Journal of Private and Commercial Law

A peer-reviewed journal published by Faculty of Law Universitas Negeri Semarang, Indonesia. The title has been indexed by DOAJ, SINTA, GARUDA. ISSN 2599-0314 (Print) 2599-0306 (Online)
Online at https://journal.unnes.ac.id/nju/index.php/jpcl/index

Analysis of Grondkaart as Land Ownership Rights in the Perspective of Land Law in Indonesia

Vitria Dini Artistry
Universitas Negeri Semarang
dinivitria17@gmail.com

Dewi Sulistianingsih
Universitas Negeri Semarang
dewisulistianingsih21@mail.unnes.ac.id

Abstract

A land dispute case was experienced by residents of Kebonharjo, Tanjung Mas Village, Semarang City against the Indonesian Railways Limited Company (PT KAI), where PT. KAI claims that the Kebonharjo Residents' land belongs to PT. KAI with grondkaart as a proof base. The State Treasury Law is the main basis regarding grondkaart. Decision "No. 227/Pdt.G/2016/PN. Smg," provides information that grondkaart is still legally valid. Meanwhile Law no. 5 of 1960 and Law no. 23 of 2007, provide mutual explanations regarding orders for making certificates for land rights. This article uses a normative juridical approach, and descriptive analysis of the basis of land ownership rights in the form of grondkaart. The research results show that a state based on Pancasila really prioritizes the value of material justice which originates from the will of the people who have a strong relationship with their land, so that it can be equated with human rights. The state cannot arbitrarily control people's land rights, and the law must be in accordance with the wishes of the community, namely as a form of service by the state, not a form of confiscation by the state. Grondkaart is not stronger than a land certificate, where the form of a land certificate is considered stronger because it contains the will of the community to transfer it consciously and is not a form of confiscation. From a normative juridical point of view, Indonesian land law does not adhere to legal positivism in which Indonesian society is united by the awareness in their souls to will on the basis of Pancasila, so that their will cannot be concretized by the state in the form of any regulations, but state regulations remain as a means of order and realizing shared prosperity.

KEYWORDS: *Land rights, Community, Basic Norms, Grondkaart*

Introduction

A country certainly has ideals and dreams, especially for the availability, utilization and provision of land, water, and space for various interests of society and the state. This really needs progress, especially the arrangement scheme that will be carried out in general (national plan) which relates to all regions of Indonesia and is summarized into a plan that has special characteristics (regional plan) for each region. With planning, land use is carried out in a directed and orderly manner so that it can maximize the benefits for the entire community[1]. Land has important meaning for a country and society.

In Indonesia, land is a human right for every human being which of course has been guaranteed by the 1945 Constitution of the Republic of Indonesia. "Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia" states that "land, water and natural resources as well as everything that goes into its internal parts are controlled and used by the State only for the broad interests of the people. This means that the state's sense of control over land, water and natural resources will result in equal distribution of the results of land, water, and natural resource management. Furthermore, the legal basis for land management is stipulated in the Law and Constitution of the Republic of Indonesia of 1945. Agricultural law in Indonesia, especially land law, is what is called land law, which the government and society also call agricultural law[2].

Law no. 5 of 1960 concerning "Basic Agrarian Law", Article 2 (2), provides an explanation of the state's power to control, empower: (a) the regulation and organization intended for use, logistics and guarding and maintenance of land and waters, as well as the entire Indonesian archipelago; b) Determining and adjusting the relationship between existing laws and humans or with land, water and the entire region; c) Identifying and adapting legal relationships between humans and legal relationships relating to biological components; d) The content of the provisions stated shows that the

[1] Luthfi, "Institutional Reform For Agrarian Reform Policy In The Era Of Joko Widodo-Jusuf Kalla's Reign."
[2] Wahyuddin, Hasan, and Rahmatullah, "Menelisik Komprehensifitas Kebijakan Hukum Reforma Agraria Di Indonesia."

state's management rights are not those who own the land but empower the state to become the top level administrator of the Indonesian nation[3]. The state regulates land rights in Indonesia.

The goal is to achieve a prosperous society. Along with the increase in buildings and population density, land also increases in terms of providing residential facilities. The increase in land-related desires is not commensurate with land availability because in fact it is limited. Of course, this could be a scandal involving land. The origin of a land becomes a benchmark for providing solutions to every land problem. This origin is needed to find out the origin of land rights owned by individuals, corporations, or government control. By clarifying the origins of land use rights, it will be easier to trace them if there is a dispute over the same land plot[4].

One of the incidents that occurred in Semarang City was a land confrontation between the Indonesian Railways Limited Company (PT KAI) and residents occupying the land. PT. KAI considers that residents do not have land rights based on a letter of evidence from a PT called grondkaart. KAI. As part of the Tawang Station to Tanjung Port Emas train reactivation project, PT. KAI has a plan to control land in the Kebonharjo area, Tanjung Mas Village, Semarang City, so regarding this case Kebonharjo protested. The community rejected the eviction from PT. KAI. The people of Kebonharjo believe that the land they currently control no longer belongs to PT. KAI because it could be said to be PT. KAI leaves the field. On this basis, residents feel they have control over the land because they have used it as a residence for a period of up to years. In fact, Kebonharjo residents have complied with paying taxes on the land and buildings they occupy and in some parts their land and existing buildings have been certified. Meanwhile PT. KAI argued that the residences on which the residents were based on the land were owned by PT. KAI in accordance with the grondkaart, namely the area plan of the Dutch

