

MAC Method (Mediation, Agreement, and Certification) for Grondkaart as an Alternative Dispute Resolution between PT.KAI and Society

Mohammad Hamidi Masykur^{a*}, Ida Nurlinda^b, Efa Laela Fakhriah^c,
Yani Puijiwati^d, ^aBrawijaya University, ^{b,c,d}Padjadjaran University, Email:
^{a*}hamidi@ub.ac.id

Grondkaart is a Measurement Letter or Technical Preview which measured by a Landmester (Land Measurement Officer) and endorsed by the Head Office of Cadastre and Resident as well as having a legal basis in the form of a decision (Besluit) and/or determination (beschikking). This can be used as an initial reference for the process of proof of land ownership rights, but the other hand, local people feel the land around Grondkaart because the land has been mastered over the years. When PT. KAI reported the residents over the land grab to police, investigators assumed PT.KAI currently does not have a strong legal standing because Grondkaart is not proof of ownership of the land but only as a measurement certificate and initial evidence to be able to register the land. Therefore, it does not have legal power and lack of legal certainty in land ownership. Indeed in order to achieve legal certainty over the ownership of the land, Article 49 paragraph (1) of Law No. 1 of 2004 on State Treasury confirms that the goods belong to countries / regions in the form of land controlled by the central government / Regions must be certified on behalf of the Government of the Republic of Indonesia / local governments whereas according to this research is PT. KAI. In line with that, in the Article 86 of Law No. 23 of 2007 on Train also confirmed that the land already controlled by the government, local government or enterprises in the development of train infrastructure, certified in accordance with the provisions of the legislation in the land sector. However, PT. KAI hampered by rules that the land must be mastered physically and there is no dispute if it is wanted to be registered. These provisions become a long series of polemical for the assets of PT. KAI against communities in several regions in Indonesia.

Key words: *Groondkart, land disputes, MAC.*

Introduction

One of the main and prioritised programs in Joko Widodo Administration is Infrastructure Development. It is embodied in *Nawa Cita* programs and is being implemented through the Third National Mid-Term Development Planning (RPJMN) in 2015 – 2019. Infrastructure development could boost the economic development and connectivity as the realisation of state self-sufficient ideology (LBH Bandung, 2017).

Infrastructure is the technical facility, physical, system, hardware, and software which are needed to provide public services and support to the networking structure in order to harmonise the social and economic development (Art. 1 (4), Law No. 38/2015). Hence, Agus Suntoro states that as the legal basis for the President's infrastructure development program, is the established President Regulation No. 3 of 2016 on the Acceleration of National Strategic Projects (PSN). In this new program, there are 245 projects, from national road/national strategic road non-highway, highway road, railways infrastructure, airport development, port, electricity, etc. (Agus, 2019).

Nevertheless, the infrastructure program, which is now the Government's priority, has provided a positive impact on economies and mass mobilisation. It has also left some conflicts from those development programs (Benhard, 2012). It is proven by Reports to the National Human Rights Commission (Komnas HAM), including (1) Power Station form Water, (2) Coal, (3) Airport and Port Development, (4) Highway and Railways, (5) Government Offices, and (6) Reclamation Project. For the details, they are provided here as follows:

Table 1: Agrarian Conflicts Report Data

No	Conflict	Total
1	Land	104
2	Garden	39
3	Infrastructure	32
4	Mining	28
5	Forestry	24
6	Environment	19
7	Law Enforcement	23
Total		269

Based on aforementioned data, it shows that the agrarian conflict in Indonesia is a phenomenon that is still a case that we often encounter. Conflict is defined as a social process between two people or more (can also group) where one party trying to get rid of the other party by destroying it or make it powerless (Bernhard, 2012). Taquiri in Newston and Davis said that conflict is a legacy of social life that might occur in many circumstances due to the rise of a state of disagreement, controversy and conflict between two or more parties in the quest (Bernhard, 2012).

