



GRONDKAART LEGALITY AS EVIDENCE OF LAND TENURE RIGHTS BY PT. KAI ACCORDING TO AGRARIAN LAW

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Abstract

Grondkaart or block maps are documents that prove the ownership of assets which are wealth for an institution or company that must be maintained. There are several things that are still being debated regarding the position or legality of Grondkaart itself. One state company that still uses Grondkaart as proof of ownership of its land assets is PT. Kereta Api Indonesia (Persero) or PT. KAI. Land assets PT. KAI is a legacy of the Dutch railroad company which was subject to nationalization, the land often causes disputes due to evidence of land tenure in the form of Grondkaart which is not regulated in Law Number 5 of 1960 and Government Regulation Number 24 of 1997. The formulation of the problem in this article is (1) What is the position of Grondkaart as a basis for rights or evidence of land tenure according to Indonesian Agrarian Law? (2) How is the legal protection and legal certainty of Grondkaart as proof of land ownership by PT KAI so that it can provide a solution to land problems for the residents of Miji Mojokerto? The research method used in this article is the normative legal research method with statutory, conceptual and case approaches. The technique used in the analysis of legal material is to use grammatical interpretation and systematic interpretation. The results showed that Grondkaart's position was not regulated in Law No. 5 of 1960 concerning Basic Agrarian Regulations and Government Regulation No. 10 of 1960 Jo. Government Regulation Number 24 of 1997 concerning Land Registration, this has resulted in that Grondkaart is not a strong proof of ownership of railway land, but can be used as a basis for ownership or as the basis for PT. Kereta Api Indonesia (Persero) to register their land in order to obtain a strong Certificate of Land Rights. Grondkaart is proof of PT KAI's land ownership which if in the process of securing assets a dispute occurs it can be used as proof of ownership where rights have never been renewed.

Keywords: *Grondkaart, PT KAI, Land Tenure Rights.*

1. INTRODUCTION

Land is one of the most important sources of human life, because this is where humans live, live, make a living, grow and develop on it, even as a final resting place. That's why land is needed, utilized and utilized for the welfare of the community. Land as a basic right of every person is guaranteed in the 1945 Constitution of the Republic of Indonesia. In Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that "Earth and water and the natural resources contained therein are controlled by the State. and used for the greatest prosperity of the people. This means, that with the control of land, water and natural resources by the State, the distribution of the results of the management of land, water. The legal basis for land management is regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) as an elaboration of the sound of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. in agrarian law in Indonesia, especially law in the field of land, which we call land law, which among the government and the general public is also known as agrarian law. Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) Article 2 Paragraph (2) describes the State's Controlling Rights, namely giving authority to:

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- a. Regulate and administer the allotment, use, supply and maintenance of Indonesia's earth, water and space;
- b. Determine and regulate legal relations between people and the earth, water and space;
- c. Determine and regulate legal relations between people and legal actions concerning the earth, water and space.

From the provisions of the above article, it means that the state is not the owner of the land, but rather is the highest institution that regulates land affairs, the purpose of which is for the greatest prosperity of the people. With the increase in population, the need for land is also increasing, while the availability of land is very limited. This is what causes many disputes or disputes in the land sector. To resolve disputes or land disputes that arise in the community, one way is to find out the origins and history of the land in dispute. These origins are needed to find out where the rights to land owned by individuals, legal entities, or land controlled by the government come from. One of the disputes in the field of land that often arises in several areas, including the dispute between PT. KAI (Indonesian Railroad) with the local community. This is due to the increasing development of the current Railway, which has encouraged PT KAI to try to manage, secure company assets as the main capital in developing railway management, but in its journey it often experiences land ownership disputes both by individuals, legal entities and by community as an example of the dispute between PT KAI (Persero) Mojokerto and the Miji Baru Community, Miji Village, Kranggan District, Mojokerto City.