[3] Subekti, "Kebijakan Pemberian Ganti Kerugian Dalam Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum."
[4] Karini, "Kedudukan Grondkaart Sebagai Bukti Penguasaan Tanah (Studi Di PT. Kereta Api Indonesia (Persero) Kantor Devisi Regional IV Tanjung Karang)."

colonial era[5]. Of course, this is a profoundly fundamental problem, even though basically there is a rule that the state cannot remove the rights of the community. Furthermore, according to Satjipto Rahardjo, the Pancasila state must prioritize the value of justice if the value of certainty and other values cannot be applied simultaneously. So of course, even though the law states that land can be owned by the state by seizing property rights from its citizens, the law is no longer for the community[6].

For this reason, normative juridical analysis is very appropriate to study in this research, because according to Stufenbau's theory by Hans Kelsen, good law is formed from basic norms, while the basic norm of the Indonesian state is Pancasila which upholds the value of justice. The basic norms of Pancasila are very appropriate in Indonesia because the Indonesian people are steeped in customary law, and have the spirit of the one and only God, so they believe that the rights to land come from God who created them and placed them randomly into which traditional tribe they were born into. Meanwhile, the state is just an institution that emerged after society wanted order in the state, because the contents of the Indonesian state do not only consist of one ethnic group, so it is necessary to condition this diversity into a container called Pancasila, in this case to regulate, not to interfere. matters of people's rights to what was given to them by their God in land matters[7].

The originality of the work should be maintained, for the sake of progress and development of education in the world of law. The following is a reference from research previously discussed. Ana Silvianna[8], discussing the National Land Law in relation to Grondkaart's views regarding land ownership in relation to Land Ownership Certificates. Research into the data through document

---

[5] Yulia Chandra, Gangga Santi, and Basuki Prasetyo, "Kekuatan Hukum Grondkaart Milik Pt. Kereta Api Indonesia (Studi Kasus Penguasaan Tanah Di Kelurahan Tanjung Mas Kota Semarang)."
[6] Utomo, "Penerapan Hukum Progresif Dalam Penyelesaian Konflik Agraria."
[7] Tiffani, Sukirno, and Cahyaningtyas, "Penyelesaian Sengketa Batas Penguasaan Tanah Di Kawasan Hutan Antara Pt. Sidosari Multifarm Dengan Perhutani Kph Balapulang."
[8] Silvianna, "Grondkaart; Problematika Hukum Dan Penyelesaiannya (Analisis Kasus Antara PT Kereta Api Indonesia (Persero) Dengan PT Pura Barutama Kudus Jawa Tengah)."

review shows that the grondkaart (issued from the land registration office at the time of receipt of fiber to the SS General Railway is not proof of land ownership. Based on "PMA No. 9 of 1965", land control by the government where the government is the right holder over land (beheer) since 24 September 1960 has been changed to authority to use and authority to manage based on the intended use during the period of use. State land managed (beheer) by PT KAI is land that does not yet have a permit or certification. Specifically on PT KAI land controlled by grondkaart land deeds will be included in the freehold land category even though it has not been certified.

Virgia Intansari and Irene Eka Sihombing[9], analyzing Grondkaart which is owned by PT. KAI (Persero) provides concrete information regarding the relationship between land ownership rights. Discussion of Grondkaart as evidence of the inheritance of railway assets from the Dutch East Indies which have been passed down from generation to generation for PT. KAI (Persero). This condition causes researchers to have a scientific understanding regarding the status of land owned by PT. KAI (Persero) before the promulgation of Law no. 5 of 1960 which discusses its relationship to the core regulations, namely Agriculture and testing by "Bandung High Prosecutor No. 209/PDT/2019/PT.BDG" on the strong influence of PT's rules. KAI (Persero) grondkaart is a fact regarding land ownership rights which is based on the existence of laws in the agrarian sector.

Farida Sekti Pahlevi[10], with the theme of the strength of the Grondkaart Law and the existence of cases in Indonesia. Grondkaart's legal authority has begun to question when PT. KAI met face to face with other groups with land use certificates submitted by the National Land Agency. This situation causes inequality in ownership rights and land control over assets, as stated by Grondkaart. Based on conventional law analysis, this article explains more about the strength of the Grondkaart Law and its problems in Indonesia.

The novelty of authoring this article is to analyze the grondkaart phenomenon which is predicted by Indonesian railway companies to

[9] Intansari and Sihombing, "Grondkaart Analysis of PT KAI (Persero) as Proof of Land Ownership."
[10] Pahlevi, "Kekuatan Hukum GRONDKAART Dan Problematikanya Di Indonesia."

provide reasons or proof of land ownership, whereas based on progressive legal theory land rights cannot simply be abolished without a clear legal reason. Furthermore, there are people who have occupied this land for a long time. Based on the explanation above, this article will focus on the juridical analysis of grondkaart as evidence of land ownership from the perspective of land law in Indonesia.

