

# Land Ownership by Indonesian Railway Corporation [PT Kereta Api Indonesia (Persero)] in Kota Intan, Indonesia

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## ABSTRACT

Since the Dutch era, the Indonesian Railway Corporation (“PT Kereta Api Indonesia (Persero)”) has held ownership of all land alongside every railroads. However, due to the increase of population and changes in the area, the lands in Kota Intan, Jakarta have been controlled by other parties without the permission from PT Kereta Api Indonesia (Persero). The purpose of this research is to analyse the ownership status of PT Kereta Api Indonesia (Persero) in Kota Intan. Research method is through normative legal research and qualitative data analysis. Research shows that majority of the land owned by PT Kereta Api Indonesia (Persero) are controlled by other parties, although there is a *grondkaart* (land map) to evidence that the lands are state property and have been registered as state asset in Republic of Indonesia’s Ministry of Finance. The strongest evidence of land ownership is a Certificate of title. Land possession supported by Certificate of title guarantees legal certainty and provides legal protection to the holder of the land right. Therefore, PT Kereta Api Indonesia (Persero) needs to make efforts to protect land assets and obtain legal certainty of land ownership by registering *grondkaart* as Management Right or Use Right to have it certified.

**Keywords:** *PT Kereta Api Indonesia (Persero); Land Ownership; Railway*

## 1. INTRODUCTION

According to the National Land Law, land ownership by anyone and for any purposes must have the right bases for that. Law Number 5 of 1960 concerning Basic Agrarian Law (hereinafter referred to as UUPA) as National Land Law provides various types of land rights, such as Ownership Rights, Cultivation Rights, Building Rights, Use Rights as the basis for land rights to meet various needs. Ownership of land rights and apartment units requires legal certainty [1]. National Land Law stipulates that the concrete legal relationship between the land owner with a plot of land which is evidenced by a land certificate obtained through land registration (Article 19 of UUPA).

The ownership of land by the Indonesian Railways Limited Company (Persero) (hereinafter referred to as PT Kereta Api Indonesia (Persero)) is the legacy of the railroad company during the Dutch colonial period, and the proof of the land ownership is *Grondkaart*. *Grondkaart* is used by PT Kereta Api Indonesia (Persero) to take over its assets in the form of land and buildings as the company's inheritance due to nationalization.

However, in reality, PT Kereta Api Indonesia (Persero) has encountered many obstacles in its efforts to control its assets, because the land has been used by other parties without PT Kereta Api Indonesia (Persero)'s permission. Another problem is the legality of the *Grondkaart*.

The research results conducted by Hastomo Mawadya Suli and Soeratno, show the importance of the revitalization policy of Cultural Heritage Area of Kota Tua Jakarta which has a positive influence on the efforts of the Provincial Government of the Special Capital City of Jakarta to increase the optimization of its assets [2]. Further research conducted by Fauzi Firdaus, Ari Widyati Purwantiastining, Lutfi Prayogi states that, Kota Tua Jakarta has the potential to develop implementing the principles of *Transit Oriented Development* which consists of to walk, cycle, connect, transit, mix, density, compact, and shift [3]. Related to this matter, the Ministry of State-Owned Companies, the Ministry of Tourism, and the Provincial Government of the Special Capital City of Jakarta together with the private sectors, namely the Jakarta *Experience Board*/PT. Jakarta Tourisindo (JXB), *PT. Pengembangan Pariwisata Indonesia (Persero)* or known as Indonesia Tourism

Development Corporation (ITDC) and *PT. Moda Integrasi Transportasi Jabodetabek (MITJ)* (PT. The Jabodetabek Transportation Integration Mode) will transform Kota Tua Jakarta into a world-class destination [4].

Reviewed from the results of other researchers' research on PT Kereta Api Indonesia (Persero)'s land assets in Semarang, Kudus and others, it turns out that no one has conducted research on PT Kereta Api Indonesia (Persero)'s land assets located in Kota Intan, Kota Tua Jakarta. Therefore, it is necessary to conduct research that focuses on land ownership of PT Kereta Api Indonesia (Persero), especially in Kota Intan, Jakarta. This research is very useful because it aims to describe the land ownership and legal force of Grondkaart as proof of land ownership of PT. Kereta Api Indonesia (Persero) which is not recognized in the National Land Law and it is different from other studies.

## 2. METHOD

Research methodology is a way to systematically solve the research problem [5]. This study uses a normative legal research method by using a legal and a conceptual approach. Sources of data consist of primary data which are obtained directly from sources through interviews, and secondary data are in the form of books, journals, library materials, laws and regulations in accordance with applicable legal principles and theories [6]. The objective of the search strategy employed was to identify certain published literature [7]. The data analysis was carried out qualitatively aims which was directed at understanding the relationship between legal aspects and the reality that occurred in the community. Overall, the qualitative inquiry simply carries on one aspect of social science, the mission to study 'the social body,' the practices that make up social institutions and produce the regularities reflected in statistical relations [8].