Viewed from the side of practices, disputed land issues that can be itemised in the types of dispute are as follows (Elza. 2012):

- a) Disputes concerning land which was intended;
- b) Disputes concerning the boundaries of land;
- c) Disputes regarding the wide of land;
- d) Disputes regarding the status of the land (state land or land rights);
- e) Disputes concerning land rights holders;
- f) Disputes concerning rights burdensome;
- g) Disputes regarding the transfer of land rights;
- h) Disputes regarding the locator and the wide determination of land for project purposes of public / private;
- i) Disputes regarding the release / liberation of land rights;
- j) Disputes concerning land endorsement;
- k) Disputes regarding compensation, severance or other payments;
- l) Disputes regarding the cancellation of land rights;
- m) Disputes concerning the revocation of land rights;
- n) Disputes regarding the handover of land rights;
- o) Disputes regarding the issuance of land certificates;
- p) Disputes regarding the means of proof of the existence of the titles or deeds of the law, and so forth.

If we analysed based on Benhard Limbong's argument, we can conclude that the type of dispute in this research is point (d) which is about land disputes (state land or land rights) in the dispute between PT. KAI and people. Furthermore, if we look it from the historical aspects of land ownership by PT. KAI, in the days of the Dutch East Indies, there are two railway companies that stands in the Dutch East Indies, which State Train / Staatspoorwegen (SS) and private railway / Verenigde Spoorwegbedrijf (VS). Asset (SS) is not given proof over land rights but by Bestemming (Tenure of Land). While asset (VS) was nationalised by Law No. 86 Year 1959 and awarded damages to the Private Railway Company. Both have now become assets; PT. KAI formerly called the Department of Railways (DKA). State railway company assets (SS) since August 18, 1945 have become an asset of the DKA. All land described in grondkaart SS has become an asset of the DKA. Assets of the private

railway company (VS) based on Law No. 86 of 1958 have been nationalised and based on the Indonesian Government Regulation No. 40 and 41 of 1959 has become an asset of the DKA which is now PT. Kereta Api (Persero) (PT. KAI, 2000). But both of these assets are not given proof of the right so it does not guarantee the legal certainty.

Grondkaart concretely describes and explains the boundaries of the land that has been handed over to the SS by ordinance published in each of the Gazettes. The status of the lands described in the *grondkaart* is state land, but the quality has become the state land assets of the SS, so that the land must be in accordance with the state treasury law (*komtabel*). From a juridical point of view of the *Grondkaart* land in Article 49 paragraph (1) of Law No. 1 of 2004 on State Treasury insists that "Goods belonging to the country / region in the form of land controlled by the central government / Regions must be certified on behalf of the Government of the Republic of Indonesia / Government" the areas concerned in this research are PT. Kereta Api Indonesia. In line with the Article 46 paragraph (1) which clearly stated that "The land which located in an area belonging to the railway line and space that benefits the railway line are certified in accordance with the law". Further emphasised in Article 86 which asserted that "The land that has been controlled by the government, local government or enterprises in the development of railway infrastructure, certified in accordance with the provisions of the legislation in the land sector ". The problem is PT.KAI does not control the land physically, but mastered by the citizen, whereas if this refers to Government Regulation No. 24 of 1997 on the Land Registration stated that the rights holder must master the land that will be registered. Therefore, PT.KAI has been experiencing barriers to obtain a certificate for their assets.

In connection with the procurement rights by PT.KAI, at the time of entry into force of the Law of the Republic of Indonesia Number 5 of 1960 on Basic Regulation of Agrarian (UUPA) on 24 September 1960, the *grondkaart* Land is subject to *beheer* rights of DKA. *Beheer* theory is initially the implementation of principle "*Domein Verklaring*" or "*Domein Statement*" as stated in Article 1 *Agrarisch Besluit* 1870, hence the whole lands are free from mastery based on Adat law or Western Law considered as state land (*vrijlanddomein*) which means owned and mastered by the state. Nevertheless, further regulation for irremovable goods as stated on Staatblad 1911 Number 110, which revised lastly by Staatblad 1940 Number 430. Therefore, irremovable goods under the mastery of department which manage the budget for the maintenance of those goods (Arie, 2011).

Based on the Minister of Agrarian and Spatial Planning Number 9 of 1965 it was confirmed that the lands controlled by government agencies with entitlement (*beheer rights*), from the date of 24 September 1960 were converted into Management Rights and Usage Rights which are valid as long as it is used. Management Rights and Usage Rights were born after control rights under the state is registered at the Land Registry Office and issued the certificates of

management rights or usage rights as proof of their rights (Urip, 2012). Nevertheless, such certification is hampered because the land is physically controlled by the community, resulting in a never-ending dispute.