Method

Determining the method or data processing for this legal research is normative juridical research. Normative research itself has a specific aim of finding dogmatic legal truths, requiring secondary data originating from empirical law (das sollen). Normative legal research means science that studies legal regulations, both in terms of legal hierarchy (vertical) and the harmonious relationship between laws (horizontal). Another term for normative legal analysis is also usually defined as doctrinal law or even normative legal analysis. using literature studies, but, if necessary, there is the possibility of interviews with legal experts so that the arguments can be stronger[11]. This article is based on the results of the author's research using normative study methods, because grondkaart is a product of norms from old agrarian regulations, so if it is linked to the novelty of this article by using new agrarian norms, it is hoped that it will provide clarity on the status of grondkaart as proof of legal land ownership or invalid.

In the problem approach that we want to use is more of a conceptual approach. The conceptual approach is an approach that discusses the applicable legal order related to the process of its formation in a country[12]. Based on the literature study method, namely analyzing with concepts and theories to dissect the object of this research in the form of grondkaart as a form of decision from the political products of old agrarian law.

[11] Butarbutar, *Metode Penelitian Hukum*.
[12] Butarbutar.

The use of data is a secondary system obtained from literature studies, namely a collection of several previous research sources, books, articles, relevant journals, and other sources that are related to the title of this article. Then the data is ready to be collected and analyzed using the deductive method, namely describing the facts or data obtained by drawing general conclusions accompanied by existing examples[13]

Result and Discussions

Legal Relations, Society and Land

Law is defined as a rule that is obeyed by society for orderly social life. In Progressive Law theory, law is born because of society, not society is born for law. So, it can be concluded that the law was not created without the existence and desires of society or humans in general[14]. These laws will serve the people in the matters they agree to obey. However, people's desires vary, so it is very difficult to absolute one legal rule that requires everyone to obey it. In this legal journey, various legal theories emerged[15].

The theory that is most appropriate in the diversity of societies that have different desires is the theory of levels of norms Stufenbau Desrecth by Hans Kelsen, where laws are made based on fundamental basic norms. These basic norms will become the national soul of a country and must be obeyed by society and are considered the most important norms for making rules. So, because of these basic norms, rules can be made, so that they can be trusted, they will not take away rights that are born in society and the law is really for society, not society for the law.

[13] Priscila Putri Haneswara, Rahayu Subekti, "Penguasaan Dan Pengusahaan Tanah Oleh Warga Terhadap Aset PT Kereta Api Indonesia Di Stasiun Klaten Priscila Putri Haneswara Rahayu Subekti Purwono Sungkowo Raharjo Hukum Tanah Indonesia Diresmikan Dalam Undang-Undang Nomor 5 Tahun."
[14] Al Arif, "Penegakan Hukum Dalam Perspektif Hukum Progresif."
[15] Budiartha, *Teori-Teori Hukum*.

Philosophically, society has rights that cannot be denied by anyone, especially the law. As mentioned above, law is born from the will of society. However, if this philosophy is not based on the conscious boundaries of everyone in society to live together in a country, it will tend to hinder and damage the country itself. If society also has free will within its individuals, then do not let that society's personal free will interfere with other individuals[16].

The free will of the community must be accommodated in a collective agreement, where specifically in Indonesia the people are known as individuals who have a close bond with God, so it is very appropriate that Pancasila was born to accommodate the multicultural and multireligious society in Indonesia with the most fundamental principles, namely the divine principles which Almighty. They consider all the rights they must be a gift from God, and they can even live and live on their own land[17].

Conceptually, the validity of land owned by Indonesia is outlined in the 1945 Constitution of the Republic of Indonesia or abbreviated as UUD45, which in Article 33 paragraph (3) regulates biological wealth which has been controlled and has been used by the state on a large scale which is intended for the prosperity of society. ". This means that by having a state that has biological power, there will be equal distribution of the results of the biological wealth that has been managed. So, the state has the task of only serving order in relations between society and its land to achieve a prosperous life together. Meanwhile, ownership of land rights remains with the community, who by custom and origin are the ulayat or experts in the land they stand on. Viewed from a legal perspective, of course it has been regulated in Law no. 5 of 1960 concerning UUPA as detailed in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The source of this UUPA is customary law[18].

Protection is needed to realize the interests of society so that people's lives can run smoothly. This can happen if society follows certain rules, regulations, or standards. As a fundamental right, land

[16] Rosana, "Kepatuhan Hukum Sebagai Wujud Kesadaran Hukum Masyarakat."
[17] Brata and Wartha, "Lahirnya Pancasila Sebagai Pemersatu Bangsa Indonesia."
[18] Ulima Fhadiah Ermahri, Betty Rubiati, "Tinjauan Hukum Penguasaan Tanah Oleh Warga Di Kecamatan Tanjungsari Kabupaten Sumedang Terhadap Jalur Kereta Api Nonaktif."

privileges are particularly important as an indication of a person's presence, opportunities, and pride. However, even though land rights are not absolute and are subject to restrictions on the needs or important matters of other people, the people or the state, the state is obliged to guarantee legal certainty. Every level of society is affected by land issues in everyday life[19].

State and Society Relations

Regarding the plan to grant freedom of land ownership to state land for persons or halal substances, this has recently been regulated in Minister of Home Affairs Regulation Number 5 of 1973 regarding the arrangement and concept of granting rights to ownership or use of land. The Minister of Home Affairs Regulation of 1977 was the year the rules for applying for and distributing certain land management rights and the registration process was established[20]. In addition, granting the right to own residential property purchased by government officials and property transferred by natural persons is regulated by this Secretary's regulations. What differentiates these requirements from individual requirements in general is the need for a building permit.