This dispute began in 1963 when a group of community members occupied and lived on the land of the former factory owned by the United Mosale Company (UMC), a Dutch-British private company that was no longer in use, and now the land is included in the administrative area of Miji Village, District Kranggan, Mojokerto City. The land that is being disputed between residents of Miji Baru 1 and PT KAI is in the north bordering the PT KAI rail or Jalan Bhayangkara. To the south it is bordered by the Jalan Pahlawan Police Dormitory, Gg Miji Baru 2, to the west by the land assets of the Mojokerto Train Station or Ngaglik Neighborhood, Kranggan Village and to the east by Jalan Pahlawan. The disputed Miji Baru 1 neighborhood is occupied by 91 households (KK) divided into 2 RTs. PT. Land Ownership by PT. KAI (Kereta Api Indonesia), which is a legacy of the Dutch colonial railroad company, uses Grondkaart as evidence of land ownership owned by PT. KAI. Grondkaart by PT. KAI is considered appropriate as a basis for rights to proof of land tenure or proof of ownership, even though the land assets were obtained by PT KAI based on the Nationalization Law (UU No. 86 of 1958) but because they originate from Western rights, they must automatically comply with the UUPA, because UUPA is Lex Specialist. Therefore, if Grondkaart is considered as proof of rights, then in fact the Railroad company, Cq PT. KAI has indirectly acknowledged that Grondkaart is the land of origin of Western rights and in accordance with Law no. 5 of 1960 Jo Presidential Decree No. 32 /1979, Grondkaart must be converted in accordance with Article 1 (1) of Presidential Decree No. 32 of 1979 which states that: Land with Building Use Rights, Usage Rights with origin of Conversion of Western rights, the term of which will end no later than September 24, 1980, as referred to in Law No. 5 of 1960 when the disputed rights expired, the land became directly controlled by the state.

Therefore, since Indonesia's independence, the law has ordered that all land rights that were regulated in laws and regulations prior to 1960 or existed since the colonial era must be registered with the National Land Agency, both physical data and juridical data. The problem is regarding the Position or Legality of Grondkaart itself which is used as the basis for land tenure rights for PT KAI which is not regulated in the Basic Agrarian Law No. 5 of 1960 and Government Regulation



No. 24 of 1997 concerning Land Registration and Government Regulation no. 8 of 1953 concerning State Land Ownership. Based on the above problems, the authors are interested in conducting research entitled "GRONDKAART'S POSITION AS THE FOUNDATION FOR LAND TENURE RIGHTS BY PT. KAI ACCORDING TO AGRARIAN LAW".

2. RESEARCH METHODS

The type of research used in this research is Normative Juridical Law Research, Normative Juridical law research is a research in the form of an inventory of applicable laws, to find the principles of these laws, so this research seeks to find legal findings that are in accordance with a certain problem. The approach used in this study is the Statutory Approach, Conceptual Approach and Case Approach. The primary legal material used by researchers in this research is in the form of legal provisions being studied, namely the Basic Agrarian Law No. 5 of 1960, Government Regulation No. 24 of 1997 concerning Land Registration and Government Regulation no. 8 of 1953 concerning State Land Tenure, and the latest Regulation, namely the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 16 of 2021 concerning Land Registration. Secondary legal materials. Secondary legal materials are library law materials used to obtain information about primary legal materials which will be used as a reference in conducting the analysis in this study. Secondary legal materials can be in the form of books, reports of previous studies, (i.e. dissertations, theses), seminars, magazines, government publications and other reference materials such as textbooks, law journals related to the theme of this research. The technique used in the analysis of legal material is to use grammatical interpretation and systematic interpretation. Systematic interpretation is a method for interpreting the provisions of a statutory regulation as part of the entire statutory system by connecting it with other statutory regulations.

3. RESULTS AND DISCUSSION

3.1 Grondkaart's position as a basis for rights or evidence of land tenure according to Indonesian Agrarian Law

According to Grondkaart, Professor of History, Professor of the Faculty of Cultural Sciences, University of Indonesia, Prof. Djoko Marihandono, M.Sc said that Grondkaart is a term used to indicate a landscape that is mapped based on the results of land measurements by the authorized institution at the time of publication. Inside Grondkaart contains a cross-sectional image of the land on which there are boundaries of the land. According to Prof. Djoko Marihandono in each Grondkaart there is validation carried out by the relevant officials and the Grondkaart itself is made based on a land measurement letter by the Kadastral (BPN). The function of Grondkaart temporally, Grondkaart was made during the Dutch Government and no grondkaart was issued after the Government of the Republic of Indonesia, especially after 1950 (after the recognition of Indonesian independence by the Netherlands through the Round Table Conference). Grondkaart has a function as evidence to show parcels of land or land that have been acquired (Onteigenning) by the Dutch East Indies Government either by payment of compensation from parties who previously had rights over that land or as unoccupied land or communal land which were later declared government land.

