The Status Of Grondkaart As A Tool Of Proof Of Land Registration In Indonesia

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Abstract.

Grondkaart as one of the basis of control over land owned by individuals or legal entities, one of which is PT. KAI (Persero). The unclear position of grondkaart in the systematics of laws and regulations has resulted in various land tenure disputes. The purpose of this research is to provide information and legal consequences of grondkaart as evidence of land registration in Indonesia. The method used is a normative juridical approach with literature review on laws and civil cases in court. Grondkaart as evidence of land tenure and guidance because it refers to article 97 PP Number 18 of 2021, Besluit No 3 of 1890, there is no provision for the conversion of the UUPA, and it is not mentioned in one of the proofs of new rights based on PP Number 24 of 1997.

Keywords: *Position, grondkaart, evidence and land registration.*

I. INTRODUCTION

Soil is one of the non-renewable natural resources and has important meaning for humans, especially for survival. One important meaning is that land has economic value. The economic value of land is not only intended for individuals but also for government agencies, legal entities and other bodies designated by laws and regulations, one of which is PT. KAI (Persero). PT. KAI (Persero) is a heritage company from the Dutch era that owns land tenure assets based on grondkaart.Historically, there were 2 (two) Dutch private railway companies namely Staatspoorweegen (SS) and Verenigde Spoorwegbedriff (VS). Staatspoorwegeen (SS) has an extension of Staatspoor-en-Tramwegen in Nederlandsch-Indiee where a company owned by the Government of the Netherlands East Indies and changed to Djawatan Kereta Api Republik Indonesia (DKARI), while Verenigde Spoorwegbedriff has an extension of Vereniging Van Nederlands Indische Spoor en Tramweg Maatschappij where there was an association of 12 Dutch private railway companies operating in Indonesia. Both SS and VS according to Law Number 86 of 1958 merged into DKA which underwent privatization so that it has now changed to PT. KAI (Persero) since 1998. Based on the Letter of the Minister of Finance Number: S.11/MK.16.1994 dated January 24, 1995 confirmed that the land that is decomposed in grondkaart is stated as state land separated as PERUMKA fixed assets (Suradi in Ngobrol@Tempo, 2018).
PT. KAI (Persero) as a business entity that aims to increase profits tries to make an inventory of the lands controlled during the Dutch era based on grondkaart. PT. KAI (Persero) is at odds with community ownership, resulting in land tenure/ownership disputes.

For example, in Semarang, the community owns inactive land on the basis of a certificate of ownership, while PT. KAI claims ownership based on grondkaart. Grondkaart's position is gray because it is not regulated in detail in Government Regulation Number 10 of 1961, Regulation of the State Minister for Agrarian Affairs Number 3 of 1961, Government Regulation Number 24 of 1997 concerning Land Registration.Prior to this study, there were several similar studies related to Grondkaart's position. Tri Wahyu (2022) found that grondkaart originates from privately owned lands and customary land from autonomous institutions and western lands such as eigendom. Others, Nadhila & Hazhiya (2018) state that the grondkaart is a land map that concretely explains land boundaries as evidence of the ownership of state land granted during the Dutch era to PT. Indonesian Railways. In order to be proof of ownership of strong land rights, the grondkaart must be converted so that it is in accordance with the current land law.There is a void in grondkaart legal arrangements and the urgency of grondkaart's position in regulating land registration in

Indonesia, the author uses the title "Grondkaart's position as evidence of land registration in Indonesia" with the formulation of the problem, namely: 1. What is grondkaart's position as evidence of land registration in court decisions? , 2. What are the legal consequences of grondkaart as evidence of land registration in statutory regulations? The purpose of this study is to provide information regarding the position of grondkaart in terms of control or ownership of land so that it becomes a guide for solutions to the problem of land tenure or ownership claims made by PT. KAI (Persero) and explained the legal consequences of grondkaart as proof of land registration.