Based on aforementioned facts, the sociological impact of the presence of *grondkaart* throughout Indonesia in its development causes problems between communities who control the *grondkaart* and PT. KAI. Communities who have been occupying the land for years feel they have right to apply for ownership rights to the local Land Office. While PT. KAI insist that these lands are assets of PT. KAI which is proved by Indonesia's history that gave birth to the Soil Map named *grondkaart* as proof of land ownership by PT. KAI.

Discussion

a. Analysis of the Problem

PT. KAI as a state owned company has the ownership rights of the land as drawn in the *Grondkaart*. The function of *Grondkaart* is to provide a map of soil measurements made for the purpose of government agencies. In contrast to the function of *Meebrief*, *grondkaart* is the final result that does not need to be followed up with a letter granting decisions by the government (PT. KAI, 2000). Although there is no solid proof in the form of a certificate, the *Grondkaart* already provides evidence that shows these lands are controlled by PT.KAI. The problem is that people often grab land which is controlled by the PT.KAI because people consider such land being abandoned and not used by PT.KAI. However, when the land is wanted to be taken over again by PT. KAI for the purpose of certification, the community is rejected even though they have been occupying the land over the years and they feel entitled to apply for ownership rights. Thus, giving rise to a new round of conflict between communities and PT.KAI throughout Indonesia.

In relation to the land control by PT.KAI, as it has been described above, PT. KAI has *Grondkaart* as proof of ownership. Given the perspectives of related laws and regulations, according to the Government Regulation No. 8 of 1953, *Grondkaart* is not included in the group of old evidence of land because *grondkaart* is *beheer* (control) over land in character. The *Grondkaart* in fact is proof of the signs that it was controlled by the agency / department concerned. It is being debated because *Grondkaart* does not ensure legal certainty of land ownership, whereas Article 19 of Law No. 5 of 1960 mandated that "In order to ensure legal certainty by the Government it is held the land registration throughout the territory of the Republic of Indonesia in accordance with the provisions stipulated by Government Regulation". Then article 49 paragraph (1) of Law No. 1 of 2004 on State Treasury insists that "Goods belonging to the country / region in the form of land controlled by the central government / Regions must be certified on behalf of the Indonesian government / government". The article is no exception to apply to *Grondkaart* land. In line with the Article

46 paragraph (1) of Law No. 23 of 2007 on Railways confirmed that "The land is located in a room belonging to the railway line and space benefits of the railway line are certified in accordance with the legislation". Then further emphasised with article 86 which asserted that "The land that has been controlled by the government, local government or enterprises in the development of railway infrastructure, certified in accordance with the provisions of the legislation in the land sector". Hence, the obligation for PT. KAI to obtain a certificate is inevitable.

Then, in order to ensure legal certainty based on Regulation of the Minister of Agrarian and Spatial Planning No. 9 of 1965, it is confirmed that the lands controlled by government agencies with entitlement (*beheer*) from the date of 24 September 1960 converted into Management Rights and Usage Rights are valid as long as they are used. Right to Use and Management Rights were born after tenure on State lands registered at the Land Registry Office and published the usage rights or management rights as proof of their rights (Urip, 2012). Then the procedure for the lands with proof of entitlement like *Grondkaart* registration is a process based on procedures for determining rights under the provisions of Article 3 of Regulation of the Minister of Agrarian and Spatial Planning No. 1 of 1966 jo. No. 9 of 1965 on Registration of Usage Rights and Management Rights. Whereas the decision to grant land rights belongs to the agency / department concerned. Thus, the problem resulting from *grondkaart* can be completed if it emphasised regarding their land rights in order to fulfil the principle of publicity and the principle of specialty land registration. This is to test through "*contradictoire de limitatie*" to meet the principle of "*nemo plus iuris*" given that the *grondkaart* does not include as proof of the rights listed in soil book-keeping in order to reach the status of legal certainty and protection of legality of the land (Rusmadi, 2013). However, the problems encountered in the field is lands controlled by PT. KAI are often taken over without permission by the local community because people think that the land is not used by PT. KAI. After such a long time people master the land which eventually gives people reason to claim that the land belongs to them, as stipulated in several cases, such as:

