Pandecta Research Law Journal
ISSN 1907-8919 (Print) 2337-5418 (Online)
Vol. 19 Issue 1 (2024) 57-92
DOI: https://doi.org/10.15294/pandecta.vol19i1.3847
Available online since: June 29, 2024

Ratio Decidendi of Judges Decisions on *Grondkaart* Land Disputes in Indonesia

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Abstract

The impact of the existence of Grondkaart Land throughout Indonesia in its development has led to conflicts that can be classified into 4 (four): first, between the community and PT KAI; second, Indigenous people with PT KAI; third, City/Regency Government with PT KAI; and fourth, Sultanate/Palace with PT KAI. In general, community members who have controlled and utilised the Grondkaart land for many years feel they have the right to apply for property rights to the local Land Office. Meanwhile, PT KAI continues to maintain that these lands are legitimate PT KAI assets based on the history of the Indonesian Nation which gave birth to the Land Map or Grondkaart as evidence of land control instructions by PT KAI. in this research, a normative juridical research method is used by using several approaches, namely the Statute Approach (Legislation Approach), Conceptual Approach (Concept Approach), Case Approach (Case Approach), and Comparative Approach (Comparative Approach) by using descriptive analytical methods that aim to describe precisely. From this, it causes a lawsuit in court as the final estuary where to seek

justice, but the Court Institution which is expected to be a place to find justice actually has a difference in views / Disparity between Judges in viewing Grondkaart Land evidence so as to cause legal uncertainty. From this legal uncertainty, rules must be created to minimise disparities among judges.

KEYWORDS *Ratio Decidendi, Judge's Decision, Grondkaart*

I. Introduction

NV *Nederlandse Indische Spoorwege Maatschaapij* (hereinafter referred to as NISM) was the first private railway company to carry out massive exploitation in the railway transportation sector and its existence even preceded the investment made by the state ten years later. The completion of the NISM period as one of the Dutch private companies specializing in Railways ended in Indonesia, causing the investment faucets for other alternative modes of land transportation to open. As well as buses/buses have a major influence on the people's economy amid the death of the train because buses have advantages including being able to transport people/goods over short distances, can stop at every place on the route passed.

This is also a milestone in the transition from rail to bus mode of transport, which has an impact on the destruction or deactivation of railway tracks in Indonesia so that it is not uncommon to find in several cities that railway tracks have changed their function to become houses, schools, markets, offices, roads, and others. The picture above indicates that there has been control of assets owned by Indonesian Railways in certain places controlled by individuals, legal entities, and government agencies outside PT KAI and even indigenous peoples.

Former *Eigendom* state land according to national agrarian law can be classified as follows:[1] The position of Grondkaart has the potential to be questionable, debatable, and even misused. So that it will cause no legal certainty and provide no legal protection. More details in understanding the legal issues regarding Grondkaart land are described in 3 (Three) problems, namely (1) philosophical, (2) juridical, and (3) sociological as follows:

First, philosophical problematics (based on philosophical reasoning) can be reviewed from 3 aspects of ontology, epistemology, and axiology as follows:

1) The ontological aspect of Grondkaart stems from the term besteming, land that is besteming (earmarked) for the benefit of the state will be given a Grondkaart. Grondkaart itself is linguistically derived from the Dutch language which consists of ***Grond*** meaning land and ***Kaart*** meaning map. The first legal force of Grondkaart was in 1895 (***Besluit van Gouverneur General*** dated 14 October 1895 No. 7) regarding Grondkaart as an official substitute for administrative evidence of land ownership (domain). The principle of domein verklaring or known as Domein Beginsel, Domein Doctrine, Domein Theory, or Domein Declaration is the principle of land ownership that developed during the Dutch colonial period in the Indonesian Archipelago. The Domein Verklaring principle contained in Agraris Wet 1987 states that "***Landsdomein is alle grond waarop niet door anderen recht van eigendom wordt bewezen***".

   This provision essentially means that all land on which no eigendom rights can be proven by a person is a domain (property) of

[1] Iing R. Sodikin Arifin, 'Pembinaan Yuridis Dalam Rangka Rapat Kerja Kantor Wilayah BPN Provinsi Jawa Timur Tahun 2019 Tanggal 26 April 2019' (Surabaya, 2019), 3.

the State.[2] However, After Indonesia's independence, the principle of *domein verklaring* which was used during the Dutch colonial administration has been abolished after the enactment of the UUPA which signifies that all colonial government regulations are no longer valid[3]. Dutch colonial government regulations no longer apply. This is contrary to the new conception known as *Hak Menguasai Negara* as stated in Article 2 of Law 5/1960 in paragraph (2) which states that 'on the basis of the provisions in Article 33 paragraph (3) of the Constitution in matters as referred to in Article 1, the earth, water, and airspace, including the natural resources contained therein, are at the highest level controlled by the State, as the organization of the power of all the people. Based on the above description, it can be concluded that the Land Grondkaart as a derivative of the conception known during the Dutch colonial period as proof of ownership is questionable because the change from the shift in the concept of ownership from the concept of domain to the concept of State Controlling Rights automatically obscures the position of the Land Grondkaart itself. Epistemological aspects that seek the nature or truth and structure of knowledge[4], it can be said that Grondkaart is an official substitute for administrative proof of land ownership as a consequence of land reserved for the benefit of the state will be given Grondkaart contained in (***Besluit van Gouverneur General*** dated 14 October 1895 No. 7) regarding Grondkaart as an official substitute

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[2] Cornelis Van Vollenhoven, *Orang Indonesia Dan Tanahnya, Angewandte Chemie International Edition, 6(11), 951–952.*, vol. 1854 (Yogyakarta: : Sekolah Tinggi Pertanahan Nasioal (STPN), 1923), xxiii.

[3] Muhamad Rafly and Abdul Halim, 'Perlindungan Hukum Masyarakat Adat Terhadap Asas Domain Verklaring Dalam Peraturan Perundang-Undangan Tentang Bank Tanah', *JURNAL USM LAW REVIEW* 6, no. 3 (4 December 2023): 1140, https://doi.org/10.26623/julr.v6i3.7351.

[4] Tira Reseki Pajriani et al., 'EPISTEMOLOGI FILSAFAT', *PRIMER : Jurnal Ilmiah Multidisiplin* 1, no. 3 (13 June 2023): 283, https://doi.org/10.55681/primer.v1i3.144.

for administrative evidence of land ownership. Administrative evidence of ownership of Grondkaart land when traced to Law 5/1960 there is no legal basis that strengthens or at least acknowledges the essence of the Grondkaart land. If traced more deeply, the rights of tenure over the land known in National Agrarian Law are sequential as follows:[5]

a. Rights of the Indonesian Nation (Article 1 of Law 5/1960)
b. Right of State Control (Article 2 of Law 5/1960)
c. Customary Law Communities' Ulayat Rights (Article 3 of Law 5/1960)
d. Individual Rights viz: Land rights (Article 4 of Law 5/1960)
   Primary: *Hak Milik, Hak Guna Usaha, Hak Guna Bangunan* granted by the state, Hak Pakai granted by the state (Article 16 of Law 5/1960).
   Secondary: *Hak Guna Bangunan* and *Hak Pakai* granted by the landowner, *Hak Gadai, Hak Usaha Bagi Hasil, Hak Menumpang, Hak Sewa*, and others (Articles 37, 41 and 53 of Law 5/1960).
e. Waqf Land (Article 49 of Law 5/1960 and Law No 41 of 2004)
f. Security Rights over Land: Mortgage Rights (Articles 23, 33, 39, 51 of Law 5/1960 and Law No. 4 of 1996 on Mortgage Rights).