II. METHODS

This study uses a normative juridical approach that uses literature review as the main material by examining several laws and literature related to the problem under study (Soekanto, 1986). The approaches used in this study are the statutory approach and the case approach, as well as the historical approach (Marzuki, 2008). Existing legal material is then processed and then analyzed and conclusions drawn (Sonata, 2014).This study aims to determine the position of grondkaart as evidence of land registration in court decisions. The author examines 4 (four) court decisions relating to the legal status of grondkaart, namely: 1). Semarang State Administrative Court Decision Number 002/G/2019/PTUN.Smg, 2) Central Java High Court Decision Number 472/Pdt/2021/PT.Smg, 3) East Java High Court Decision Number 727/PDT/2020/PT .Sby, 4). Supreme Court Decision Number 1619 K/Pdt/2018. Of the 4 decisions can show grondkaart as evidence in land registration in Indonesia.Another objective of the research proposed by the author is to find out the legal consequences of grondkaart as proof of land registration in statutory regulations. The author conducted a literature review of several laws and regulations including:

1) Presidential Decree Number 3 of 1890,
2) Law Number 86 of 1958 concerning the Nationalization of Dutch Owned Companies
3) Law Number 5 of 1960 concerning Basic Agrarian Regulations,
4) Government Regulation Number 40 of 1959 concerning the Nationalization of Dutch-Owned Companies,
5) Government Regulation Number 41 of 1959 concerning the Nationalization of Dutch-Owned Railway and Telephone Companies
6) Government Regulation Number 10 of 1961 concerning Land Registration,
7) Government Regulation Number 24 of 1997 concerning Land Registration,
8) Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration,
9) Regulation of the Minister of Agrarian Affairs Number 2 of 1960 concerning Implementation of Provisions in the Basic Agrarian Law
10) Regulation of the Minister of Agrarian Affairs Number 9 of 1965 concerning Implementation of Conversion of Tenure Rights over Land and Subsequent Provisions,
11) Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration in conjunction with Regulation of the Head of the National Land Agency Number 8 of 2012.

This research is different from other research because it collects various laws and regulations as well as several court decisions so that it tries to prove that judges in making legal discoveries are based on legal thinking and the belief that grondkaart is evidence of land registration. This research is important to do considering the absence of legal regulations regarding grondkaart. By conducting a study of various previous laws and regulations until now, it can show the legal consequences of grondkaart in statutory regulations.

III. RESULT AND DISCUSSION

1. *GRONDKAART*, PAST AND THE PRESENT

Grondkaart, in language comes from 2 syllables namely grond which means land and kaart which means map. The understanding of the meaning of grondkaart differs across Indonesian society. According to Besluit Van Gouvernour General dated October 14, 1895 Number 7 that land that is bestemming (allocated)

for the benefit of the state is then given grondkaart. Grondkaart as a substitute for receipt of administrative evidence regarding land ownership (Iing R. Sodikin, 2018). Grondkaart according to Mr. Wagimin as a community member in the Kemijen Village, Semarang means a picture of the legacy of the Dutch East Indies government where the land that is written down is a legacy of colonialism. Grondkaart, according to Mr. Radiyanto as Head of PMPP Semarang City, is a picture of the boundaries of a cross-section of land where the boundaries of both the object and the subject have been marked and the validity of the product has been guaranteed by the Dutch East Indies government. Grondkaart according to Mr. Rohmad Pramu W, as the asset manager of PT. KAI DAOP IV Semarang as a map to determine the boundaries of the railroad land. Of the various understandings of grondkaart, the writer will first examine the history of grondkaart. Article 1 of Besluit No. 3 dated April 21, 1890 states grondkaart is a description of the appearance of land obtained from a land acquisition project and made and ratified by cadastral officials during the Dutch Colonial government. Grondkaart is made in 1 sheet or more with a maximum size of 35x70 cm, with a scale of 1:500, 1:1000 or adjusted as needed to show the land under control. Article 1 Besluit Number 3 of 1890 also states that the grondkaart contains the boundaries and area of the plots that are freed as well as the name of the person next to the name of the village that has the authority over the plots or rights over the land. The area of the plots in grondkaart to indicate the nominal amount of compensation that will be given to the rights holders.