## 3. RESULT AND DISCUSSION

Based on the history of the Dutch East Indies era before the Law Number 5 of 1960 (UUPA) was applied, the Land Law in force in Indonesia was dualistic, meaning that there were two kinds of Land Laws in Indonesia, Western Land Law and Customary Land Law. The consequences of the enactment of these two kinds of Land Law include the recognition of land rights according to Western Law, such as Eigendom Rights, Erfpacht Rights, Opstal Rights and according to Customary Law, such as Indonesian Rights. The land with Western rights has been registered according to the Overschrijvings Ordonnantie S 1834 Number 27, and has proof of ownership, such as the Eigendom Rights Deed, Erfpacht Rights Deed, Opstal Rights Deed. Meanwhile, Indonesian land rights have never been registered, therefore they do not have any proof of ownership.

Administrative Land Law during the colonial period was based on *Agrarische Wet, Staatsblad* 1870 Number 55 of which one of its implementing provisions was *Agrarische Besluit* 1870 Number 118 [9]. According to the Land Law concept during the colonial era, the relationship concept between the Dutch East Indies Government and land was in the form of ownership relationship, a statement called *Domein Verklaring* was issued in Article 1 *Agrarische Besluit* 1870, which stated that all land owned by other parties that are not able to prove that their eigendom rights are state domains [10]. Thus, the term *landsdomein* is known as State-Owned Land.

This situation ended on September 24, 1960, with the enactment of the Law Number 5 of 1960 (UUPA). Lands with Western rights and *Indonesian* rights were then converted into one of the rights according to the National Land Law, such as Ownership Rights, Cultivation Rights, Building Rights, and Use Rights. The concept that land belongs to the State has also been removed on the basis of Article 33 paragraph (3) of the 1945 Constitution. Thus, there is currently no civil legal relationship between the State and the land in Indonesia. The relationship between the state and land is public only which means having the authority to regulate land throughout the territory of Indonesia.

One of the subjects having a legal relationship with the land is the Indonesian Railways Limited Company [PT Kereta Api Indonesia (Persero)]. The presence of trains in Indonesia was marked by the first grounding of the construction of the railway in the village of Kemijen, Friday, June 17, 1864 by the Governor General of the Dutch East Indies, Mr. L.A.J Baron Sloet van den Beele. The construction was initiated by Naamlooze Venootschap Nederlandsch Indische Spoorweg Maatschappij (NV. NISM) led by Ir. J.P de Bordes from Kemijen to Tanggung village (26 Km) with a track width of 1435 mm. This road section was opened for public transportation on Saturday, August 10, 1867 [11]. Naamlooze Venootschap Nederlandsch Indische Spoorweg Maatschappij is a private company, known as the Private Railway Company (Verenigde Spoorwegbedrijf), with its headquarters in Semarang.

A few years later the Dutch East Indies government established a railway company named Staatsspoorwegen (Perusahaan Kereta Api Negara), with its headquarters in Bandung, which has been operating since 1878, and carried out the construction of railroads. In the Dutch era, land ownership for Staatsspoorwegen was in the form of Grondkaart. The lands by the Dutch government were (bestemming) or bestowed to Staatsspoorwegen and then measured, mapped and described in grondkaart. Grondkaart is a Land Map including a Measurement Letter or Technical Drawing and has a legal basis in the form of a decision (besluit) or determination (beschikking). The land measurement using geodetic techniques was carried out by Landmester (Cadastral

Measurement Officer) and approved by the Head of the local Cadastre (Land Registry) and Resident Office. The lands described in the grondkaart are state lands and become the state assets of the Staatsspoorwegen [based on the transfer of control (bestemming)]. Therefore, the state treasury legislation applies to the lands.

Based on Agrarische Wet (Staatsblad 1870 Number 55) and Agrarische Besluit (Staatsblad 1870 Number 118), it can be concluded that in accordance with the domein verklaring principle, only private persons or legal entities are required to have proof of land rights. The obligation to show proof of land rights is not what government agencies has to do, because government agencies have never been given proof of land rights. Staatsspoorwegen as a Dutch government agency was not issued with proof of land rights (land certificates). Therefore, Grondkaart of Staatsspoorwegen has the same function as a proof of Ownership of an individual or private legal entity.