The description of the types of land tenure under national land law above reinforces that Grondkaart land is not known in national agrarian law. Whereas the essence of land rights according to Rusmadi Murad, as also corroborated by Maria S.W. Sumardjono, is a concrete legal relationship between legal subjects (persons/legal entities) and legal objects (land) where the relationship can obtain guarantees of protection and legal certainty.[6] Guarantee of protection and certainty

[5] Boedi Harsono, *Hukum Agraria Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya* (Jakarta: Penerbit Djambatan, 2008), 264.
[6] Rusmadi Murad, *Menyingkap Tabir Masalah Pertanahan* (Bandung: Penerbit Mandar Maju, 2007), 71–72.

of three things, namely (1) type of use, (2) size of area (bulk), and (3) height. This restriction, according to Maria S.W. Sumardjono, is intended to show that the control of a person or entity over land is only limited to the upper part of the earth (substratum).[7] This is the researcher's question that the Grondkaart is at the top of the earth (substratum) but the question then is what about the area (bulk) and height (height) as intended to be unclear.

2) Axiology comes from Axios which means useful.[8] The benefits or functions of the Grondkaart are based on Agraris Wet (Staatblad 1870 No. 55) and Agraris Besluit (Staatblad 1870 No. 118). The function of the Grondkaart land map is made for the State Government and no land rights are required. Based on the principle of Domein in Agrarian law, government agencies are not given land rights certificates (Article 1 Agrarisch Besluit). This is contrary to Law 5/1960, which states that to provide legal certainty and legal protection to holders of land rights, certificates are given as proof of land rights. This is reinforced in Article 13 paragraph 3 of Government Regulation No. 10/1961 on Land Registration (PP 10/1961), which states that the evidence of registered land rights is called a **Certificate**, which is a copy of the land book and measurement letter after being sewn together with a cover paper whose shape is determined by the Minister of Agrarian Affairs. The certificate rule is further clarified in Article 1 point 20 of PP 24/1997 which states that the certificate is a proof of rights as referred to in Article 19 paragraph (2) letter c of Law 5/1960 for land rights, management rights, waqf land, ownership rights of apartment units, and mortgage rights, each of which is recorded in the relevant land book. Based on the description above, it can be concluded that since

[7] Maria Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi, Sosial Dan Budaya* (Jakarta: Kompas, 2008), 22–23.

[8] Bahrum, 'ONTOLOGI, EPISTEMOLOGI DAN AKSIOLOGI' 8, no. 2 (2013): 35, https://doi.org/10.24252/.v8i2.1276.

the beginning of the institutionalization of Grondkaart land, it was very weak in its proof because in its day for the State Government, Grondkaart land did not require land rights, so it is clear and very reasonable that Grondkaart land does not have strong legal certainty and legal protection.

Second, on juridical problems related to Grondkaart Land in Article 49 paragraph (1) of Law Number 1 Year 2004 concerning State Treasury confirms that "*State / regional property in the form of land controlled by the Central / Regional Government must be certified in the name of the government of the Republic of Indonesia/government*" the area concerned in this study is PT Kereta Api Indonesia. In line with that Article 46 paragraph (1) confirms that "*Land located in the space belonging to the railway line and the railway line benefit space is certified by statutory regulations*". Then reinforced by Article 86 of the Law A quo also confirms that "*Land that has been controlled by the Government, Regional Government or Business Entity in the context of the development of railway infrastructure, certified by statutory provisions in the field of land*". The problem is that PT KAI does not physically control the land, it is the residents who control it, whereas if we refer to PP 24/1997 the Right Subject must control the Land to be registered. So that PT.KAI experienced obstacles in certifying its assets.

About the right of occupation by PT KAI, at the time of the enactment of Law 5/1960, the Grondkaart lands were the best rights of DKA. The theory of beheer originated from the implementation of the principle of "*Domein Verklaring*" or "*Domein Statement*" as stipulated in Article 1 of the 1870 Agrarisch Besluit, then all lands free from the control of a person based on Customary law or Western law are considered free state land (*vrijlandsdomein*) which means owned and controlled by the state. Furthermore, further regulation of immovable objects as stipulated in Staatsblad 1911 No. 110, which was last amended by Staatsblad 1940

No. 430, such immovable objects are under the control of the department that budgets in its budget to finance the maintenance of such objects.[9]

Based on Regulation of the Minister of Agrarian Affairs No. 9 of 1965, it is confirmed that the land controlled by government agencies with the right of control (*beheer*) since 24 September 1960 was converted into the Right of Management and the Right of Use is valid as long as it is used. *Hak Pakai* and *Hak Pengelolaan* are born after the right of control over State land is registered with the Land Registry Office and a Hak Pakai or *Hak Pengelolaan* certificate is issued as proof of the right.[10] However, the certification was hampered because the land was physically occupied by the community, resulting in a dispute that has not ended until now.

Third, on sociological problems, the existence of Grondkaart throughout Indonesia has resulted in conflicts that can be classified into 4 (four): first, between the residents and PT KAI; second, Indigenous people with PT KAI; third, Government with PT KAI; and fourth, Sultanate/Palace with PT KAI. In general, citizens who have controlled and utilized the Grondkaart land for many years feel they have the right to apply for property rights to the local Land Office. Meanwhile, PT KAI continues to maintain that these lands are legitimate PT KAI assets based on the history of the Indonesian Nation which gave birth to the Land Map or Grondkaart as evidence of land tenure by PT KAI.

In cases handled by the court, the parties to the dispute above can be categorized into a typology of disputes consisting of 4 (four), namely:

1) The SHM dispute that arose over Grondkaart land;
2) HPL dispute arising over Grondkaart land;
3) HGB dispute over Grondkaart land; And
4) Dispute regarding sale and purchase and rental of Grondkaart land;

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[9] Arie Sukanti Hutagalung dan Oloan Sitorus, *Seputar Hak Pengelolaan* (Yogyakarta: STPN Press, 2011), 11.

[10] Urip Susanto, 'Kewenangan Pemerintah Daerah Terhadap Hak Penguasaan Atas Tanah', *Jurnal Dinamika Hukum* 12, no. 1 (2012): 191.

Based on the description above, the problem formulations of this research are: How is the Ratio Decidendi of Judges' Decisions on Grondkaart Land Disputes in Indonesia? The research method used in this research is normative juridical with a statutory approach, conceptual approach, and case approach. Types and sources of legal materials used, are primary legal materials, secondary legal materials, and tertiary legal materials with material collection methods through literature studies. The legal material analysis technique used in this research is a qualitative analysis using content analysis techniques.