Article 1 Besluit Number 3 of 1890 also states that the grondkaart is also supplemented with an official report which states information regarding the nature, extent or extent of the rights of land owners or users and information on the rights held includes:

a. Property rights: owner's name and verponding number;

b. Land HGU, HGB or usufructuary rights: verponding name and number, date and deed number

c. Traditional agrarian property rights: name, date and number of deed;

d. Communal owned land: village name

e. Land controlled by the results: name, date and deed number

f. Land that does not have a usufructuary patent but has a permit among native people or the government: the name of the giver of the permit

g. Land with patent rights according to State Gazette 1866 Number 57: name and owner of the patent right

h. parcels with inheritance rights; heir name

i. Land is leased by the government, on the basis of a civil code, by indigenous people to non-indigenous people based on State Gazette 1871 Numbers 163 and 1879, by native people to non-indigenous people.

Article 2 of Besluit Number 3 of 1890 also states that the grondkaart agreement relates to the interpretation of the costs used to give project implementers the right to take over land and other movable objects in the interests of the government. In this regulation grondkaart becomes the basis for land tenure for the implementation of development projects in the interest of the government, especially railways. PT. KAI (Persero) is currently the result of the nationalization of SS (Staats Spoorwegen) and NIS (Nederlands Indische Spoorweg Maatschappij). Based on Government Announcement No. 2 on December 27, 1949 that DKARI (Republic of Indonesia Railways Service) was formed and SS was merged to become DKA (Railroad Department). In 1950, 2 (two) railroad companies were established, namely DKA which became a government-owned railroad company and there was also NIS which was a private railway company. Until the enactment of Law Number 86 of 1958 concerning Nationalization of Dutch-Owned Companies and Government Regulation Number 40 of 1959 that all assets of 11 private railroad companies were nationalized into state land, all private companies including Nis were successfully nationalized.The fact that grondkaart is an asset or not an asset from PT. KAI (Persero) needs to be investigated regarding the acquisition of asset status by PT. KAI (Persero) itself. Based on the Staatsblad of 1911 Number 110 states that government agencies control state land, are maintained by the budget, then land becomes government agency assets. Both SS and NIS have land tenure which is described by grondkaart (PT.KAI, 2000).

With the enactment of the nationalization, land tenure based on grondkaart by DKA which is now PT. KAI (Persero) becomes state land. This is confirmed by Soesangobeng, 2012 which states that land

owned by the state because of its power must be made a decision letter (besluit) attached with a picture of the plot and given physical boundary lands in the form of stakes, the size of the area of the land parcel controlled by the Department or Agency Government. The existence of a plot drawing (scheets kaart) is not interpreted as proof of rights but rather as an indication of land ownership by the relevant government agency. Understanding of grondkaart is very limited, where the author cannot see the original contents of the grondkaart, so it is only a copy of the grondkaart. The validity of the grondkaart has been fulfilled because it was made and ratified by an authorized official during the reign of the Dutch East Indies. Grondkaart is also not specifically owned by PT. KAI (Persero) but also owned by other agencies such as plantations.Towards today's grondkaart, grondkaart is not only a map of past assets but also one of the hidden assets belonging to government agencies, one of which is PT. KAI (Persero). Various cases in court, PT. KAI (Persero) does not only show certificates as proof of ownership rights to land but also grondkaart. The contents of the grondkaart include land tenure that is given a scale, but grondkaart cannot be interpreted as the boundary of land parcels.