According to the University of Indonesia History Expert, Grondkaart can be legal evidence to show legal status of rights and ownership or tenure of land because it has two bases, namely Administrative Legal Basis and Material Legal Basis. One of the basic Administrative Laws is the

Government Decree (Government Besluit) dated 21 April 1890 Number 3 which stated that at least 5 parties formed a team for the creation of Grondkaart. The team involved in making the Grondkaart were (1) the Head of the Region where the land made by the Grondkaart was located, (2) the Cadastral Officer (BPN in the Colonial era) who was responsible for measuring and making the land measurement certificate. (3) Two government officials related to the project to be built (can be from Public Works, BUMN, Transportation and Authorization Rights Holders over the land (in the form of HGB,

The control of PT KAI's land assets had taken place before the birth of the UUPA, even before Indonesia's independence, so the lands controlled by PT KAI at this time already had land status in accordance with the Land Law at that time, namely the West Land law, this continues lasts until the issuance of the UUPA. For the Mojokerto region, it is an asset left by the Staatspoorwegen (SS) and for proof of ownership of this asset, it is a Grondkaart. To state that a piece of land is an asset of the person concerned is a transfer of land control (Bestamming) based on the Ordinance contained in the Staatblad Nederlands Indie, land that has surrendered control automatically becomes the asset of the government agency concerned. Based on the Domein principle contained in Agrarisch Wet and Agrarisch Besluit, the state as the owner (Domein) of the land states that if the land does not have evidence of its Eigendom rights, then the state must hand over the land to the agency for the purposes of the agency concerned. Likewise with the land, the land belongs to the agency.

According to the principle of Domein Verklaring, if the state (government) wants to own land, then the step to grant it is based on private law, which is then called Gouvernement Ground (government-owned land). The administration of state land is handed over to the Department of Ven Binnenlands Bestuur (BB), which is currently the same as the Ministry of Home Affairs. The authority to manage state land by BB can be given or delegated to a Department or Government Agency. Thus the evidence of surrender was sufficient for proof of possession by the SS, in which the evidence was in the form of a map called Grondkaart, a type of land map of the results of measurements and determinations made for the SS's needs. Grondkaart was made using geodetic techniques by the landmester (Cadastre Measurement Officer) to fulfill its legality in accordance with the regulations in force at the time, so each Grondkaart was authorized by the Head of the Cadastral Office and the local resident. After the birth of the UUPA, all forms of land tenure that were previously subject to Western Land Law must be converted into Land Rights in accordance with the provisions of the UUPA. The conversion itself is regulated in the UUPA in the second part regarding the Conversion Provisions. Conversion of land rights also includes lands controlled by PT KAI. Although the UUPA does not regulate the conversion of land controlled by government agencies, but further rules are regulated through the Minister of Agrarian Regulation Number 9 of 1965 concerning the Implementation of the Conversion of Tenure Rights over State Land and provisions regarding subsequent policies. Based on these provisions, PT KAI's land is converted into usage rights or management rights. As long as the land use rights are used alone, they are also intended for other parties or third parties.

So, de jure these lands have become usufructuary rights and management rights but there are still other obligations that must be fulfilled by every agency that uses state land, namely the obligation to register rights over said land with the Land Office. As long as the land use rights are used alone, they are also intended for other parties or third parties. So, de jure these lands have become usufructuary rights and management rights but there are still other obligations that must be fulfilled by every agency that uses state land, namely the obligation to register rights over said land



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In the use and management of state land by PT KAI with the obligation to register the land, the same treatment and opportunities are given to both the former SS and former VS railway companies. Since the establishment of the Republic of Indonesia Railways Service (DKARI) the assets of the former SS automatically become their assets, but they did not have land rights at the time before the enactment of the BAL. Then with Government Regulation Number 8 of 1953 the land became state land which was under the control of the Railway Service (DKA). In contrast to VS land, on SS land there are concession rights, eigendom and opstal, but after nationalization the land automatically becomes land directly controlled by the state. Furthermore, by the state the control is under DKA, then the land becomes land under the control (In Beheer) of DKA. Thus the provisions of the Regulation of the Minister of Agrarian Affairs Number 9 of 1965 apply both to SS and to VS.