This research is a normative juridical writing in which this writing will explain the juridical basis for the position of Grondkaart land, dispute resolution and formulate findings on the concept of future dispute resolution regarding the existence of Grondkaart land disputes. From the type of research chosen in this case, the approach method used in this writing is to use the Statute Approach (Legislation Approach), Conceptual Approach (Concept Approach), Case Approach (Case Approach), and Comparative Approach.[11] The writing specification used is descriptive analytical which aims to describe precisely.[12] This means analysing the juridical basis of the position of Grondkaart land, law enforcement and formulating the findings of the concept of dispute resolution regarding Grondkaart land in the future so that conclusions can be drawn from all the results of the writing. As stated by Soerjono Soekanto that descriptive analysis writing is intended to provide data that is as accurate as possible about humans, circumstances or certain symptoms. The purpose is to reinforce hypotheses, in order to strengthen old theories or in the framework of compiling new theories[13].

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[11] Peter Mahmud Marzuki, *Penelitian Hukum*, Pertama Ce (Jakarta: Kencana Prenada Media Group, 2007), 93.

[12] Amiruddin & Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2003), 25.

[13] Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, 1 Cet. 11 (Jakarta: Rajawali Pers, 2004), 10.

II. *Grondkaart* Land Disputes in Indonesia

In Indonesia, disputes often occur due to the existence of land objects complained about by someone because of objections and demands for priority land rights and ownership in the hope of obtaining a fair settlement without partiality[14]. where in percentage terms land disputes always experience a significant increase[15], including railway land, railway land occurs because there are several different views from residents, companies, PT KAI, and even judges as law enforcers about how the legal force in viewing Grondkaart certificates as proof of legal ownership and has legal force over the disputed land.

Of the many decisions that discuss cases related to land Grondkaart disputes, there are 10 (ten) examples of decisions where the typology of disputes occurs regarding issues divided into 4 (four), namely:

1) Dispute over SHM issued on Grondkaart land;
2) Dispute over HPL issued on Grondkaart land;
3) Dispute over HGB issued on Grondkaart land; and
4) Dispute over sale and lease of Grondkaart land.

For more details, researchers describe 10 (ten) decisions on Grondkaart land as follows.

[14] Hamidi Hamidi and Moh Abdul Latif, 'Penyelesaian Sengketa Pertanahan Di Wilayah Madura Secara Mediasi Oleh Badan Pertanahan Nasional', *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam* 12, no. 1 (29 June 2021): 52, https://doi.org/10.21043/yudisia.v12i1.10546.

[15] Willya Achmad, 'Konflik Sengketa Lahan Dan Strategi Penyelesaian Di Indonesia', *Kolaborasi Resolusi Konflik* 6, no. 1 (2024): 9, https://doi.org/10.24198/jkrk.v6i1.53280.

Judicial Review Decision No. 437/PK/Pdt/2015 *jo.* Cassation Decision No. 1262 K/Pdt/2004 jo. Tanjungkarang High Court Decision No. 14/Pdt/2003/PT.TK *jo.* District Court Decision No. 34/Pdt/2002/PN.TK

a. *Parties*

Mrs Linda Surjati and the heirs of Ibrahim Cokro **versus** PT Kereta Api (Persero)

b. *Object of Dispute*

Serifikat No. 17/ to 7 January 1975 and on 15 March 1975 transferred to Mrs Linda Surjati **against** Grondkaart No. 10 of 1913 located at Jalan Teuku Umar / Jalan Duku, Kelurahan Pasir Gintung (now numbered 1 to 9) Tanjungkarang, Bandar Lampung, with an area of approximately 1,815 m 2 (one thousand eight hundred fifteen square metres).

c. *Ratio Decidendi of the Judge in assessing Grondkaart evidence*

According to Article 3 paragraph (2) of Regulation of the Minister of Agrarian Affairs Number 9 of 1965 on the Implementation of Conversion of Tenure Rights over State Land and Provisions on the policy regarding rights that have not been registered at the Land Registration Office, the Implementation of the Conversion is only carried out after the right holder comes to register it as referred to in Article 9 paragraph (3) **(Vide Decision on Judicial Review of the case a quo, Page 23)**.

That related to the regulation is the Regulation of the Minister of Agrarian Affairs Number 1 of 1966 concerning Registration of Rights of Use and Management in Article 1 states: In addition to Hak Milik, Hak Guna Usaha, and Guna Bangunan, they must also be registered in accordance with the provisions of PP 10/1961:

1. All Rights of Use, including those acquired by Departments, Directorates, and Swatantra regions as referred to in Minister of Agrarian Affairs Regulation Number 9 of 1965;

2. All Management Rights as referred to in the regulation of the Minister of Agrarian Affairs Number 9 of 1965, based on the above provisions, then the photocopy of Grondkaart Number 10 of 1913 without the original, must be declared invalid, which was made as the basis of **the consideration of the Tanjungkarang District Court must be ruled out (Vide Decision on Judicial Review of the case a quo, pp. 23-24).**

Judicial Review Decision No. 699/PK/Pdt/2014 jo Cassation Decision No. 1108K/Pdt/2005 jo Surabaya High Court Decision No. 367/Pdt/2003/PT.SBY jo Surabaya District Court Decision No. 384/Pdt.G/2003/PN.SBY

a. *Parties*

PT Kereta Api Indonesia (Persero) **against** Sanusi, Nahir, Adrianto, Hartini (Suhartini), Masripah, Nyai, Andi Nukanah, Rector of Widya Mandala Catholic University

b. *Object of the Case*

A plot of land obtained based on the Nationalisation of NV OJS (*Oost Java Stoomtram Maatschappij*) or Grondkaart Emplacement Groedo covering an area of approximately 1.8 Ha located on Jalan Dinoyo Kavling Number 52, 54 and 56, Keputran Village, Tegalsari District, Surabaya City **against** six units of official housing buildings for the first time occupied by each: Machmud occupied official residence Number 52, Soebadi occupied official residence Number 54, Nah IR occupied official residence Number 56, Sutanto occupied official residence Number 56A, Soedjoko occupied official residence Number 56B, Ngali occupied official residence Number 56C.

c. *Ratio Decidendi of the Judge in assessing Grondkaart evidence*

The object of dispute in this case is land with Building Rights Title Certificate No. 415, measurement letter No. 126/2002, Building Rights Title Certificate No. 416, measurement letter No. 123/2002, and Building Rights Title Certificate No. 417, measurement letter

No. 124/2002, each of which is located on Dinoyo Street Surabaya, all of which have changed to the Diocese of Surabaya as the right holder **(Vide Judgment of Judicial Review of the case a quo, Page 35)**.

That the Diocese of Surabaya is not included as a party in this case so the parties in this case are incomplete and therefore the Plaintiff's claim cannot be accepted as has been considered in the decision of the Surabaya District Court Number 384/Pdt.G/2003/PN.Sby., dated 27 January 2004 **(Vide Decision on Judicial Review of the case a quo, Page 36)**.