After the Indonesian Independence Proclamation on August 17, 1945, the properties of the Dutch East Indies Government by law (van rechtswege) automatically became the properties of the Republic of Indonesia whose sovereignty was handed over at the Round Table Conference which was signed on November 2, 1949 and applied on December 27, 1949. Based on the the Round Table Conference, Staatsspoorwegen has become the property of the Government of the Republic of Indonesia (nationalization). Then the Railway Department of the Republic of Indonesia which was established on September 28, 1945 and all Staatsspoorwegen assets described in Grondkaart automatically became the

Railway Department of the Republic of Indonesia assets. In 1990, the railway company in Indonesia changed its name into Public Company (Perum) Kereta Api based on Government Regulation No. RI. 57 In 1990, then in 1998 changed its name into PT. Kereta Api Indonesia (Persero) based on Government Regulation Number 19 of 1998. All land assets of PT. Kereta Api Indonesia (Persero) have the capacity as separated state assets and is subject to the Indische Comptabiliteitswet Staatsblad 1925 Number 448 (State Treasury Law) and other laws and regulations regarding state assets, therefore in accordance with these provisions the land assets of PT. Kereta Api Indonesia (Persero), both certified and uncertified, may not be released to third parties without permission from the Minister of Finance.

The results of this study show that PT Kereta Api Indonesia (Persero) is currently optimizing its land assets through certification and controlling as well as salvaging its assets in the form of land. Up to present, it is recorded that PT Kereta Api Indonesia (Persero) has total assets in the form of land (immovable objects) covering an area of 270,670,874m<sup>2</sup>. Out off this amount, only 147,512,092m<sup>2</sup> or 54% of PT. Kereta Api Indonesia (Persero)'s land has been certified. Meanwhile, it is recorded that PT. Kereta Api Indonesia (Persero) also has 16,424 units of official housing as its assets which spread all over Java and Sumatra. 8,517 units out of this number (52%) are declared "clean and clear" and could be utilized by PT. Kereta Api Indonesia (Persero). The following is an overview of PT. Kereta Api Indonesia (Persero)'s 2014 asset recapitulation:

**Table 1** PT. Kereta Api Indonesia (Persero)'s Land Asset Data Recapitulation

Total Land assets	Clean and Clear	Ongoing certificati on process	Utilized by other party without agreement	Utilized without payment, nor agreed rent	Occupied with new proof	Ongoing court process	In disputes with Government Agencies	Ongoing validation
270.670.874	147.512.092	1.618.653	59.405.494	44.044.133	7.168.557	600.727	9.966.128	462.037
100%	54%	1%	22%	16%	3%	0%	4%	0%

Source: kereta-api.co.id

To protect its assets, PT. Kereta Api Indonesia (Persero) has taken various ways, including by continuing collecting asset data, controlling assets which are controlled by other parties, safeguarding assets that have been rescued, and certificating to legalize ownership of these assets. In addition, PT. Kereta Api Indonesia (Persero) has also formed a search team to collect data and trace the history and the truth of whether these assets really belong to PT. Kereta Api Indonesia (Persero). This team is in charge of excavating and finding where PT. Kereta Api Indonesia (Persero)'s assets are to be controlled/rescued. Among several assets in the form of land that have been occupied by residents without any rights, are the assets of PT. Kereta Api Indonesia

(Persero) in Kota Intan compound, located in area of Kota Tua Jakarta. Based on the Decree of the Governor of the Special Capital City of Jakarta Number 34 of 2005, the area of Kota Tua Jakarta was designated as a cultural conservation area, the Provincial Government of the Special Capital Region of Jakarta officially carried out a revitalization policy in 2012. In 2014, the Regulation of the Governor of the Special Capital Region of the Province Jakarta No. 36 of 2014 was enacted concerning the Master Plan of Kuta Tua compound.

The development of the Kota Tua compound is directed with the vision of realizing Kota Tua compound as a Cultural Conservation Area which has high economic value as a tourist, business, service and trade

area while maintaining the character and historical values of the compound.[12] To realize this vision, spatial planning in the Kota Tua compound is intended to carry out seven main missions, as follows: 1) increasing the role of Kota Tua as a cultural heritage tourism compound that is able to increase the economic value and become an attractive source for investors and tourists; 2) revitalizing Kota Tua by protecting, preserving and utilizing both the materials and non-materials of Kota Tua; 3) improving the physical and visual quality of Kota Tua by improving the accessibility, providing proper infrastructures and facilities; 4) maintaining existing activities and encouraging the growth of new activities that support economic activities in Kota Tua compound; 5) restoring and improving the compound as a place to live by providing housing and social and public facilities; 6) improving the welfare of the community by opening up job opportunities, increasing human resources, and encouraging the growth of entrepreneurial activities; and 7) developing public-private partnerships and creating an investment interest that supports economic activities in the compound through the system of institutional as well as an effective and professional legal urban management. [13].