Only the Regulation of the Minister of Agriculture/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Removing State Property Rights and Management Rights, contains the clearest provisions regarding the granting of ownership rights to state land. For the sake of legal certainty and to avoid misunderstandings that lead to land disputes, regulations on state ownership rights to land should be regulated or arranged in a systematic manner in the field of land law and administration[21].

Based on developments in the world of land law, community customary rights are often defeated by land laws created by the state

[19] Labib Mahdi, "Analisis Yuridis Terhadap Sengketa Mengenai Perkara Hak Milik Atas Tanah Pada Putusan Kasasi Mahkamah Agung Nomor 1753 K/PDT/2015 (Studi Kasus Putusan Kasasi Mahkamah Agung Nomor 1753 K/PDT/2015)."
[20] Widiarto, "Implikasi Hukum Pengaturan Hukum Acara Mahkamah Konstitusi Dalam Bentuk Peraturan Mahkamah Konstitusi."
[21] Rohman and Sugiyono, "Tinjauan Yuridis Pemberian Hak Kepemilikan Atas Tanah Negara Kepada Perorangan Atau Badan Hukum."

itself. In fact, in theory the law mentioned above has been implemented, this could be eroded by society itself. Here what needs to be emphasized is that it is the will of the community that can order the law itself, so that the will of the community also wants itself to be free from its own land by selling it to other parties for its own interests. It is people like this who are not aware that ties of land rights need to be strongly guarded. So, Indigenous peoples often lose their land rights to individuals holding transition certificates. And this transition assumes that land law is considered legal[22].

The next development, to obtain land rights, the state can transform into an individual who is considered to have the will to make transactions, an individual in this case is called a legal institution. So that in its development the state no longer functions as a regulator but can also function like a community or individual who can buy or release land rights[23]. In conclusion, the relationship between the state and society is the provider of land law implementation services, and in its development the state can also become part of the users of legal services itself and can even try to seek profits like society.

Chronology of Community Dispute Against PT. KAI

A land dispute between PT. KAI together with Kebonharjo residents in Semarang City took place around May 2016. Starting with a plan to reactivate the Tawang Station-Tanjung Emas Harbor train line. This track is being built to divert containers from being on the road to rail. Based on this agreement, PT. KAI will soon take control of the old railway area to reactivate it in the Kebonharjo area, Semarang City. Residents of the Kebonharjo area opposed it.

The community openly refuses to be evicted by PT. KAI, what they felt was a loss because the reactivation of the train involved the renovation of many residents' houses which did not go through the legal process. The people of Kebonharjo believe that the land they

[22] Rafiqi, Kartika, and Marsella, "Teori Hak Milik Ditinjau Dari Hak Atas Tanah Adat Melayu."
[23] Nugroho, Isnaeni, and Muhibbin, "Akibat Hukum Tanah Groondkart Yang Di Kuasai PT Kereta Api Indonesia Setelah Berlakunya UUPA Nomor 5 Tahun 1960."

currently control no longer belongs to PT. KAI because it could be said to be PT. KAI leaves the field.

The community feels they have control over the land because they have used it as a residence for decades and generations. Residents have also paid Land and Building Tax on their residences and residential buildings they own have been given proof of ownership rights to control land use in the form of an official certificate. Meanwhile PT. KAI argued that residents' residences are the property of PT and must be maintained because they are in accordance with the grondkaart, the area plan from the Dutch colonial era.

The residents' objection to being evicted and demolished was because the Kebonharjo residents lived in a residence located precisely on land they had controlled for ± 40 years, located in Tanjung Mas Village, North Semarang District, Semarang City and when they occupied it. home, without distractions. All the land and buildings are heritage sites. Because these houses belong to residents, of course the land has already received the Ownership Certificate (SHM), and some have not yet received a certificate.

Meanwhile PT. KAI argued that it still holds ownership and has the right to demolish the building on the land, meaning that the land belongs to PT. KAI as presented in “Grondkaart Land Map No. W 17286 of 1962 at locations: Semarang, Kemijen, Semarang Tawang and the Semarang – Yogyakarta Cross Harbor.” Former Verponding Eigendom No. 69, based on Metbrief No. 877 dated 28 July 1853 and based on Land Ownership Deed No. 236 dated 22 June 1864, registered under the name "De Nederland Indische Spoorweg Maatschappij N.V.) has an area of approximately 159,832 m2 which is located in the Kebonharjo area, Semarang City. The land belongs to PT. Until now, KAI has never transferred its rights. to anyone and is still registered as an asset/fixed asset of PT. KAI. Based on the letter from the Minister of Finance of the Republic of Indonesia, General Department for the Development of State-Owned Enterprises Number: S-11/MK. 16/1994 dated 24 January 1995 to the Minister of Agriculture/Head of BPN that the land that has been described in Grondkaart is essentially the property of the state which is the property of PERUMKA which does not move now PT. KAI. For KAI land, land certificates cannot be printed in the name of another party

without the approval of the Minister of Finance of the Republic of Indonesia.