Therefore, the Decision of the Supreme Court Number 1108 K/Pdt/2005, dated 22 March 2007 jo. Decision of the Surabaya High Court Number 367/Pdt/2004/PT. Sby, dated 15 September 2004 cannot be sustained anymore **(Vide Judgment of Judicial Review of the case a quo, Page 36)**.

Cassation Decision No. 904 K/Pdt/2014 jo High Court Decision No. 381/Pdt/2013/PT.BDG jo District Court Decision No. 13/Pdt.G/2012/PN.CMS.

a. *Parties*

Ciamis Regional Government CQ. Regent of Ciamis **against** PT Kereta Api Indonesia (Persero)

b. *Object of the Case*

A plot of land measuring + 15,447 m2 (fifteen thousand four hundred forty-seven square meters) formerly known as Pananjung (Pangandaran) Station Emplacement located formerly known as Jalan Bulak Laut RT 002 RW 002 Pangandaran Village Pangandaran Subdistrict Ciamis Regency, now known as Jalan Pantai Barat RT 005 RW 004 Pangandaran Village Pangandaran Subdistrict Ciamis Regency **against** Land Grondkaart No. 22 A dated 01 May 1917 (hereinafter referred to as the case object land) obtained by the

Plaintiff from the Dutch Government Railway Company/Staats Spoorwagen/SS since the independence of the Republic of Indonesia. 22 A dated 01 May 1917 (hereinafter referred to as the case object land) obtained by the Plaintiff from the Dutch Government Railway Company/Staats Spoorwagen/SS since the independence of the Republic of Indonesia.

c. *Ratio Decidendi of the Judge in assessing Grondkaart evidence*

That during the process of evidence, the Cassation Respondent originally the Appellant/ Plaintiff produced the original and submitted a photocopy of the Grondkaart in question (as Exhibit P.I), and after the Cassation Petitioner originally the Appellant/ Defendant examined it in court, only one signature was found in the bottom right corner which read "*de chef van de aanleg der lijn B/Pi.* ", which was translated by expert Djoko Marihandono as meaning the Section Head of the Banjar-Parigi Line and in the bottom left corner it reads "*de Resident der Preanger....*" which expert Djoko Marihandono translated as Resident of Priangan (without signature) so that it is clear and indisputable that Exhibit P.1 does not fulfill the legality of being an exhibit. does not fulfill the legality to become evidence of rights by applicable regulations, because evidence P.1 does not have the endorsement of the Head of the Cadastral Office and the Resident. So it is clear that to fulfill legality, a Grondkaart or land map to become evidence of rights for the legal entity *Staats spoorwegen* at that time must be endorsed by the Head of the Cadastral Office and Resident where the land map is located. Whereas in Exhibit P.1 only one signature was found, which according to the expert testimony submitted by the Cassation Respondent, originally the Appellant, in the name of Djoko Marihandono, was the signature of the Head of the Banjar Parigi Line Section. In addition, in Exhibit P.1, there is no stamp or seal from the agency that issued the Grondkaart, whereas as is known, the

administration during the Dutch East Indies Government was very neat and systematic. Therefore, Grondkaart No. 22A (Exhibit P.1) does not meet the requirements as stipulated by Ordinance No. 259 dated 11 May 1927, hence Grondkaart does not meet the legality as evidence of rights to land ownership. **(Vide Cassation Decision in the case a quo, pp. 25-26).**

That Grondkaart is a product of the Dutch colonial era that was valid before Indonesia's independence, to be recognized and provide legal certainty, then after the enactment of Law 5/1960 must be registered by the agency concerned. This is in line with the opinion of Expert Djoko Marihandono who stated that Grondkaart is a valid proof of ownership from the past until now, but it becomes a problem because according to the regulations, all land must be certified. So, in the expert's opinion, the step that must be taken by PT KAI is to adjust the ownership of existing assets with the current regulations. Expert Morini Basuki, at the trial also explained that Grondkaart is only a map drawing and not proof of land ownership. Grondkaart holders who want the status of their land can request it by registering it. Grondkaart cannot be equated with *metbrief*, because *metbrief* must be made by an authorized agency. This is of course by Article 19 paragraph (1) of Law 5/1960, which states that to ensure legal certainty, the government shall conduct land registration throughout the territory of the Republic of Indonesia by the provisions regulated by Government Regulation **(Vide Cassation Decision on the case a quo, Page 28).**

The lands included in the Grondkaart are not necessarily converted into land use rights or management rights under the control of the Grondkaart holder. This is by the Regulation of the Minister of Agrarian Affairs No. 1 of 1966 on the Registration of Rights of Use and Management Rights in Article 1, which states that "in addition to the right of ownership, the right to cultivate and the

right to build, it must also be registered according to the provisions of PP 10/1961, namely:

a) All rights of use including those acquired by departments, directorates, and self-governing regions as referred to in Minister of Agrarian Affairs Regulation No. 9 of 1965;
b) All management rights as referred to in Minister of Agrarian Affairs Regulation Number 9 of 1965.

Expert Morini Basuki, at the trial, argued that after the enactment of Law 5/1960, there were still many western land rights that had not been converted and registered according to Law 5/1960, therefore the Indonesian Government issued Presidential Decree No. 32 of 1979, the essence of which was that the lands that had not been registered were given a grace period no later than 24 September 1980. The enactment of Law 5/1960 automatically revoked several regulations regarding land law that were in effect at that time and all western land rights became state land. Thus, anyone who wants to control and use the land must register by applying for rights, if it is not taken care of, then the land becomes state land as the ruler and owner of the land, as well as to PT KAI if it wants to control the land which is the object of dispute in this case, it must register by applying for rights. Furthermore, expert Morini Basuki explained that with the enactment of Law 5/1960, holders of Western rights (eigendom, obstacle, or impact) who still need their rights, were given the opportunity until 24 September 1980 to register their rights to have strong proof of ownership rights. Consequently, if an entity does not register the land it controls by the deadline of 24 September 1980, its rights will be extinguished. For agencies that have a map drawing of a piece of land such as a Grondkaart or only have a letter of measurement, but do not proceed with registering it to apply for its rights (so that a certificate is issued), then the letter of measurement or map drawing that is owned becomes useless. So if it is still possible,

PT KAI is the holder of Grondkaart for the lands it controls, why not apply for its rights, so that the Grondkaart-Grondkaart it owns can be issued a certificate as proof of rights that have been mandated since the promulgation of the Presidential Regulation instead of Law Number 19 of 1960 concerning State Companies which states that without prejudice to the provisions in this Government Regulation instead of Law and its implementing regulations, then all kinds of Indonesian laws apply to the legal entities referred to in this Government Regulation instead of Law, which was then born Law 5/1960 and all its implementing regulations. Is that not enough to be used as a basis for the Judge in deciding the case? **(Vide Cassation Decision on the case a quo, pp. 29-30)**.