- a. Land disputes PT Kereta Api Indonesia (Persero) against Muara Gula people, District Ujan Mas, Muaraenim Regency, South Sumatra. People who objected when PT. KAI wanted to carry out development in the carriage depot land; whereas PT.KAI still insisted that the land was controlled by PT. KAI. Hence, one of the people claimed to have a certificate of ownership rights of those lands. "Ownership of the land proved a letter Description on Ownership Rights No: 31 / district / 1976 on behalf of Mohd Salah bin Mapi who is the biological father signed by Head of district (Camat) named Muaraenim A Muis Manjan BA" (Sumatera Deadline, 2018).
- b. Land disputed by PT Kereta Api Indonesia (Persero) against People in Lohdoyong Village, District Ambarawa, Semarang regency, Central Java, related to policing 134 families who are affected by the activation project Ambarawa - Kedungjati. People

claimed that they have certified land with ownership rights in the PT. KAI's lands. Finally, PT. KAI gave compensation to citizens whose property was evicted. (Regional Kompas, 2018)

- c. Land disputes between PT Kereta Api Indonesia (Persero) against people in Emplasemen Station, Muara Gula, Palembang. This case was started by people who claimed to have evidence of ownership of the land with Certificate of Ownership Letter Number: 31 / district / 1976 on behalf of Mohd Soleh bin Mapi who is the real father and signed by the Head of District Muaraenim named A Muis Manjan BA (Kompasiana, 2018).

From the abovementioned cases it is clear that the illegal land occupation of PT. KAI's assets still often occurs; it is an obstacle that PT. KAI encounter in its effort to obtain a certificate for their land as stipulated in the Government Regulation No. 24 of 1997 on the Land Registration that the subject of the rights must master the land which will be registered. Thus, it is necessary to uphold a proper solution that brings justice for both sides, meets the principle of legal certainty and is consistent with the laws.

b. Solution

In a land dispute between PT.KAI against communities there are strategies offered by the author through three stages called the MAC Method (Mediation, Agreement and Certification). This is further elaborated as follows:

Mediation

Mediation is a negotiation process through a neutral third person's help which does not have the authority to make a decision (Takdir, 2010). In relation to that in the Minister Regulation of Agrarian Affairs No. 11 of 2016 on Land Dispute Settlement, it is stated that Mediation is the dispute settlement mechanism through the negotiation process to achieve mutual agreement supported by the mediator. On the other hand, the mediator is a party or parties who are working on facilitating the negotiation and finalisation of the dispute without using decision or force. Furthermore, Takdir Rahmadi explains that the essential elements of mediation are parties where: (1) both parties resolve disputes through negotiation; (2) are based on mutual consent; and, (3) ask for assistance from other impartial party or parties. Emphasised by Laurence Boulle that mediation separated into three major steps, which are (Laurence, 2010):

- a. First stage (preparation):
 - a. The initiator for mediation and involvement of Mediator.
 - b. Intake and screening.
 - c. Information gathering and exchange.
 - d. Provision of information to the parties.

- e. Contact with parties.
 - f. Preliminary conference.
 - g. Settling the topic to mediate.
2. Mediation meeting:
- a. Preliminary mediator's opening statement.
 - b. The party presentation.
 - c. Identifying areas of agreement.
 - d. Defining and ordering the issues.
 - e. Exploring of issues
 - f. Negotiation and problem solving
 - g. The separate meetings
 - h. Final decision making
 - i. Closing statement and termination
3. Post-mediation activities:
- a. Ratification and review.
 - b. Official sanction.
 - c. Referrals and reporting obligations.
 - d. Mediator's debriefing.
 - e. Other follow-up activities.

Compared to Laurence Boulle, Laura Nader and Harry F. Todd Jr. argued that there are seven methods to solve disputes in society. These are: (1) lumping it, (2) avoidance, (3) coercion, (4) negotiation, (5) mediation, (6) arbitration, and (7) adjudication (H. Salim, 2013). The Author agreed with Laura's view that mediation is at fifth stage. This is because before the mediation phase, people just let it be, avoid it, sometimes coercion happens however until the end parties negotiate and then end up in mediation.

Given the importance of mediation in society, the Government has regulated as it is stated in Article 37 Regulation of Agrarian Minister No. 11 of 2016 on Land Disputes Settlement that (1) Dispute resolution or conflicts as stated in Article 12 (5) could be solved through mediation. On the other hand, in para. (2) in case of the other party decline the mediation as the method, parties are given freedom to solve their own issues in accordance with law.