Thus it can be explained that when viewed from the origin of the granting of tenure rights based on the provisions of Western law, Grondkaart can be used as evidence against the mastery of land rights, this is corroborated by the provisions of the Letter of the Minister of Finance/Director General of BUMN Development to the Minister of Agrarian Affairs/Head of BPN No. .S-11/MK.16/1994 dated January 24, 1995 which states that Grondkaart and certificates have the same form, that is, both constitute a stipulation (Beschikking), but Grondkaart's position cannot be equated with a certificate of Land Rights which is valid according to law Land now. So, Grondkaart's position is not regulated in Law No. 5 of 1960 concerning Basic Agrarian Regulations and Government Regulation No. 10 of 1960 Jo. Government Regulation Number 24 of 1997 concerning Land Registration, this has resulted in that Grondkaart is not a strong proof of ownership of railway land, but can be used as a basis for ownership or as the basis for PT. Kereta Api Indonesia (Persero) to register their land in order to obtain a strong Certificate of Land Rights.

3.2 Legal Protection and Legal Certainty for Grondkaart as Proof of Land Ownership by PT KAI So that it Can Provide Solutions to Land Problems for the Miji Mojokerto Community

Grondkaart or block maps are documents that prove the ownership of assets which are wealth for an institution or company that must be maintained. There are several things that are still being debated regarding the position or legality of Grondkaart itself. The current rapid development of railways must of course be supported by securing and managing assets as one of the main capital. Even so, the seizure and control of KAI's assets by unauthorized and illegal parties is still rife. As is known, PT KAI is a BUMN with a long journey which was originally a company owned by the Dutch East Indies colonial government. After Indonesia became independent and received recognition from the Netherlands, Dutch-owned companies were then nationalized to become Indonesian property. Talking about nationalized land assets, this cannot be separated from Grondkaart. Grondkaart is a legal product of the past which is permanent until now, its validity is recognized according to law. Grondkaart is a type of document that explains the legal and perfect ownership status of a land object, and is not a type of land object.

Grond literally means land while Kaart means map, so it means land map. However, in terms of legal understanding, it becomes very strong and perfect because the legality of Grondkaart

fulfills the formal legal requirements and material legal requirements currently in effect. Grondkaart is a legacy of the Dutch East Indies government in the form of a product of past legal objects that is permanent and final. It contains a cross-sectional image of the land on which there are boundaries of the land. Grondkaart ratification is carried out by the relevant officials and based on a land survey letter issued by the cadastral (BPN).

Grondkaart has two functions, namely the ownership function and the interest function. The ownership function confirms the ownership rights to the land while the interest function refers to the purpose of the object contained in the Grondkaart and the parties with an interest in the object contained in the Grondkaart. Evidence of ownership is shown through the inclusion of a Cadastral official (BPN during the Dutch East Indies) who gave approval for Grondkaart, so it can be seen that Grondkaart was made based on the results of land measurements by Cadastral officers so that it has formal legal force as a document issued by the land agency of its time. Another legal power possessed by Grondkaart is the inclusion of a government official's decree/stipulation letter agreeing to the authorization of the Grondkaart to be used according to its function. The decree/decreed contains an explanation of the history of the land listed in the Grondkaart and the process of ownership of the objects recorded therein. Thus, aside from the Cadastral, Grondkaart has the legal force of a government official authorized to validate land ownership and proof through Grondkaart, such as the Decree of the Director of Public Works (OpenbareWaken), Director of State-Owned Enterprises (Gouvernement Bedrijven), or Director of Transportation (Verkeer) . These three provisions originate from the Decree (Besluit) of the Governor General as the Head of the Colony.