Cassation Decision No. 1192 K/Pdt/2016 jo High Court Decision No. 328/Pdt/2015/PT.SBY jo Surabaya District Court Decision No. 61/Pdt.G/2014/PN.SBY

a. *Parties*

PT Kereta Api Indonesia (Persero) Operation Region 8 Surabaya **against** Suradi, S.H., as President Director of PT MARGO RAHAYU

b. *Object of the Case*

A plot of land covering an area of ± 38,000 m². located at Sidotopo station Emplacement Sidotopo Lor Street Surabaya is an asset of PT Kereta Api Indonesia (Persero) Operation Area 8 Surabaya former Dutch railway company as recorded in the drawing of the land map (Grondkart) Number E.2084/W dated 27 March 1928 **against** the base of the Right to Use Land covering an area of + 38,000 m², located at Jl. Sidotopo Lor Number 68 A Surabaya to the Surabaya City Government (Pemkot) and agreed to give permission, as stated in the Agreement Letter Number 4100/740, dated 25 October 1973.

c. *Ratio Decidendi of the Judge in assessing Grondkaart evidence*

That the Judex Facti in its legal considerations has erred in applying the provisions stipulated in Government Regulation No. 8 of 1953 on the Control of State Lands (hereinafter referred to as "Government Regulation No. 8/1953") and Minister of Agrarian Affairs Regulation No. 9 of 1965 on the Implementation of Conversion of Tenure Rights over State Lands (hereinafter referred to as "Minister of Agrarian Affairs Regulation No. 9/1965"), such error can be seen in the Judex Facti's legal considerations on page 41 (forty-one) to page 42 (forty-two) of Surabaya District Court Decision No. 61/Pdt. G/2014/PN.Sby **(Vide Decision of the Court of Cassation in the case a quo, Page 29).**

That the Disputed Object Land is a Right of Use land owned by the Cassation Petitioner/ Defendant based on a land map or Grondkaart Number 2084/W Dated 27 March 1928, from the Dutch Government at that time (vide Exhibit T-1.a) covering an area of 38,000 m² (thirty-eight thousand square meters) which originally belonged to the Dutch Government Railway Company called *Staats Spoorwegwn* (SS) **(vide Decision of the Court of Cassation in the case a quo, Page 29).**

That the Cassation Petitioner/ Defendant was formerly a Djawatan Kereta Api Republik Indonesia (hereinafter referred to as "DKARI") formed under the Ministry of Transportation of the Republic of Indonesia Decree No. 1/KA dated 23 October 1946 to manage railways throughout the territory of the Republic of Indonesia. Over time, DKARI underwent several name changes, and most recently became PT KAI (in the case of the Cassation Applicant/Defendant), with the following historical description:

1. Announcement of the Minister of Transportation, Power and Public Works Number 2 dated 6 January 1950 which states that:

"Since 1 January 1950 DKARI and *Staats Spoorwegen* [SS]/*Verenigde Spoorwegbedrijf* [VS] are combined into one Djawatan under the name Djawatan Kereta Api (DKA). All the assets, rights, and obligations of DKARI starting from 1 January were transferred to the DKA.";

2. Government Regulation of the Republic of Indonesia No. 22/1963 ("GR No. 22/1963"), DKA was transformed into the State Railway Company (PNKA). In Chapter I, Article 1 paragraph (3) of PP No. 22/1963, it is stated that: "All rights and obligations, equipment and assets, as well as the business of Djawatan Kereta Api, are transferred to the State Railway Company";
3. Government Regulation of the Republic of Indonesia Number 61 Year 1971 ("PP Number 61/1971"), PNKA was changed to Perusahaan Djawatan Kereta Api (PJKA). Article 3 paragraph (2) of PP No. 61/1971 emphasizes that: "All businesses and activities, all employees, as well as all assets and liabilities of the State Railway Company shall be transferred to the said Jawatan Company (PERJAN), provided that the composition and value of the assets and liabilities of the State Railway Company which are transferred to the said Jawatan Company are as stated in the closing balance sheet (liquidation) of the State Railway Company which has been examined by the Directorate of State Accountants and approved by the Minister of Transportation";
4. Under Government Regulation No. 57/1990 ("PP No. 57/1990"), PJKA was transformed into Perusahaan Umum Kereta Api (Perumka). Article 2 paragraph (2) of Government Regulation No. 57/1990 states: "With the transfer of the form of Railway Service Company (Perjan) into a Public Company (Perum) as referred to in paragraph (1), PJKA is declared dissolved at the time of the establishment of the Perum with the

provision that all rights and obligations, assets and including all PJKA employees existing at the time of its dissolution shall be transferred to the relevant Perum.";

5. Government Regulation of the Republic of Indonesia Number 19 of 1998 ("PP Number 19/1998"), Perumka changed into PT KAI. Article 1 paragraph (2) of GR No. 19/1998 states: "With the transfer of form as referred to in paragraph (1), the Railway Public Company (Perum) is declared dissolved at the time of the establishment of the Company (Persero), provided that all rights and obligations, assets and employees of the Railway Public Company (Perum) existing at the time of its dissolution shall be transferred to the relevant PT KAI (Persero)" **(Vide Cassation Decision in the case a quo, pp. 29-31).**

Cassation Decision No. 3404 K/Pdt/2017 jo. High Court Decision No. 369/PDT/2016/PT.SMG jo. District Court Decision No. 4/Pdt.G/2015/PN.Bla

a. *Parties*

Anita Kumala Sari, Sugianto, Kiki Sanjaya, Puspita Sari, Hartono Adi Wibowo, Soegiarto, Head of PT Kereta Api Indonesia (Persero) Operating Region 4 Semarang, President Director of PT Kereta Api Indonesia (Persero) Central, Minister of Transportation of the Republic of Indonesia Ministry of Transportation of the Republic of Indonesia **against** Dr. Soegiarto Soehardjo, Sp.PA(K)

b. *Object of the Case*

Land Grondkaart Number 21 of 1939 including the Cepu area (Semarang Joana Stoomtam Mij N.V. Lijn Rembang - Blora - Tjepoe) which is in dispute, with an area of ± 440 m2 (approximately four hundred and forty square meters) located at Jalan Raya Cepu Number 7, 7A, 7A-1, 7B, 7C, 7C-1, and 7D, RT.002 RW.003, Cepu Village, Cepu Subdistrict, Blora Regency **against** Certificate of

Title Number 1533, Situation Drawing Number 3296/92, dated 10 September 1992, in the name of the right holder Dr. Soegiarto Soehardjo

c. *Ratio Decidendi of Judges in assessing Grondkaart Evidence*

That the disputed object is by Certificate of Title No. 1533 which has been owned by the Plaintiff in good faith since 1992, originating from a sale and purchase made before a PPAT dated 1 July 1992 so that based on the provisions of Article 32 and PP 24/1997 for Land Parcels that have been legally issued certificates in the name of the person who obtained the land in good faith and controls/collects rental rights, then other parties who feel they have rights to the land can no longer demand the exercise of these rights if within 5 years of the issuance of the certificate concerned do not file an objection/question to the National Defence Agency or file a lawsuit in court **(Vide: Cassation Decision on the Case a quo, Page 21).**