Normative Juridical Analysis of Grondkaart as Evidence of Land Rights in the Perspective of Indonesian Land Law

Control of land assets of PT. KAI existed before the Agrarian Law existed, and even existed before Indonesia became independent, so the lands controlled by PT. KAI currently has land status in accordance with the land law in force at that time, namely western land law, this lasted until the Agrarian Law was issued. Control of land assets of PT. KAI existed before the Agrarian Law existed, and even existed before Indonesia became independent, so the lands controlled by PT. KAI currently has land status in accordance with the land law in force at that time, namely western land law, this lasted until the Agrarian Law was issued[24]. Based on its history, Indonesian railways are characterized by the construction of railways carried out by the State Railway Company or Staat Spoorwegen (abbreviated as SS) which has been operating since 1878 and has its head office in Bandung and the Private Railway Company or Verenigde Spoorwegbedrijf (abbreviated as VS) which has been operating since in 1867 and is headquartered in Semarang. Land control at that time was marked by grondkaart. Grondkaart is a measurement letter or technical drawing and has a legal basis in the form of a decision (besluit) and/or determination (beschikking) which can be used as an initial reference for the process of proving land ownership rights[25].

Etymologically, Grondkaart originates from a mixture of the words "Grond" which means earth and "kaart" which means map or plan. So Grondkaart means regional map. Meanwhile, in terms of terminology, Grondkaart can be understood as a measurement document or technical drawing made from the order of measurements

[24] Nasrul, "Pemanfaatan Tanah Aset PT Kereta Api Indonesia (Persero) Divisi Regional II Sumatera Barat Oleh Pihak Ketiga."
[25] Sulistiowati Sulistiowati, Nurhasan Ismail, "Status Kepemilikan Dan Pemanfaatan Tanah Grondkaart Di Stasiun Depok Baru, Lenteng Agung, Dan Tanjung Barat."

and mapping of land which has decision guidelines that prove land ownership.

Meanwhile, Grondkaart is used to control land within Grondkaart, in accordance with the railroad crossing rights used by PT KAI to verify land control. The only evidence that PT KAI must reclaim land and buildings left by the Dutch railway company is this Grondkaart[26]. Grondkaart is used in terms of controlling and reclaiming land in Grondkaart, the right to railway land is used by PT KAI as a patent for land ownership. Grondkaart is just one piece of evidence that PT KAI must take over property involving land and buildings left by the Dutch railway company.

The result of creating a legal object inherited from the Dutch East Indies government, Grondkaart has a horizontal image of an area with land boundaries. Grondkaart is permanent and final, so it is not subject to government decisions that provide authority[27]. However, other conservationists state that Grondkaart is not proof of physical and legal ownership but is only the result of land control during the Dutch East Indies era, at which time there was a unified inheritance accompanied by the origin of the land. Therefore, no party can declare that he is completely correct unless proven by a court decision. If in another incident, Grondkaart would be convincing evidence to be presented in the courtroom because Grondkaart is a strong state guideline which of course cannot simply be replaced.

After obtaining permission from the SS, the land was measured and mapped using geodetic modeling by the Landmester (surveyor/cadastre), and the results were recorded in Grondkaart. Each Grondkaart must then be legalized for legalization purposes by the head of the land registration office and residents in accordance with the patent that has been applied. Therefore, Grondkaart was founded based on a land survey letter from Kadaster (National Land Agency)[28]. The data in Grondkaart includes the location of land and intersections, map overlays, land borders, scale and direction, year of

[26] Pahlevi, "Kekuatan Hukum GRONDKAART Dan Problematikanya Di Indonesia."
[27] Silvianna, "Grondkaart; Problematika Hukum Dan Penyelesaiannya (Analisis Kasus Antara PT Kereta Api Indonesia (Persero) Dengan PT Pura Barutama Kudus Jawa Tengah)."
[28] Silvianna.

approval, decisions approved by authorized officials, land acquisition lists, geographic and demographic areas, locations and/or depots and routes. trains, legends, and stakes/kilometers.

Grondkaart has significant capabilities, which are specifically equivalent to testamentary responsibility towards persons or confidential legal substances. Grondkaart has two functions and legal authority, namely[29]: (1) The purpose of ownership is to determine who owns the land; In particular, valid information can be demonstrated by the approval of the Grondkaart recorded by the cadastral authority (Pilgrim period Public Land Organization). In addition, Grondkaart has ownership of legal authority due to the inclusion of government officials in decisions regarding its functions. An explanation of the history of the land listed in the Grondkaart and the property rights mechanism recorded in the Grondkaart is contained in this official decree or decree. Apart from that, Grondkaart has legal authority in the form of government officials who, based on a decree from the Director of Public Works, Director of BUMN, or Director of Transportation, have the authority to validate and prove land ownership. (2). The parties who have an interest in the contents of Grondkaart and the purpose of its use are referred to as "interest functions".

The analysis obtained after presenting the case above is: In terms of terminology, Grondkaart can be understood as a measurement document or technical drawing created during the land measurement and land mapping process which has a legal basis in the form of a decision. prove land ownership.

So, we can analyze clearly that of course it is a type of legal certainty, such as a legal product in the form of a beschikking decision which is a form of application of formal law that assesses ownership formally and non-materially, which can be narrowly equated with a certificate but is not the same. As discussed previously, the Indonesian state does not adhere to positivism, where positivism can damage laws based on the Pancasila ideology. The Pancasila ideology underlies that all legal rules are enforced based on the Almighty God, thus the true bond of the Indonesian people to the state is not as strong as their

[29] Pahlevi, "Kekuatan Hukum GRONDKAART Dan Problematikanya Di Indonesia."

bond with God. So, if the rules made by the state violate what the community wants (the word "will" here is the true conscious freedom within the community to believe in, submit to a fundamental order within the community) then of course this is a violation of the law. Because the relationship between society and the state is only limited to providing order and not to take away all the will or ideals of society, whereas the law is a tool that arises from the will of society itself and the state carries it out. This formal boundary is what we need to emphasize in legalizing in Indonesia, while the material boundary is the true will of the people, where they believe that everything comes from their God so that the value of justice is the desire of the people in their hearts not to be confiscated by anyone but their God because they are considered the one who provide livelihoods so that fundamental rights are born in society[30].

