semarang and Esti Widayanti, et al), in which it was decided to cancel five certificates of Ownership Rights in the name of Esti Widayanti, et al which were issued on the Land of Use Rights on behalf of the Ministry of Transportation, which comes from *Grondkaart* Number: W.17286 B of 1962.

Decision Number 1626 K/Pdt/2017 (Esti Tunggal D., et al against PT KAI Central in Bandung, Cq Kadaop IV of PT KAI Semarang City), in which the Supreme Court decided to punish so that Esti Tunggal D., et al, hand over the house occupied to PT KAI (Persero) empty and without any conditions within 14 (fourteen) days after this decision is pronounced.

Decision No. 218/Pdt.G/2019/PN SMG (CV. Putra Jago Pertama against PT KAI DaOp IV Semarang), where it was decided that the HGB certificates issued were invalid, and punished CV Putra Jago Pertama to actually hand over the building object of the dispute to PT. Kereta Api Indonesia (Persero) in good condition and well maintained free from all demands of other parties and taxes that are the responsibility of CV Putra Jago Pertama.

Based on the analysis of the sixteen decisions of PT. KAI (Persero) has received legal protection against land tenure through *grondkaart* which is

recognized as proof of land ownership of PT. KAI (Persero). However, by showing *grondkaart*, PT. KAI (Persero) does not necessarily obtain legal certainty of land ownership, considering that proof of land ownership as regulated in the national land law is a certificate, so that in practice PT. KAI (Persero) must go to court to fight for the ownership of the land.

CONCLUSION

According to the National Land Law, the evidence of land ownership rights that is protected by law and guaranteed legal certainty is a certificate of land rights. Meanwhile, *Grondkaart's* position is not proof of land ownership, although Boedi Harsono's opinion states that land controlled by Government Agencies is classified as private land, even though it is not yet certified. Based on the Letter of the Minister of Finance S.11/MK.16/1994 it was confirmed that the lands described in *Grondkaart* were declared as state lands which were separated as fixed assets of Perumka [now PT KAI (Persero)]. *Grondkaart* is the basis of rights as beheer rights to state land by certain subjects in this case PT KAI (Persero). According to the Supreme Court's Decision Number: 2505 K/Pdt/1989 and Number: 1262 K/Pdt/2014 which became the Jurisprudence of the Supreme Court, the existence of *Grondkaart* is proof of rights. Position of *grondkaart* is recognized as proof of land ownership controlled by PT. KAI (Persero). The land described in *grondkaart* is state land which is separated from the fixed assets of PT. KAI (Persero).

Land disputes belonging to PT KAI can be grouped into two, namely first, civil disputes related to the ownership of houses on land owned by PT KAI inhabited by the heirs of former PT KAI employees by paying rent to PT KAI (the lawsuit against PT KAI is against the law). In its development the residents no longer pay rent but demand ownership of the house. Second, disputes over state administrative decisions

(certificates) related to PT KAI's land ownership on the basis of *Grondkaart's* rights on which certificates of Ownership and Building Use Rights are issued on behalf of other parties. In addition, there is also PT KAI land as evidenced by the overlapping Right of Use certificate with the certificate of Ownership on behalf of another party. Based on the decisions of the judiciary that became the object of this research, it was found that the court's decision gave rights to PT KAI (Persero) with the consideration of *Grondkaart* as the basis for the rights to land owned by the government (PT KAI) (Persero), although according to the National Land Law, certificates were used as evidence. strong. This is as a result of the publication system adopted by Indonesia, namely negative publications that contain positive elements. PT KAI (Persero) obtains legal protection for the land it owns, because the land has been registered as a State asset, and *Grondkaart* is recognized as the basis for land ownership rights. However, by showing *grondkaart*, PT. KAI (Persero) does not necessarily obtain legal certainty of land ownership, considering that proof of land ownership as regulated in the national land law is a certificate, so that in practice PT. KAI (Persero) must go to court to fight for the ownership of the land.