That, after all, the objection in the form of Grondkaart (on land No. 21 of 1939) Exhibit TVIII is only a photocopy and is not supported by other evidence, is not valid evidence **(Vide: Cassation Decision of the Case a quo, Page 21).**

Judicial Review Decision No. 134 PK/Pdt/2017 jo Cassation Decision No. 478 K/Pdt/2013 jo High Court Decision No. 348/PDT/2011/PT. MDN jo District Court Decision No. 374/Pdt.G/2010/PN. Mdn.

a. *Parties*

Wendy Auda, Nensy, Lie Kin Sin, Lina, Liem Weng Howa, Yamin, Feny Farida, Amir Kusno **against** PT Kereta Api Regional Division I North Sumatra

b. *Object of the Case*

Plaintiff I had control of a 242 m^2 plot of land located at Jalan Wahidin Jalan P-12, Pandau Hulu I Village, Medan Kota Sub-District, Medan City; Plaintiff II had control of a 423.5 m^2 plot of

land located at Jalan Wahidin Jalan P-14, Pandau Hulu I Village, Medan Kota Sub-District, Medan City; Plaintiff III had control of a plot of land measuring 400 m² located at Jalan Wahidin Jalan P-15, Pandau Hulu I Village, Medan Kota Sub-District, Medan City; Plaintiff IV had control of a plot of land measuring 418.8 m² located at Jalan Wahidin Jalan P-16, Pandau Hulu I Village, Medan Kota Sub-District, Medan City; Plaintiff V controls a plot of land measuring 161 m² located at Jalan Wahidin Jalan P-12-P, Pandau Hulu I Village, Medan Kota Sub-District, Medan City; Plaintiff VI controls a plot of land measuring 249.6 m² located at Jalan Wahidin Jalan P-6 Medan, Pandau Hulu I Village, Medan Kota Sub-District, Medan City; Plaintiff VII controls a plot of land measuring 243.75 m² located at Jalan Wahidin Jalan P-2 Medan, Pandau Hulu I Village, Medan Kota Sub-District, Medan City; Plaintiff VII controls a plot of land measuring 427.5 m² located at Jalan Wahidin Jalan P-4 Medan, Pandau Hulu I Village, Medan Kota Sub-District, Medan City; Plaintiff VII controls a plot of land measuring 427.5 m² located at Jalan Wahidin Jalan P-4 Medan, Pandau Hulu I Village, Medan Kota Sub-District, Medan City **against** Land of the railway company *N. V. Deli Spoorweg Maatscappij* which was nationalised was measured, mapped and then described in the Grondkaart.

c. *Ratio Decidendi of Judges in assessing Grondkaart Evidence*

Whereas, the Judex Facti (Decision of the Medan High Court Number 348/PDT/2011/PT MDN.) page 5 has taken into consideration as follows: That based on Government Regulation No. 41 of 1959, State Gazette No. 87 of 1959 indicating the implementation of the Nationalisation of N.V.Deli Spoorweg Maatschappij and PN.Kereta Api (now PT KAI) based on the Deed of Establishment of PN.Kereta Api based on Government Regulation No. 22 of 1963, State Gazette No. 43 of 1963, PN. Kereta Api and

then until now it has changed into a State company into a Jawatan company then into a Public Company (Perum) and finally into a Persero Company based on Government Regulation Number 19 of 1998, all of which shows the takeover of all assets of N.V. Deli Spoorweg-Maatschappij into assets owned by PT KAI (PT Kereta Api Indonesia) including the land in question transferred to land owned by PT KAI **(Vide: Judgment of Judicial Review in the case a quo, Page 16).**

That evidence T-9 shows that the land which is the object of dispute is an asset of PT KAI, because in accordance with the provisions of Law No. 86 of 1958 (LN. No. 162 of 1958) it has been determined that all railway assets in North Sumatra which formerly belonged to N. V. Deli Spoorweg Maatschappij have been nationalised to belong to the government of the Republic of Indonesia, namely the former PN Kereta Api now belongs to PT KAI (PT Kereta Api Indonesia) **(Vide: Judgment of Judicial Review in the case a quo, Page 18).**

Cassation Decision No. 1323 K/Pdt/2017 jo High Court Decision No. 446/PDT/2016/PT.DKI jo District Court Decision No. 192/Pdt.G/2015/PN. Jkt Pst

a. *Parties*

Roy Charles, Gary Geovani, Shelvie Hamenda **against** PT Kereta Api Indonesia Daerah Operasi I (PT KAI DAOP I)

b. *Object of the Case*

A plot of land of former Western Title ex. Eigendom Verponding Number 12104, which he had occupied since 1946, with an area of ± 3050 m2, located at Jalan Garuda Number 21, RT 015, RW 001, Gunung Sahari Selatan Urban Village, Kemayoran District, Central Jakarta City against Grondkaart 4e Land Number 6 of 1929 concerning Land Map of Kemayoran Station Emplacements is in the

possession and has the status of right to use owned by Djawatan Kereta Api which is currently PT Kereta Api Indonesia (Persero).

c. *Ratio Decidendi of Judges in assessing Grondkaart Evidence*

That the Judex Facti did not consider the results of the local examination conducted on 30 October 2015 which found facts:

1. That it is true that the land in question is located at Jalan Garuda Number 21 RT 015 RW 001, Kel. Gunung Sahari Selatan, Kec. Kemayoran, Central Jakarta, with the following boundaries:
   North : East of Gunawan's house
   East : PT KAI land (station area)
   South : Garuda Street
   West : Gang Buntu
   As argued in the lawsuit of the Plaintiff/Case Petitioner **(Vide: Judgement of Judicial Review in the case a quo, pp. 30-31)**;
2. That it is clear that there is a permanent red fence that separates the land in question from the land area owned by PT KAI (Defendant I), where the land in question is outside the fence. This shows that the land in question is not an asset of Defendant I (PT KAI) **(Vide: Judgement of Judicial Review in the case a quo, Page 31).**

That in relation to the fact that Defendant I (PT KAI) allowed the Plaintiffs to control and occupy the house and land in question for 65 years, the argument of Defendant I that Defendant I had provided housing facilities to H.R. Pichel who had retired as an employee of Defendant I in 1948 (Answer of Defendant I, page 8 item 32) is an argument that has no legal basis and does not make sense. Because there is not a single piece of evidence that shows the truth of the Defendant I's argument **(Vide: Judgment of Judicial Review in the case a quo, Page 32).**

That if it is true that the house and land are assets of Defendant I, it does not make sense that the Plaintiff/Case Petitioner has been

allowed to occupy them for decades without a single letter indicating the existence of a legal relationship between Defendant I and the Plaintiff/Case Petitioner **(Vide: Judgement of Judicial Review in the case a quo, Page 32).**