Grondkaart only plays a supporting role in understanding that Grondkaart has the same capabilities as the confirmation letter of freedom of ownership claimed by PT. Trains in Indonesia. PT. Based on the provisions of the State Treasury Law and several court decisions, PT assets can be ratified, with the Indonesian Railways having the right to use Grondkaart's land. Trains in Indonesia. The following is an excerpt from the decision of the "Supreme Court of the Republic of Indonesia: 2505/K/Pdt/1989" and the decision of the "Supreme Court of the Republic of Indonesia Number: Supreme Court Legal Case, 1262/K/Dt/2014". , stated that the existence of Grondkaart was proof of the existence of rights. “Letter from the Minister of Finance to the Head of the National Land Agency No: This makes Grondkaart even more legitimate. In the decision S-11/MK.16/1994, a statement regarding Grondkaart is provided which functions as information regarding Perumka's ownership of the property. Perumka then changed its name to PT. KAI[31].

As in the case above, the state becomes a company which can also enjoy law, or civil relations and can even own land, but if you look at its function, it is not entirely wrong, because the efforts carried out by the state still contain elements of the public interest or common

[30] Atikah, “Kedudukan Surat Keterangan Tanah Sebagai Bukti Kepemilikan.”
[31] Silvianna, “Grondkaart; Problematika Hukum Dan Penyelesaiannya (Analisis Kasus Antara PT Kereta Api Indonesia (Persero) Dengan PT Pura Barutama Kudus Jawa Tengah).”

welfare. Call it PT. KAI, which is the business of PT. KAI provides facilities for the public so they can transport according to their wishes or interests to carry out daily activities or do business. Here the author does not discuss in too much detail the results of his transportation business, is it true that the public can also enjoy it? Directly, the community does not get any benefits apart from certain communities who invest capital in PT. KAI. Departing from this, if it is the people around the tracks or railway lines who are entitled to get the effects of the transportation business, perhaps this could be appropriate for applying the principles of land law in Indonesia because people outside the railway area are not affected by the environmental consequences that arise during the transportation process by PT. KAI. However, the reality is reversed, because grondkaart tends to simply seize land belonging to the community under the pretext of this evidence. So normatively it clearly violates justice by what PT did. the KAI.

Recognizing PT problems. PT often uses KAI's Grondkaart land as an environmental object. KAI needs to act immediately to save its assets. Regarding the arrangements that can be made by PT. KAI includes: (1) Register the Grondkaart land for Use and Management Rights; (2) Examining the evidence and historical background of the Grondkaart land; (3) Stakeholder cooperation, synchronization and synergy; (4) If a dispute arises, follow the mediation and deliberation procedures.

It is necessary to carry out land history research so that land-related disputes do not occur with PT KAI. The goal of soil history is to learn more about the origins of soil. The origin of the land is whether it belongs to a private person or community whether it is a legal entity or not[32].

Regulation of the Minister of Agriculture Number 1 of 1966 regulates that the government has authority over land rights which must be delegated to Administration and Use Rights so that they can be registered at the State Land Registration Office and obtain a certificate as evidence, this is adjusted to the Law which has already been implemented. Agricultural Issues Number 9 of 1965. This

[32] Wintoko, "Peralihan Hak Atas Tanah Milik Negara PT Kereta Api Indonesia (KAI) Ditinjau Dari Perspektif Hukum Perdata."

obligation is regulated by Railway Law Number 23 of 2007. According to Article 46(1), land in space for railway track purposes and land in space belonging to railway lines must be legalized in accordance with the Law in the field land. Furthermore, this law regulates in Article 86 that land managed by local governments or commercial organizations must be certified in accordance with the law in the land sector for the availability of building fire-fighting facilities[33].

To be able to synergize, PT requires the concept of synergy, synchronization and operational standards. To avoid confusion regarding the status of Grondkaart's land, KAI, and PT Badan Pertanahan have separated their decision-making functions. This is an effort to minimize and prevent disagreements between PT. KAI and BPN regarding the determination of applications for Certificates for Land Rights by other parties where the Grondkaart land belongs to PT. KAI[34].

Consideration and conciliation as well as the presence of experts to find mutually beneficial solutions to problems are alternative actions. In this way, there is confidence that all PT KAI land assets managed by PT KAI have clear rights which are adjusted to the Law on land as well as the socialization of SOPs for asset utilization which are followed by PT. KAI is obliged to quickly confirm assets related to hands that still do not have land use rights status. In this case PT. KAI partners with third parties to reach consensus and be responsible and commercially appropriate.[35]

Conclusion

The Pancasila state prioritizes the value of material justice which originates from the will of the people who have a strong relationship with their land, so that it can be equated with human rights.