2. *GRONDKAART'S* ARRANGEMENT IN COURT DECISIONS

a. Decision of the Semarang State Administrative Court Number 002/G/2017/PTUN.Smg

The Panel of Judges found the legal basis for the plaintiff's ownership of the usufructuary object land in the form of grondkaart No: W 17286 B Year 1962 Land Map at Semarang Kemijen Emplacement, Semarang Tawang and Semarang Cross Port Semarang-Jogyakarta former Eigendom Verponding Number 69 which contains measurement letter No: 877 dated July 28, 1953 and registered in the name of De Nederland Indische Spoorweg Maatschappij NV (NIS) covering an area of 159,822m2 located in Kebonharjo, Tanjung Emas, North Semarang District, Semarang City and Certificate of Right to Use Number 14,16,18,22,23 Bandarharjo Village on behalf of the Ministry of Transportation of the Republic of Indonesia cq the Railway Bureau Company. The Defendant issued a product that became the object of the lawsuit, namely a total of 50 (fifty) certificates consisting of Certificates of Property Rights Numbers: 3011, 3009, 3007, 3904, 3399, 3898, 3900, 3466, 3426, 3010, 2981, 3008, 3012, 3916 , 3905, 3913, 3910, 3917, 3896, 3909, 3901, 3902, 5472, 3911, 4639, 5435, 4633, 4638, 4771, 4770, 2586, 3487, 3488, 3490, 3491, 3489, 3485, 3484, 3483 , 3486, 4839, 4840, 4838, 1845, 3465, 4232, 2588, 3481, 3914, 3903 located in Tanjung Mas Village, North Semarang District, Semarang City. The proofs of ownership owned by both the plaintiff and the Intervening Defendant II are land with original ownership of the Ministry of Transportation cq the Railway Bureau Company.

The State Administrative Court considers the authority in which the defendant has or does not have authority in issuing the object of the dispute. Against the 50 (fifty) certificates issued based on the official report Number: JB.306/V/05/DIV-2000 dated 30-05-2000 concerning the handover of rights to use state land controlled by PT. KAI (Persero) where the Mayor of Semarang sent a letter to the Minister of Finance Number: 590/2273 dated 25-05-2000 regarding the application for the release of land assets of PT. KAI (Persero) in Tanjungmas, North Semarang, Semarang City where a reply letter from the Minister of Finance Number: 2484/A/2000 dated 21-06-2000 stated that the land assets of PT. KAI (Persero) above is a state asset that is separated and managed by BUMN so that it is no longer listed in the BMN inventory and if you want to make a transfer of this land, it is advisable to coordinate with the Ministry of Transportation and PT. KAI and have not received a reply. Due to a letter from the Mayor of Semarang Number: 594.3/2718 dated 26-06-2000 that the Municipal Government of Semarang had no objection to the certificate of the object of the dispute, the Defendant issued a certificate of the object of the dispute.The State Administrative Court considers the authority in which the defendant has or does not have authority in issuing the object of the dispute.

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b. Decision of the Central Java High Court Number : 472/Pdt/2021/PT.Smg

In a land ownership dispute between PT. KAI (Persero) against PT. PURA BARUTAMA, the Panel of Judges rejected the lawsuit of appeal I in its entirety. The object of the dispute is a plot of land which is claimed to belong to the community based on the Building Use Right Certificate Number: 18/Jatikulon, Kudus District with PT. KAI (Persero) based on grondkaart van KM 48+400 tot KM 49+100 Zijspoor Djati Lijn Semarang Joana No. Ag 461 dated 27 June 1935.The Panel of Judges reviewed grondkaart more closely in this decision by involving a historian, namely Djoko Marihandono, Professor of the Faculty of Cultural Sciences, University of Indonesia. According to Djoko Marihandono, grondkaart is a cross-sectional drawing of land that has boundaries from the land which are approved by the relevant officials and made solely for the agency's needs. With grondkaart, there is no need to follow up with a Decree on the Granting of Rights by the Government. Grondkaart is also new evidence in the Judicial Review of Civil Case Number: 125/K/Pdt/2014 in a land dispute between PT. KAI (Persero) and PT. Agra Citra Kasisma where grondkaart proof is the same as using written evidence in the form of an authentic deed. Grondkaart cannot necessarily be proof as a land title certificate that has perfect and binding legal force, but grondkaart is proof of ownership of PT. KAI (Persero).