That the reasons for the cassation of the Cassation Petitioners cannot be justified, because the legal considerations of the decision of the Judex Facti / Jakarta High Court which upheld the decision of the Judex Facti / Central Jakarta District Court which rejected the Plaintiff's lawsuit can be justified, because based on the facts in the case a quo the Judex Facti has given sufficient consideration and is not contrary to the law, Where it turns out that the Plaintiffs cannot prove the basis of their right to challenge the actions of Defendant I (PT KAI) who has dismantled and controlled and fenced the disputed object, because the control of the disputed object by the Plaintiffs is only based on lease rights, on the other hand Defendant I (PT KAI) has succeeded in proving its rebuttal argument that the disputed object is an asset of Defendant I (PT KAI) which is registered in the Right to Use Certificate (SHP) Number 82 of 1998, so that the actions of Defendant I (PT KAI) cannot be considered as unlawful **(Vide: Judgement of Judicial Review in the case a quo, Page. 32).**

Judicial Review Decision No. 125 K/Pdt/2014 jo Cassation Decision No. 1040 K/Pdt/2012 jo High Court Decision No. 415/PDT/2011/PT. Mdn jo District Court Decision No. 314/Pdt.G/2011/PN. Mdn

a. *Parties*

PT Kereta Api (Persero) **against** PT Arga Citra Kharisma

b. *Object of the Case*

2 (two) parcels of land measuring 13,578 m2 and 22,377 m2 respectively located at Jalan Jawa/Jalan Veteran, Gang Buntu Urban Village, East Medan Sub-District, Medan City have obtained based

on the Release of Rights and Compensation that the Plaintiff gave to 331 people who had previously controlled the land in the amount of Rp54,143,630,000.00 (fifty-four billion one hundred forty-three million six hundred thirty thousand rupiahs) **against** Grondplan Number I K.6 b D.S.M. W.W. dated 18 October 1888 and Deli Spoorweg Matschappij Emplacement Medan Land Map Number I J135d D.S.M. W.W; and Gronplan or Grondkaart Number I K.6 D.S.M.W.W dated 13 August 1931 and Land Map Number 2476/01245 which is a combination of ex. Eigendom Verponding Number 9 and Number 33 which are registered at the Medan City Land Office in the name of *Het Government Nederland Indie*.

c. *Ratio Decidendi of the Judge in assessing Grondkaart Evidence*

That in examining the Plaintiff's lawsuit dated 16 June 2011, it is evident that the only Defendants made by the Plaintiff are: 1. the Indonesian Railway Company, 2. the Medan City Government, 3. the Government of the Republic of Indonesia in this case the Head of the Medan City Land Agency Office and did not join the 331 (three hundred and thirty one) people, who had relinquished their rights and were compensated by the Plaintiff in this case PT Arga Citra Kharisma **(Vide: Judgement of Judicial Review in the case a quo, Page 96).**

With the fact that the Plaintiff's claim lacks parties and must be declared inadmissible, the decision of the Judex Facti, in this case, the Decision of the Medan District Court which granted the Plaintiff's claim in part and was upheld by the Decision of the Medan Court of Appeal following the Decision of the Supreme Court which rejected the cassation application cannot be maintained and must be cancelled by re-adjudicating as described below **(Vide: Judgment of Judicial Review in the case a quo, Page 97).**

Cassation Decision No. 2443 K/Pdt/2017 jo High Court Decision No. 112/PDT/2016/PT. Mdn jo District Court Decision No. 273/Pdt.G/2014/PN. Mdn

a. *Parties*

T.M. Abzal Azad **against** PT Kereta Api Indonesia (Persero) Regional Division I North Sumatra

b. *Object of the Case*

A plot of land measuring ± 4,000 meters on which stands a permanent multi-story house (ex. Dutch house) locally known as Jalan Bundar No. 7, Pulo Brayan Bengkel Baru Urban Village, Medan Timur Subdistrict, Medan City formerly P. Brayan Pasar Bundar 7 by Housing Certificate No. 1750 dated 2 August 1952 issued by the Ministry of Social Affairs Office of Housing Medan **against** Pulo Brayan Grondkaart Land dated 3 May 2005

c. *Ratio Decidendi of Judges in assessing Grondkaart Evidence*

That the reasons for the cassation of the Cassation Petitioner in the cassation brief cannot be justified, the Judex Facti / High Court did not misapply the law with the consideration that the Judex Facti's judgment was correct and correct **(Vide: Cassation Decision in the case a quo, Page 15).**

That the possession and occupation by the Plaintiff Convention based on Housing Certificate No. 1750 dated 2 August 1952 issued by the Ministry of Social Affairs, Medan Housing Affairs Office is without right and constitutes an unlawful act **(Vide: Cassation Decision in the case a quo, Page 15).**

Cassation Decision No. 457 K/TUN/2017 jo. High Court Decision No. 52/B/2017/PT.TUN.SBY jo. State Administrative Court Decision No. 034/G/2016/PTUN.SM

a. *Parties*

PT Kereta Api Indonesia (Persero) **against** PT Pura Barutama

b. *Object of the Case*

Land Grondkaart Number: Ag 461. dated 27 June 1935 covering an area of ± 15,034.2 M2 **against** Building Rights Title Certificate Number 18/Desa Jati Kulon, dated 24 October 1991, Situation Drawing Number 3916/1990 dated 14 October 1990, covering an area of ± 5,731 M 2 (approximately five thousand seven hundred thirty one square meters), in the name of the right holder PT Pura Barutama domiciled in Kudus.

c. *Ratio Decidendi of Judges in assessing Grondkaart Evidence*

That the Cassation Petitioner is the asset manager of the land contained in the decision of the object of dispute a quo based on Grondkaart (Land Map) Number Ag 461. dated 27 June 1935 covering an area of ± 15,034.2 M2 which was formerly owned by Samarang - *Joana Stoomtram - Maatschappij. N.V.* (a Dutch private railway company incorporated in *Verenigde Spoorwegbedrijf* (VS) **(Vide: Cassation Decision in the case a quo, Page 30).**

That the *Verenigde Spoorwegbedrijf* (VS) asset lands were nationalized into State property and handed over for use to the Railway Djawatan in the case of the Cassation Petitioner as stipulated in Law Number 86 of 1958 concerning the Nationalisation of Dutch-Owned Companies located in the territory of Indonesia jo. Government Regulation No. 40 of 1959 and Government Regulation No. 41 of 1959 **(Vide: Cassation Decision in the case a quo, Page 30).**

That the actions of the Cassation Respondent/formerly the Defendant in issuing the decision on the object of dispute a quo have been contrary to the provisions of Article 19 paragraph (2) of Law 5/1960 in conjunction with Article 3 paragraph (2) of Government Regulation 10/1961, because the Cassation Respondent/formerly the Defendant did not conduct a historical investigation of the land **(Vide: Cassation Decision in the case a quo, Page 30).**

From these 10 (ten) decisions, researchers identify that there are different views on Grondkaart land disputes, especially when looking at the historical aspects of the Dutch era where the assets were nationalized into state control which was then given to PT KAI and the development of the times, registration must be carried out to obtain ownership by procedures to obtain a certificate which will later be used as proof of ownership based on the birth of Law 5/1960 and other related regulations related to land registration. As regulated in Article 32 paragraph (1) and paragraph (2) of PP 24/1997 which is a replacement for PP 10/1961, it is stated that the certificate is a proof of right that applies as a strong proof tool related to the physical and juridical data contained therein, as long as the data is by the data contained in the measurement certificate and land book of the right concerned and if a land parcel has been issued a certificate legally on behalf of a person or legal entity in good faith, and other persons who feel they have rights to the land if within 5 (five) years from the issuance of the certificate if they do not file an objection in writing to the certificate holder and the Head of the Land Office or do not file a lawsuit with the Court regarding land tenure or issuance, the certificate.