[33] Saifuddin and Qamariyanti, "Kepastian Hukum Sertifikat Hak Milik Atas Tanah Atas Terbitnya Surat Keterangan Tanah Pada Objek Tanah Yang Sama."
[34] Fitri and Aini, "Analisis Yuridis Penyelesaian Sengketa Tanah Hak Milik Untuk Kepentingan Umum Di Indonesia."
[35] Tumba, "Tinjauan Yuridis Terhadap Kedudukan Kepemilikan Sertifikat Hak Atas Tanah Dalam Sistem Pembuktian Perdata."

Normatively, the state cannot arbitrarily control people's land rights, and the law must be in accordance with the wishes of the community, namely as a form of service by the state, not a form of confiscation by the state. Grondkaart is not stronger than a land certificate, where the form of a land certificate is considered stronger because it contains the will of the community to transfer it consciously and is not a form of confiscation. From a normative juridical point of view, Indonesian land law does not adhere to legal positivism in which Indonesian society is united by the awareness in their souls to will on the basis of Pancasila, so that their will cannot be concretized by the state in the form of any regulations, but state regulations remain as a means of order and realizing shared prosperity. The state should be able to place land rights as a lordship right by the local community if it is not liberated by the community itself, so it is not allowed to be arbitrary. Even though it is freed by the community, it is certain that the benefits of PT's business. The KAI of the surrounding community must also pay attention to the welfare of the surrounding community, remembering that Article 33 (3) of the 45 Constitution must be used for the welfare of the people. The public must be aware of the law and must also obey the state or government to create public order, if the state or government does not do things that undermine the law or justice.

References

Arif, M. Yasin Al. "Penegakan Hukum Dalam Perspektif Hukum Progresif." *Undang: Jurnal Hukum* 2, no. 1 (2019): 169–92. https://doi.org/10.22437/ujh.2.1.169-192.

Atikah, Noor. "Kedudukan Surat Keterangan Tanah Sebagai Bukti Kepemilikan." *Notary Law Journal* 1, no. 3 (2022): 263–89.

Brata, Ida Bagus, and Ida Bagus Nyoman Wartha. "Lahirnya Pancasila Sebagai Pemersatu Bangsa Indonesia." *Jurnal Santiaji Pendidikan* 7, no. 1 (2017): 120–32.

Budiartha, I Dewa gede Atmadja & Nyoman Putu. *Teori-Teori Hukum*. Malang: Setara Press, 2018.

Butarbutar, Elisabeth Nurhaini. *Metode Penelitian Hukum*. Bandung: Refika Aditama, 2018.

Fitri, Winda, and Zahratul Aini. "Analisis Yuridis Penyelesaian Sengketa Tanah Hak Milik Untuk Kepentingan Umum Di Indonesia." *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 3 (2021): 277–86. https://doi.org/http://dx.doi.org/10.31604/jips.v8i3.2021.277-286.

Intansari, Virgia, and Irene Eka Sihombing. "Grondkaart Analysis of PT KAI (Persero) as Proof of Land Ownership." *Reformasi Hukum Trisakti* 3, no. 4 (2021): 599–607. https://doi.org/https://doi.org/10.25105/refor.v4i2.13606.

Karini, Eti. "Kedudukan Grondkaart Sebagai Bukti Penguasaan Tanah (Studi Di PT. Kereta Api Indonesia (Persero) Kantor Devisi Regional IV Tanjung Karang)." *Jurnal Kepastian Hukum Dan Keadilan* 2, no. 2 (2021): 11. https://doi.org/10.32502/khdk.v2i2.3456.

Labib Mahdi, Indri Fogar Susilowati. "Analisis Yuridis Terhadap Sengketa Mengenai Perkara Hak Milik Atas Tanah Pada Putusan Kasasi Mahkamah Agung Nomor 1753 K/PDT/2015 (Studi Kasus Putusan Kasasi Mahkamah Agung Nomor 1753 K/PDT/2015)." *Novum: Jurnal Hukum* 9, no. 4 (2022). https://doi.org/https://doi.org/10.2674/novum.v0i0.42264.

Luthfi, A N. "Institutional Reform For Agrarian Reform Policy In The Era Of Joko Widodo-Jusuf Kalla's Reign." *BHUMI: Jurnal Agraria Dan Pertanahan* 4, no. 2 (2018): 140–63. https://doi.org/http://dx.doi.org/10.31292/jb.v4i2.276.

Nasrul, O K Y. "Pemanfaatan Tanah Aset PT Kereta Api Indonesia (Persero) Divisi Regional II Sumatera Barat Oleh Pihak Ketiga." *Soumatera Law Review* 2, no. 1 (2019): 150–71. https://doi.org/http://doi.org/10.22216/soumlaw.v2i1.3554.

Nugroho, Septian Ikhwan, Diyan Isnaeni, and M. Muhibbin. "Akibat Hukum Tanah Groondkart Yang Di Kuasai PT Kereta Api Indonesia Setelah Berlakunya UUPA Nomor 5 Tahun 1960." *Dinamika, Jurnal Ilmiah Ilmu Hukum* 27, no. 7 (2021): 2013–15.

Pahlevi, Farida Sekti. "Kekuatan Hukum GRONDKAART Dan Problematikanya Di Indonesia." *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 1 (2022): 69–82. https://doi.org/10.37680/almanhaj.v4i1.1522.