In regard to that, the Author argues that it is the time to maximise or strengthen the role of Land Office (BPN), which has huge responsibilities. This is in line with Benhard Limbong's views that normatively BPN is the one and only institution in Indonesia that has the authority to manage land. In President Regulation No. 10 of 2006 on National Land Department (BPN) as amended in President Regulation No. 85 of 2012 which is stated that BPN conduct the duty of government in land both national and regional, and sectoral by the authority. BPN has control over the formulation of national policy in land, technical policy, planning,

programming, implementation of administrative services in order to fulfil the legal certainty over lands, land management, agrarian reform, including the empowerment of society (Benhard, 2012).

It is also supported by Nia Kurniati's views on emphasising what the Government has given real attention to, as stipulated in TAP MPR RI No. IX/MPR/2001, whereas it says that the management of land for long time disputes has not yet been solved. Therefore in article 6 (1) (d) and € on the Guidelines on Agrarian Policy Reform, it is stated that:

Solving conflicts concerning agrarian natural resources which has arisen for decades as well as to prevent the future conflicts in order to making sure that the law enforcement is in accordance with the principles embodied in Article 5 of the Decision. Strengthen the institution and its authority in order to be mandated with agrarian reform agenda and solve conflicts which concerning agrarian natural resources. Taking measures for budgeting implementing the reform program and conflicts resolution (Nia, 2016).

Based on previous discussions, the initial phase which should be done is to attempt mediation between PT. KAI and the community who control the land. Implementation of the mediation can be based on the initiative of the desire of the parties or the initiative of the Ministry of the Agrarian and Spatial Planning/BPN who also serves as a mediator, because the Ministry is the party that has the authority to handle the settlement of land disputes in accordance with the Regulation of Minister of Agrarian and Spatial Planning/ Head of the Land Office No. 11 of 2016 on the Settlement of Land Disputes.

Participants of the mediation under section 39 paragraph (1) of the Regulation of the Minister of Agrarian / Head of Land No. 11 of 2016 on the Settlement of Land Disputes are:

- a. The Management team;
- b. The Ministry officials, BPN Regional Office and / or the Land Office;
- c. The Mediators from ministries, regional offices BPN and / or the Land Office;
- d. The parties and / or other related parties; and / or
- e. Specialists and / or experts related to disputes and conflicts, the relevant agencies, and the public, community / cultural / religious, or observer / activist of agrarian and arrangement of space, as well as other elements which deem necessary. All the participants must receive an assignment from the Ministry of parties in accordance with the provisions of paragraph (2) of article above.

In the attempt of mediation, people who control the land will be requested to give up land they control to PT. KAI to be certified on behalf of PT.KAI with Management Rights, as well as being willing to declare their certificates as invalid by the Ministry of Agrarian and Spatial Planning/BPN, because land objects which are about to certify must be free from any

disputes. However, when one of the parties refuses to hold mediation then the dispute resolution would be given to the parties in accordance with the provisions of the legislation, as stated in Article 37 paragraph (2) of the Regulation of the Minister of Agrarian / Head of Land No. 11 of 2016 on the Settlement of Land Disputes.

Agreement Making Process

State mastery rights as stated in article 2 (1) in Law no. 5 of 1960 has given authority as follows:

- a. Regulate and take measures for the use, procurement, conservation of earth, water, and outer space;
- b. Determine and regulate the legal relations between people and earth, water, and outer space;
- c. Determine and regulate the legal relations between people and legal acts pertaining earth, water, and outer space.

In line with that, the meaning of these words “greatest number of people’s welfare” in legal perspective is the existence of legal certainty upon right to social and economics of people as it is fit as citizen (Umar, 2014). Furthermore, from a legal point of view, Constitutional Court defines “mastered by State” as stipulated in Article 33 of Constitution 1945. Constitutional Court determines that the phrase has higher meaning or wider rather than ownership in civil concept. The concept of mastery by State is public law conception which is related to the principle of people’s sovereignty based on Constitution 1945 both in politics and economics. In people’s sovereignty, that the people as source, owner as well as the highest power in process of nation, in accordance with “from people, by people, for people”. In the context of that highest power, it is also included the definition of the public ownership by people collectively (Yance, 2014). For further details of the five functions or forms of state mastery, see below:

1. Regulating (*regelendaad*). Regulating is conducted by the Government both national and regional starting from Law, Government Regulation, Regional Regulation and Decision which has govern the legal relationship between Government, Private sector, and people towards land and other natural resources.
2. Management (*beheerdaad*). Management is conducted as directly by National Government or Regional Government or by State-owned Enterprise (BUMN) or Regional State-owned Enterprise (BUMD). Besides, the management also held by form of shares by Government upon the private companies. For BUMN and BUMD, the Government shall own the major shares. However, the ownership of shares does not necessary to be absolute majority (50% + 1) instead it is relative majority, whereas the state is the majority shareholder which cannot own more than 50% of shares, as long as the control of state towards the BUMN and BUMD is considered strong enough.