As planned, Kota Tua compounds is divided into 2 control areas as follows: a) the area inside the wall; and b) the area outside the walls. Area inside the walls covers Fatahillah, Kali Besar, Roa Malaka, Galangan Tembok, Fish Market Maritime Museum, and Sunda Kelapa. This area is an area within Kota Tua with strict control over all historical and morphological elements of Kota Tua. The area outside the walls covers Luar Batang, Pekojan, Chinatown, and the *Onrust* Archaeological Park. The area outside the wall is an area with control over cultural heritage buildings of class A, B, and C following the existing building restoration rules, as well as controlling the city-forming elements that are considered significant as stated in special rules. In this area, a cluster control system is implemented, which includes the main protection of the block characteristics and the elements that make up Kota Tua with its physical, historical, social and cultural values. The area inside the wall consists of a core zone and a supporting zone with its development leading to a historical zone with educational main functions, cultural and social activities, international tourism icons, the former city replication- Batavia, a limited business and trade center. The area within the wall is Fatahillah Park area, Beos station area, Kali Besar corridor, and Sunda Kelapa area with each surroundings. The area outside the wall consists of: a) Kampung Luar Batang with the concept of marine tourism revitalization development directed as an area with spiritual and supporting tourism around Luar Batang Mosque; b) Chinatown with the concept of preservation development of ethnic cultural environment and business center covering Petak Sembilan, Jembatan Lima, Glodok, Tambora, Pasar Pagi, Pintu Besar Selatan, and Pinangisia.

Its development is directed as a Chinatown preservation area with the functions of a wholesaling and retailing centers, residential as well as Chinatown shopping tourism destination; c) Pekojan with the concept of revitalizing ethnic and religious cultural villages, its development is directed as a residential area for all groups and diverse ethnic backgrounds with residential mixed with commercial wholesaling functions and spiritual tourism destinations; d) *Onrust* Archaeological Park Island is developed in line and integrated with the development of Kota Tua compound. Within Kota Tua compound there is a land asset of PT. Kereta Api Indonesia (Persero).

Based on the results of research in an interview with one of the heads of the neighborhood in Kota Intan, is that the land where they live does not belong to them. The residents rent from other party who previously used to have a factory on that land. But the factory is currently no longer exist or operating. In addition, the residents have never met the "original owner", but only met with "the messengers" who collect the rent.

We argue that, Grondkaart which is used as proof of land ownership should not have legal force if it is not converted into Management Rights or Use Rights in accordance with the National Land Law. In relation to the land ownership status of PT. Kereta Api Indonesia (Persero) in Kota Intan which is located in Kota Tua compound, Jakarta, what need to be done are: (1) Conducting public consultations with "illegal" land users, namely. parties who use the land without any rights, without any certificate as the only proof of land ownership; (2) Requesting the West Jakarta City Land Office to measure and remap PT. Kereta Api Indonesia (Persero)'s land (assets) in Kota Intan, based on grondkaart, considering that grondkaart has the same function as proof of individual ownership or private legal entities; (3) The principle of land tenure by anyone must be based on land rights, therefore PT. Kereta Api Indonesia (Persero) must submit land certificate application of Kota Intan located in Kota Tua Jakarta, on the basis of grondkaart as a proof of land ownership of PT. Kereta Api Indonesia (Persero); (4) Utilizing PT. Kereta Api Indonesia (Persero)'s land in Kota Tua compound Jakarta aiming at reorganizing the area to provide added value and a positive impact for the community and stakeholders.

#### 4. CONCLUSION

Land tenure by Staatsspoorwegen (State Railway Company) during the Dutch East Indies era has been measured, mapped and described in grondkaart. Currently, the land previously controlled by Staatsspoorwegen has been transferred to PT Kereta Api Indonesia (Persero). In fact, the land is controlled by another party without any approval of PT. Kereta Api Indonesia (Persero). Regarding this matter, PT. Kereta

Api Indonesia (Persero) has carried out control and rescue of its assets, but only 54% have been certified on behalf of PT. Kereta Api Indonesia (Persero). Specifically, regarding the land ownership status of PT. Kereta Api Indonesia (Persero) located in Kota Intan, Kota Tua Jakarta, it turns out that the ownership of the land needs to be followed up by submitting an application for a land certificate by PT. Kereta Api Indonesia to the Land Office on the basis of *grondkaart* as a proof of its control to be a Management Rights or Use Rights. least provide special bank interest so that all fundamental indicators are safe and resilient to the changes of input values.

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