According to the Panel of Judges, the object of the dispute has been issued a Building Use Rights Certificate with Number: 18/Jatikulon according to the Panel of Judges, it is no longer valid because when traced to the history of land acquisition, according to the plaintiff, the origin of the rights is from Letter C Village Number C 442 in the name of Niti Semito. Based on the evidence submitted by the plaintiff, in real terms the Photocopy of Village Letter C Number C 442 in the name of Niti Semito had streaks so that the ownership was transferred to someone else. Based on the stipulation of the Semarang State Administrative Court Number: 034/G/2016/PTUN.Smg that the SHGB had been declared null and void and revoked so that PT. PURA BARUTAMA does not have the capacity as the owner of the disputed object.Based on jurisprudence and the evidence presented at the court, the Panel of Judges constructed a belief regarding grondkaart as the basis for the ownership rights owned by PT. KAI (Persero) based on Law Number 86 of 1958, Government Regulation of the Republic of Indonesia Number 2 of 1959, Government Regulation Number 40 of 1959, Minister of Agrarian Regulation Number 9 of 1965, Presidential Decree of the Republic of Indonesia Number 32 of 1979, Article 14 paragraph (1) Government Regulation Number 10 of 1961. The Panel of Judges concluded that the plaintiffs did not have the authority to file a lawsuit because the plaintiff was not the legal owner of the object of the dispute. Even though the defendant already has a certificate of land rights in the form of SHGB Number 18/Jatikulon which has been canceled based on the Semarang State Administrative Court Decision Number 034/G/2016/PTUN.Smg.

c. Decision of the East Java High Court Number 727/PDT/2020/PT SBY

The object of dispute in this case is a plot of land claimed by the plaintiff with a Building Use Rights Certificate No. 1/K of 1977 Wonokromo Village, Wonokromo District, Surabaya City with the defendant filing a claim of ownership based on gewijzidge grondkaart number 48 dated July 25, 1926. The beginning of This case is the acceleration of the development activities of Frontage Riad Jl Wonokromo Surabaya West Side which was measured by BPN where there is a HGB ex Cinema certificate covering an area of 337 m2 and a resident's certificate covering an area of 24.36 m2 where one of them is the object of dispute. Based on the results of field investigations, the disputed parcels of land are next to the official residence of PT. KAI and confirmation from the Surabaya City Government to PT. KAI is part of the assets of PT. KAI (Persero).Based on the evidence submitted by the plaintiff as the heir of the legal owner of SHGB No. 1/K Kelurahan Wonokromo that the base of rights from SHGB No. 1/K namely eigendom verponding 7159 remains from Nationale Industrie en Landbouw Maatschappihj to the Republic of Indonesia. The Panel of

Judges also examined further that the remaining eigendom verponding number 7159 was issued in 1915 while gewijsde grondkaart was issued on July 25, 1926.

Thus it is clear that eigendom verponding 7159 was issued earlier than PT. KAI (Persero) based on gewijsde grondkaart.Regarding the legitimacy of the Certificate of Right to Build Number 1/K Kelurahan Wonokromo in the name of Hartanto Harto, it was explained in a letter of application Hartanto Harto October 12, 1971 to the Director General of Agrarian Affairs/Head of East Java Agrarian Inspection through the Head of the Regional Agrarian Office of the Municipality of Surabaya by attaching eigendom verponding Number 7159 remaining covering an area of 792 m2 along with other equipment and proof of payment to the state. The request was followed up with a copy of the 1915 situation map number 88 made by the Head of the Land Registration and Supervision Office on October 7 1971 until the issuance of SHGB No. 1/K Kelurahan Wonokromo. The certificate issuance process has also complied with the provisions of Law Number 5 of 1960 and Government Regulation Number 10 of 1961 concerning Land Registration.The Defendant argued that the object of the dispute was the possession of PT. KAI (Persero). However, the panel of judges considered that the lawsuit filed by the defendant was out of date because since the issuance of SHGB No. 1/K Kelurahan Wonokromo in 1977, no attempt had been made by the defendant to demonstrate land ownership based on the grondkaart it owned. The panel of judges believes that declaring the exception of the defendant unacceptable (niet onvankelijke verklaart).