With the formal and material legal power that is owned by Grondkaart, the lands that have been transferred to PT KAI's assets are then measured, determined, and described in Grondkaart. published in each Staatblad. Grondkaart is proof of ownership of PT KAI's land which if in the process of securing assets a dispute occurs it can be used as proof of ownership where rights have never been renewed. Like the case of the dispute between PT KAI (Persero) Mojokerto and the Miji Baru Community, Miji Village, Kranggan District, Mojokerto City, when controlling their assets in the form of land, Grondkaart was used as the basis for controlling them. PT KAI claims that the status of the land in Miji Baru I Gang I is theirs. However, from the documents owned by the Mojokerto City Government, the land is the land of a former molasses factory owned by a Dutch-British private company called United Molase Company (UMC) on the south side of the Mojokerto Station railroad tracks. Mojokerto Mayor Ika Puspitasari explained that all this time residents had been occupying the land since 1963. The Mojokerto City Sub-District Head had submitted a request to the Municipal Government to give power of attorney to the village head so that the residents could take care of the land.

However, over time, there was a land dispute with PT KAI which claimed to have the Grondkaart Map as proof of land status. The land is the land of a former molasses factory owned by a Dutch-British private company called United Molase Company (UMC) on the south side of the Mojokerto Station railroad tracks. Mojokerto Mayor Ika Puspitasari explained that all this time residents had been occupying the land since 1963. The Mojokerto City Sub-District Head had submitted a request to the Municipal Government to give power of attorney to the village head so that the residents could take care of the land. However, over time, there was a land dispute with PT KAI which claimed to have the Grondkaart Map as proof of land status. The land is the land of a former molasses factory owned by a Dutch-British private company called United Molase Company (UMC) on the south side of the Mojokerto Station railroad tracks. Mojokerto Mayor Ika



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Based on the case examples above, it is clear that a legally made Grondkaart can be accepted as perfect documentary evidence as authentically made documentary evidence. In the Court's decision which has permanent legal force (Incracht) the judge annuls and orders to revoke the Certificate of Ownership (SHM) which is on land owned by PT KAI which only has evidence in the form of Grondkaart. On September 24, 1960, the Government passed Law Number 5 of 1960 concerning Basic Agrarian Regulations. The second part of the BAL contains provisions regarding conversion, in which lands controlled by government agencies with ownership rights (Beheer) since September 24, 1960 were converted into usufructuary rights and management rights are valid as long as they are used.

4. CONCLUSION

Grondkaart's position is not regulated in Law No. 5 of 1960 concerning Basic Agrarian Regulations and Government Regulation No. 10 of 1960 Jo. Government Regulation Number 24 of 1997 concerning Land Registration, this has resulted in that Grondkaart is not a strong proof of ownership of railway land, but can be used as a basis for ownership or as the basis for PT. Kereta Api Indonesia (Persero) to register their land in order to obtain a strong Certificate of Land Rights. Grondkaart is proof of ownership of PT KAI's land which if in the process of securing assets a dispute occurs it can be used as proof of ownership where rights have never been renewed, in which it is also explained concretely the boundaries of the land that has been handed over to KAI's assets based on the ordinance contained in Staatblad respectively so that the legal consequences that occur if a third party controls KAI's assets, the judge can cancel and order to revoke the Certificate of Ownership (SHM) which is on land owned by PT KAI.

REFERENCES

- Arba, Hukum Agraria Indonesia (Jakarta;Sinar Grafika, 2015).
- Bahder Johan Nasution, Metode Penelitian Ilmu Hukum, (Bandung:Penerbit Mandar Maju, 2008).
- Boedi Harsono, Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, (Jakarta: Djambatan, 2008).
- Enggran Eko Budianto, 2020, DPD Respons Polemik Tanah PT KAI dengan Pemkot Mojokerto, <https://news.detik.com/berita-jawa-timur/d-5200918/dpd-respons-polemik-tanah-pt-kai-dengan-pemkot-mojokerto>, diakses tanggal 20 Juni 2023.
- Oky Nasrul, Pemanfaatan Tanah Aset PT Kereta Api Oleh Pihak Ketiga, Kamus Jurnal Ilmu Hukum, Vo.20, No.3 Tahun 2018.
- Sudikno Mertokusumo, Bab-bab tentang Penemuan Hukum, (Bandung:Citra Aditya Bakti, 2013).