REFERENCES

- Chandra, R. Y., Santi, I. G. A., & Prasetyo, A. B. (2017). *Kekuatan Hukum Grondkaart Milik PT. Kereta Api Indonesia (Studi Kasus Penguasaan Tanah di Kelurahan Tanjung Mas Kota Semarang)*. Universitas Diponegoro. [Google Scholar](#)
- Creswell, J. W., & Creswell, J. D. (2017). *Research design: Qualitative, quantitative, and mixed methods approaches*. Sage publications. [Google Scholar](#)
- Dwina. (2020). *Menteri ATR/BPN: Pemsertifikatan Tanah Grondkaart Jadi Prioritas Kami*.

- <https://www.headline.co.id/2877/menteri-atr-bpn-pensertifikatan-tanah-grondkaart-jadi-prioritas-kami/>
- Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat di Indonesia: sebuah studi tentang prinsip-prinsipnya, penanganannya oleh pengadilan dalam lingkungan peradilan umum dan pembentukan peradilan administrasi negara*. Bina Ilmu. [Google Scholar](#)
- Hermawan, I. (2020). Kereta Api Scs: Angkutan Gula di Cirebon. *Patanjala*, 12(2), 518208. [Google Scholar](#)
- Marendra, D. (2021, June 16). Eksekusi Aset PT KAI di Semarang Diwarnai Ketegangan. *INewsJateng*. <https://jateng.inews.id/berita/eksekusi-aset-pt-kai-di-semarang-diwarnai-ketegangan>
- Marihandono, D. (2008). Perubahan peran dan fungsi benteng dalam tata ruang kota. *Wacana: Jurnal Ilmu Pengetahuan Budaya*, 10(1), 144–160. [Google Scholar](#)
- Muchsin, M. (2003). Perlindungan dan Kepastian Hukum bagi Investor di Indonesia. *Universitas Sebelas Maret*. [Google Scholar](#)
- Paul, J., & Criado, A. R. (2020). The art of writing literature review: What do we know and what do we need to know? *International Business Review*, 29(4), 101717. [Scopus](#)
- Purwanto, A. (2021, May 7). Kota Semarang: Pintu Gerbang dan Sentra Perdagangan Jawa Tengah. *Kompas*.
- Rahardjo, S. (1993). Penyelenggaraan Keadilan dalam Masyarakat yang sedang berubah. *Jurnal Masalah Hukum*, 10, 121. [Google Scholar](#)
- Santosa, H. (2017). Analisis Hukum Grondkaart Sebagai Bukti Penguasaan Tanah Perkeretaapian Indonesia (Studi Putusan Peninjauan Kembali No: 125 Pk/Pdt/2014). *Seminar Nasional" Perlindungan Hukum Terhadap Tenaga Kesehatan Dan Pasien Dalam Perspektif UU No. 36 Tahun 2014"*. [Google Scholar](#)
- Setiono, J. H. (2004). Rule Of Law (Supremasi Hukum). *Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, Surakarta*. [Google Scholar](#)
- Silvianna, A. (2020). Grondkaart; Problematika Hukum dan Penyelesaiannya (Analisis Kasus antara PT Kereta Api Indonesia (Persero) dengan PT Pura Barutama Kudus Jawa Tengah). *Law, Development and Justice Review*, 3(1), 70–83. [Google Scholar](#)
- Sumanto, Listyowati, Pandamdari, E., & Sihombing, I. E. (2022). *Inventarisasi Kepemilikan Tanah Oleh PT KAI (Persero) Di Kawasan Kota Intan Jakarta Barat*.
- Ushmani. (2018). *Adakah yang Mengingkari Hukum Grondkaart atas Kepemilikan Lahan?* Kompasiana.Com. <https://www.kompasiana.com/ushmani/5a7ea5aacbe52335056257e2/pengingkaran-grondkaart-andi-surya-dan-basko-kerja-sama-merampas-aset-negara>
- Wintoko, D. H. (2019). Peralihan Hak Atas Tanah Milik Negara PT. Kereta Api Indonesia (KAI) Ditinjau dari Perspektif Hukum Perdata. *Program Studi S1 Hukum, Fakultas Ilmu Sosial Dan Ilmu Politik, Universitas Tidar*. [Google Scholar](#)



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