d. Supreme Court Decision Number 1619 K/Pdt/2018

Overlap between land ownership certificates and land ownership by the railroad also occurred, one of which was in Tegal Regency, Central Java Province. The plaintiff demands that the defendant has committed an unlawful act which is detrimental to the plaintiff by filing a grondkaart. This demand was accepted by the Panel of Judges with the consideration that the grondkaart submitted by the defendant was not made in 1929 as evidence submitted that the grondkaart was in 1929.The plaintiff, as the heir of the legal owner of the disputed object, namely Chomisah binti Chanapi, also demanded that the Panel of Judges declare the collateral confiscation valid and valuable in this case. The collateral object of the dispute in this case was confiscated, namely a plot of land that was decomposed in the Property Rights Certificate Number 43 Pakembaran Village, Slawi District, Tegal Regency.

The defendant presented evidence in the form of grondkaart in 1929.The panel of judges considered the evidence submitted by both the plaintiff and the defendant, so they believed that a piece of land with a certificate of ownership number 43 was declared valid. Grondkart (land map) in 1929 submitted by the defendant in this case PT. KAI (Persero) has no legal force because it was not made in 1929 as stated in the Decision of the Slawi District Court dated May 5, 1988 Number 8/Pdt.G/1987/PN. Slw juncto Decision of the High Court of Semarang dated 28 February 1989 Number 556/PDT/1988/PT SMG juncto Decision of the Supreme Court of the Republic of Indonesia dated 10 March 1993 Number 2505 K/Pdt/1989. Therefore, the Panel of Judges decided to grant the plaintiff's request and cancel the decision of the Central Java High Court in Semarang Number 300/PDT/2017/PT SMG dated 15 September 2017 juncto Decision of the Slawi District Court Number 27/Pdt.G/2016/PN Slw dated April 6, 2017.

3. *GRONDKAART* ARRANGEMENTS IN LEGAL REGULATIONS

The review of grondkaart arrangements began with Law Number 86 of 1958 concerning the Nationalization of Dutch-Owned Companies, Law Number 5 of 1960 concerning Basic Agrarian Regulations, Government Regulation Number 40 of 1959 concerning Nationalization of Dutch-Owned Companies, Government Regulation Number 41 of 1959 concerning the Nationalization of Dutch-Owned Railway and Telephone Companies, Government Regulation Number 10 of 1961 concerning Land Registration, Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 18 of 2021 concerning Management Rights, Rights over Land, Apartment Units, and Land Registration, Regulation of the Minister of Agrarian Affairs Number 2 of 1960 concerning Implementation of Provisions of the Basic Agrarian Law, Regulation of the Minister of Agrarian Affairs Number 9 of 1965 concerning Implementation of Conversion of Tenure Rights over Land and Subsequent Provisions, Regulation of the Minister of State for Agrarian Affairs /Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997

concerning Land Registration in conjunction with Regulation of the Head of the National Land Agency Number 8 of 2012. Article 1 of Law Number 86 of 1958 states that Dutch-owned companies located in the The Republic of Indonesia was subject to nationalization and became fully owned by the State, one of which was DKA which has now turned into PT. KAI (Persero).

This was also corroborated by Article 1 PP No. 41 of 1959 that Dutch-owned railway and telephone companies located in the territory of the Republic of Indonesia were subject to nationalization.The provisions on the Conversion of Law Number 5 of 1960 in the form of eigendom rights, hakerfpachtt, other land rights that can be converted also do not mention grondkaart elements. Article 24 paragraph (2) of Government Regulation Number 24 of 1997 concerning proof of old rights states that if the means of proof as intended are not fully available, then proof of rights can be carried out based on the fact that the land parcel in question is physically possessed for 20 (twenty) years or more consecutively. in good faith and without dispute. Article 60 of PMNA Number 3 of 1997 states that written evidence for registration of old rights includes: a) groose deed of eigendom rights, proof of ownership rights based on autonomous regulations, certificate of ownership rights based on PMA Number 9 of 1959, decree on granting ownership rights, land tax receipts, deed of transfer of rights made underhanded, deed of transfer made by PPAT, deed of waqf pledge, minutes of auction, letter of appointment, certificate of history of yanah and other means of written evidence in accordance with the provisions of the conversion. Article 60 paragraph (3) also states that if the proof of ownership of a plot of land is incomplete, proof of land rights can be made with a statement or statement from 2 (two) witnesses stating the validity of ownership of the land parcel.