Priscila Putri Haneswara, Rahayu Subekti, Purwono Sungkowo Raharjo. "Penguasaan Dan Pengusahaan Tanah Oleh Warga Terhadap Aset PT Kereta Api Indonesia Di Stasiun Klaten Priscila Putri Haneswara Rahayu Subekti Purwono Sungkowo Raharjo Hukum Tanah Indonesia Diresmikan Dalam Undang-Undang Nomor 5 Tahun." *Jaksa: Jurnal Kajian Ilmu Hukum Dan Politik* 1, no. 4 (2023). https://doi.org/https://doi.org/10.51903/jaksa.v1i4.1394.

Rafiqi, Rafiqi, Arie Kartika, and Marsella Marsella. "Teori Hak Milik Ditinjau Dari Hak Atas Tanah Adat Melayu." *Jurnal Mercatoria* 14, no. 2 (2021): 16–21. https://doi.org/10.31289/mercatoria.v14i2.5852.

Rohman, Zahrah Farhataeni, and Heru Sugiyono. "Tinjauan Yuridis Pemberian Hak Kepemilikan Atas Tanah Negara Kepada Perorangan Atau Badan Hukum." In *Procceding: Call for Paper National Conference For Law Studies: Pembangunan Hukum Menuju Era Digital Society*, 978–79, 2020.

Rosana, Ellya. "Kepatuhan Hukum Sebagai Wujud Kesadaran Hukum Masyarakat." *Jurnal TAPIs* 10, no. 1 (2014): 1–25. https://doi.org/http://dx.doi.org/10.24042/tps.v10i1.1600.

Saifuddin, Sendy Salsabila, and Yulia Qamariyanti. "Kepastian Hukum Sertifikat Hak Milik Atas Tanah Atas Terbitnya Surat Keterangan Tanah Pada Objek Tanah Yang Sama." *Notary Law Journal* 1, no. 1 (2022): 31–48. https://doi.org/10.32801/nolaj.v1i1.2.

Silvianna, Ana. "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, no. 1 (2020): 70–83. https://doi.org/10.14710/ldjr.v3i1.7871.

Subekti, Rahayu. "Kebijakan Pemberian Ganti Kerugian Dalam Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum." *Yustisia Jurnal Hukum* 95, no. 2 (2016): 376–94. https://doi.org/10.20961/yustisia.v95i0.2816.

Sulistiowati Sulistiowati, Nurhasan Ismail, Taufiq El Rahman. "Status Kepemilikan Dan Pemanfaatan Tanah Grondkaart Di Stasiun Depok Baru, Lenteng Agung, Dan Tanjung Barat." *Jurnal Hukum & Pembangunan* 50, no. 4 (2021): 1004. https://doi.org/10.21143/jhp.vol50.no4.2868.

Tiffani, Michell, Sukirno Sukirno, and Irma Cahyaningtyas. "Penyelesaian Sengketa Batas Penguasaan Tanah Di Kawasan Hutan Antara Pt. Sidosari Multifarm Dengan Perhutani Kph Balapulang." *Notarius* 13, no. 2 (2020): 585–94. https://doi.org/10.14710/nts.v13i2.31079.

Tumba, Alvian B. "Tinjauan Yuridis Terhadap Kedudukan Kepemilikan Sertifikat Hak Atas Tanah Dalam Sistem Pembuktian Perdata." *Lex Privatum* 7, no. 7 (2018).

Ulima Fhadiah Ermahri, Betty Rubiati, Mulyani Djakaria. "Tinjauan Hukum Penguasaan Tanah Oleh Warga Di Kecamatan Tanjungsari Kabupaten Sumedang Terhadap Jalur Kereta Api Nonaktif." *Era Hukum* 19, no. 2 (2021): 125–47. https://doi.org/https://doi.org/10.24912/erahukum.v19i2.12182.

Utomo, Setiyo. “Penerapan Hukum Progresif Dalam Penyelesaian Konflik Agraria.” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 2 (2020): 33–43. https://doi.org/10.24090/volksgeist.v3i2.3998.

Wahyuddin, Wahyuddin, Abd. Hasan, and Johan Rahmatullah. “Menelisik Komprehensifitas Kebijakan Hukum Reforma Agraria Di Indonesia.” *Journal Kompilasi Hukum* 6, no. 2 (2021). https://doi.org/10.29303/jkh.v6i2.79.

Widiarto, Aan Eko. “Implikasi Hukum Pengaturan Hukum Acara Mahkamah Konstitusi Dalam Bentuk Peraturan Mahkamah Konstitusi.” *Jurnal Konstitusi* 16, no. 1 (2019): 23. https://doi.org/10.31078/jk1612.

Wintoko, Dhudy Hario. “Peralihan Hak Atas Tanah Milik Negara PT Kereta Api Indonesia (KAI) Ditinjau Dari Perspektif Hukum Perdata.” *Lontar Merah* 2, no. 1 (2019).

Yulia Chandra, Rizky, Iga Gangga Santi, and Agung Basuki Prasetyo. “Kekuatan Hukum Grondkaart Milik Pt. Kereta Api Indonesia (Studi Kasus Penguasaan Tanah Di Kelurahan Tanjung Mas Kota Semarang).” *Diponegoro Law Journal* 6, no. 2 (2017): 1–12. https://doi.org/https://doi.org/10.14710/dlj.2017.17381.

***

DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None.

ACKNOWLEDGMENT

None.

HISTORY OF ARTICLE

Submitted : January 18, 2024
Revised : April 19, 2024; May 5, 2024
Accepted : May 9, 2024
Published : May 30, 2024