The unclear status of Grondkaart land due to the absence of adequate regulations causes differences in views whether it is enough with Grondkaart alone to be proof of ownership or must be registered also so that proof of the existence of Grondkaart is balanced with a certificate also in accordance with statutory regulations. given that currently the certificate applies as a strong means of proof[16]. Different views from residents, companies, PT KAI, and even judges as law enforcers regarding how the legal force in viewing the existence of certificates and Grondkaart as proof of ownership that is valid and has legal force over the disputed land.

[16] Noor Atikah, 'Kedudukan Surat Keterangan Tanah Sebagai Bukti Kepemilikan Hak Atas Tanah Dalam Sistem Hukum Pertanahan Indonesia', *Notary Law Journal* 1, no. 3 (13 July 2022): 265, https://doi.org/10.32801/nolaj.v1i3.29.

Based on these court decisions, the researcher relates the principle of seeking formal truth and opposing evidence to the Grondkaart land case that was examined in the court. If connected, it is true that in the process the judge has fulfilled his functions and responsibilities in examining, trying, and deciding cases. It should be noted that in proving the Grondkaart land the judges interpreted it differently. Not only between judges but also with the community and the Government. PT KAI has interpreted that it is enough with Grondkaart to show legal evidence that the land belongs to PT KAI from the results of nationalization during the Dutch era. This Grondkaart can only be used as initial evidence for registration which can then be made a certificate as proof of ownership of land that is strong, valid, and recognised in current land law.

As a result of the absence of harmony in the making of legislation related to land has an impact on law enforcement, namely judges look more strongly at certificates or Grondkaart as evidence in the trial. This is very closely related because good rules will create good law enforcement as well. This difference in view is unfair to the community or the Government who have carried out land registration procedures in accordance with the laws and regulations. Not only that, making regulations for the community is also influenced by public awareness of the law, so it is also necessary to understand the community regarding Grondkaart land because all arrangements are adjusted to the conditions that exist in the community in this case. so that there will be ideal law enforcement[17].

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[17] Hasaziduhu Moho, 'Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, Dan Hasaziduhu Moho. "Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, Dan Kemanfaatan." Jurnal Warta 13, No. 1 (2019): 138–49.Kemanfaatan', *Jurnal Warta* 13, no. 1 (2019): 10, https://doi.org/https://doi.org/10.46576/wdw.v0i59.349.

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Law enforcement factors regarding regulations that are made better are related to Hans Kelsen's Stufenbau Theory, which states that in the level of legal levels, it means that legal norms gain validity because they get delegation from norms that are considered valid at a higher level[18], where researchers also agree that to avoid conflicts or differences regarding the position of Grondkaart in dispute resolution in court, it is necessary to synchronise regulations which will be used as guidelines not only for judges but also for all law enforcers.

The hierarchy of laws and regulations is tiered and interrelated where lower regulations follow or do not conflict with higher regulations. The location of the highest hierarchy according to this theory is the grundnorm. The placement of justice, certainty, and legal benefits according to this legal ideal is placed on the grundnorm. This means that when Grondkaart land is regulated by land laws and regulations related to registration to land certification to be controlled, the rules must be adjusted to the ideals of law for the purpose of law must fulfil three aspects,

[18] Dyah Ochtorina S, 'PANCASILA DALAM TEORI JENJANG NORMA HUKUM HANS KELSEN', *Jurnal Legislasi Indonesia* 18, no. 4 (23 December 2021): 515, https://doi.org/10.54629/jli.v18i4.860.

namely Justice, Certainty, and Benefit[19]. This is in accordance with Gustav Radbruch's theory of legal ideals.

The next analysis is related to the position of Grondkaart as evidence in the trial. It was explained at the beginning that for evidence here the parties prove and there is a term called opposing evidence. Here the researcher takes opposing evidence because, between PT KAI and the City Government or residents, they submit evidence in the form of specific letters from PT KAI is enough with Grondkaart with the legal basis of laws and regulations related to the nationalisation of Dutch assets and others, while the City Government or residents register the land to have a certificate using the legal basis of Law 5/1960 and other related regulations on land registration.

This opposing evidence as explained earlier to refute the evidence of the opponent, where the conditions must have the same evidentiary value, the type of evidence is the same, and the value of the inherent strength is the same.[20] The researcher's analysis of the existence of evidence and *inkracht* decisions on Grondkaart land disputes is related to the requirements of the level of opposing evidence submitted of the same type, namely letter evidence. Ownership Here researchers do not find clear arrangements that Grondkaart is used as valid evidence to show ownership in court and do not find that it has a higher evidentiary value than a certificate. As far as researchers analyze the Grondkaart land dispute decision, judges and PT KAI are only based on nationalization rules and emphasize that since the Dutch era, there has been a Grondkaart which states that it belongs to the state, which in turn since independence has been nationalized and the state property has been handed over to PT KAI.

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[19] Endang Pratiwi, Theo Negoro, and Hassanain Haykal, 'Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?', *Jurnal Konstitusi* 19, no. 2 (2 June 2022): 270, https://doi.org/10.31078/jk1922.

[20] M. Yahya Harahap, *HUKUM ACARA PERDATA* (Jakarta: Sinar Grafika, 2005), 586–90.

Through several decisions on Grondkaart land disputes above, it is concluded that there are differences (disparities) in the opinions of judges in the settlement of Grondkaart land disputes in Indonesia, so guidelines are needed for judges to decide Grondkaart disputes considering that a decision is needed that can reflect the values of society and customary law, law enforcement, and facilities for better law enforcement in the future.

III. Conclusion

The judges' consideration of 10 Court Decisions at the first level, appeal and cassation up to the review of the Grondkaart case in the period 2002 to 2016 there is a sharp disparity in the judges' decisions in compiling the ratio decidendi based on different views in assessing the position of Grondkaart land. From some of the above decisions, judges rely on nationalisation rules and emphasise that since the Dutch era there has been a Grondkaart which states that it belongs to the State, after independence it was nationalised and the State property was handed over to PT KAI. in addition to this, there are several judges who strengthen the existence of certificates issued on Grondkaart as proof of valid ownership according to Law 5/1960, so that guidelines are needed for judges in the form of Supreme Court regulations to decide Grondkaart disputes so that there are no differences (disparities) in judges' opinions in the future.

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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 : December 19, 2023
Revised : April 24, 2024
Accepted : June 16, 2024
Published : June 29, 2024