Whereas article 61 PMNA No. 3 of 1997 states that in the event that ownership cannot be proven by means of proof according to article 60, it can be proven by physical possession for 20 (twenty) years or more. The same thing is strengthened by Article 97 PP Number 18 of 2021 which states that land certificates, compensation certificates, other statements as information on land tenure and ownership can only be used as instructions in the framework of land registration.Not regulating grondkaart in one of the statutory arrangements does not necessarily make grondkaart's position gray. Grondkaart is a legal product in the Dutch colonial period which is still used today. Grondkaart is also one of the complete documents for issuing certificates of land rights by the Land Office. Land rights owned by PT. KAI. The land rights that have been obtained by PT KAI are in the form of building use rights, usage rights as long as they are used. The procedures taken by PT. KAI (Persero) to obtain a certificate of land rights as proof of ownership, namely:

a. PT. KAI (Persero) determines the object of control which refers to the grondkaart with the criteria for stakes being installed, recognition by residents and no disputes;

b. PT. KAI appoints a notary, a notary deals, then a Cooperation Agreement (SPK) is issued;

c. The Notary submits an application for a Decree on the Granting of Legal Entity Building Use Rights;

d. The process of measuring and mapping land parcels is carried out at the Land Office to issue a Land Plot Map (PBT);

e. The Land Sector Map will be reviewed at the Land Office for approval or disapproval in the process of obtaining a Decree on the Granting of Rights;

f. A Decree on the Granting of Rights is granted if a material and formal test is met on the basis of the land rights.

g. The notary continues the registration of the Decree on the Granting of Rights to obtain a certificate of Building Use Rights in the name of PT. KAI (Persero).

4. *GRONDKAART,* STATUS AND CONSEQUENCES

Grondkaart is basically a product of the past during the Dutch colonial era which was issued by an authorized official equipped with a cross-sectional view of land owned by government agencies, one of which is SS and VS. SS and VS merged to become DKA (Djawatan Kereta Api) based on Law Number 86 of 1958 including the recognition of grondkaart as an asset in the form of fixed assets at this time for PT. KAI (Persero). Even though DKA has been nationalized and has now become PT. KAI (Persero) but there is no regulation regarding the legal position of Grondkaart, especially with regard to land registration in Indonesia.Legal reasoning is often used by judges to determine decisions in several cases. Legal reasoning can be done because law is a system consisting of norms and in applying these norms an interpretation is

carried out (Raz 2009,204). In a hierarchical legal system, the validity of each norm is determined based on a higher norm, including legal acts whose validity is determined based on legal norms as can be seen in court decisions (Wacks 2006, 32-34 ; Raz 1980, 62). Munzer also explained that a norm which is a measure of the validity of a norm can come from, among other things, jurisprudence and custom (Munzer 1972.65). Jurisprudence is referred to by judges as a description of a condition that is expected so that a legal behavior can be declared valid (Munzer 1972, 65).

In international law, doctrine and jurisprudence are subsidiary means for the determination of rules of law which are used when there is insufficient explanation in international conventions, international customs and general legal principles; so that doctrine and jurisprudence can be used to demonstrate that the law applies in the case (Peil 2002, 141).In the Decision of the Semarang State Administrative Court, the Panel of Judges considered that grondkaart as an additional basis for rights besides the Certificate of Use Rights on behalf of the Ministry of Transportation of the Republic of Indonesia cq the Railway Bureau Company and the community has proof of ownership in the form of a certificate of land rights with a basis of rights, namely the minutes of handover . The panel of judges referred to article 18 of Law Number 5 of 1960 which states that in the public interest including the interests of the nation and the state and the common interests of the people, land rights can be revoked by providing appropriate compensation and according to the method regulated by law. . The concept of public interest is also contained in the minutes of the handover so that this is what convinces the judge to cancel the land title certificate.In the Central Java High Court Decision, the Panel of Judges used positivsistic reasoning in legal findings by referring to jurisprudence and evidence shown in court. Jurisprudence and doctrine refer to grondkraat as proof of PT. KAI (Persero). In tracing the history of the land, discrepancies were found between the history of the object of the dispute and the right holder so that a transfer of ownership of rights had occurred.

The Panel of Judges in the East Java High Court Decision used positivistic legal reasoning to determine the applicable law in grondkaart land ownership disputes.This decision is strengthened by the doctrine and jurisprudence that grondkaart as the basis for ownership rights by PT. KAI (Persero). Dispute between PT. KAI (Persero) with the community where eigendom verponding 7159 which is the basis for community ownership rights was issued earlier than control of the railroad by PT. KAI (Persero) based on gewijsde grondkaart.In the Supreme Court Decision regarding overlapping land between the community and PT. KAI (Persero), the Panel of Judges reviewed based on the legal reasoning of positivism to show grondkaart as a pointer to land control by PT. KAI (Persero). In this court decision, the grondkaart filed by PT. KAI (Persero) was made in 1929. The panel of judges tested the validity of the grondkaart, the validity was fulfilled but the year of manufacture was not in 1929. This is what convinced the judge to strengthen the certificate of ownership of individual land in the disputed object.This research is to prove the hypothesis that grondkaart as evidence of land registration in court decisions. Positivistic reasoning makes it easier for judges to determine the applicable law, especially when there is a void in the legal arrangements for grondkaart. The doctrine regarding grondkaart as the basis for ownership rights is not in accordance with the provisions in force in the laws and regulations.

There is no definition regarding the basis of rights and evidence in the review of grondkaart arrangements starting from Law Number 86 of 1958 concerning the Nationalization of Dutch-Owned Companies, Law Number 5 of 1960 concerning Basic Agrarian Regulations, Government Regulation Number 40 1959 concerning Nationalization of Dutch-Owned Companies, Government Regulation Number 41 of 1959 concerning Nationalization of Dutch-Owned Railway and Telephone Companies, Government Regulation Number 10 of 1961 concerning Land Registration, Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, Minister of Agrarian Regulation Number 2 of 1960 concerning Implementation of Provisions of the Basic Agrarian Law, Minister of Agrarian Regulation Number 9 of 1965 concerning Implementation of Conversion of Tenure Rights over Land and Subsequent Provisions, Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration in conjunction with Regulation of the Head of the National Land Agency

Number 8 of 2012. Article 24 PP Number 24 of 1997 explains regarding proving old rights and researchers based on customary law, namely the written evidence described in the article is the basis for rights used in land registration so that it becomes the basis for issuing certificates of land rights to the Ministry of ATR/BPN as an organization engaged in land administration, and not the existence of grondkaart arrangements in statutory regulations, grondkaart is more assertive as evidence in land registration in Indonesia.

IV. CONCLUSION

Grondkaart is a description of the appearance of land obtained from a land acquisition project and made and approved by cadastral officials during the Dutch Colonial government. Grondkaart as proof of land registration in court decisions because if there is a land dispute between PT. KAI (Persero) with the community or legal entity, PT. KAI (Persero) provides strong evidence, namely grondkaart. Grondkaart's position in court decisions points to positivism in finding laws by judges to make it easier for judges to apply grondkaart to land ownership disputes.Grondkaart arrangements that are not described in laws and regulations, especially in the land sector, create a legal vacuum. Vulgarly, there is no clarity regarding the definition of the basis of land ownership rights. The author believes that the evidence in proving old rights in PP No. 24 of 1997 refers to the basis of ownership rights that underlies the issuance of certificates of land rights. Therefore, based on the author's interpretation, grondkaart is proof of land registration where the author equates the position between grondkaart and the statement of physical possession as stated in article 97 PP Number 18 of 2021. With grondkaart as evidence in statutory regulations, PT. KAI (Persero) needs to apply for state land rights to obtain land rights.

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