3. Policy (*beleid*). The making of policy is conducted by the Government through formulation and establishment of policy concerning mastery, procurement, the use of land and other natural resources. The policy could also be initiated by the National Government through formulation of planning in conducting land administration and other natural resources.
4. Administration (*bestuursdaad*). Administration is conducted by the Government through its authority to issue and terminate permit facility (*vergunning*), licence (*licentie*), and concession (*concesie*). The administration could be done also by the government through establishment of legal relation such as rights on land towards the individuals or communal rights (*hak ulayat*) in *adat* law society.
5. Supervision (*toezichthoudensdaad*). Supervision is conducted by The Government in order to supervise, evaluate, audit, control, and law enforcement to exercise the power of state over land and natural resources, whereas to make sure that the used of it is for the greatest number of people's welfare (Yance, 2014)

Based on the abovementioned information, we can conclude that the Government can implement 5 types of functions in mastery as it is stipulated in administration function (*bestuurdaad*) in Law No. 1 of 2004 on State Treasury which one of the essential elements is state property. In the management of state property, it is regulated through Ministry of Finance as the manager of state property, in the other hand the officials other than Minister of Finance are the users. Based in Article 45 (1) of Law No. 1 of 2004 on State Treasury, it is stated that state property that needed for the administration of government cannot be transferred (Imam, 2016).

According to the legal provisions of the state treasury, the land assets of PT. Kereta Api (Persero) either already certified or not, should not be released to third parties if there is no permission from the Minister of Finance first. Although the land assets of PT Kereta Api (Persero) is still not yet certified or of state land status, but may not be provided with a right of the land to a third party, if there is no permission from the Minister of Finance (PT. KAI, 2000), Therefore, PT. KAI's land assets must be certified first. After the PT.KAI land is certified with Rights Management, these lands can be used by a third party on the basis of the leasing agreement. Under Article 21 of Government Regulation No. 40 of 1996 on Business Rights, Development Rights, and Usage Rights. Business rights (HGU), development Rights (HGB), and usage rights (HP) may be charged to the management rights, so the lease agreement could include HGU, HGB, and HP. The submission procedure is set in the Regulation of Minister of Agrarian and Spatial Planning / Head of the Land Agency No. 9 of 1999 on Procedures for Granting and Cancellation of Rights over Land State and Management Rights.

Making the agreement between PT KAI and the community is one of types of implementations of mastery as stated in point Policy (*beleid*), it could be in a form of lease agreement, cooperation and others. Therefore, after land certification has done Grondkaart PT. KAI can obtain legal certainty on the *Gronkaart* land and the community can continue to enjoy the land with the agreement so as to create a win-win solution.

Land Certification

In national land law, certificate is the most strong and full evidence as stated in Article 19 (2) (c) Law No. 5 of 1960 jo. Government Regulation No. 24 of 1997 on Land Registration. In addition to that M. Machfud Zarqoni tried to shift the meaning of externality of Land Certificate by stating that even though it is not an absolute guarantee that certified land would not be sued by another party who has legal standing. Further Machfud emphasized that the obligation to protect land not only belong to the government, but it belongs to the owner themselves (Machfud, 2015). However, Benhard has a different opinion, he stated that there are at least four privileges of having a certificate of ownership which are: (1) giving legal certainty for the owner, (2) preventing the disputes, (3) giving the owners more composure, and (4) being able to exercise any legal action pertaining to the land as long as it is accordance with the law and not against public policy as well as decency (Benhard, 2014).

Certificate as proof of rights, issued for the purpose of the interests of the relevant right holders are in accordance with the existing physical data in the measurement certificate and juridical data as registered in the land book (Boedi, 2008). Issuance of certificates means that rights holders can easily prove their rights. Therefore, the certificate is a form of solid evidence, as stated in article 19 UUPA (Boedi, 2008). Certification of the state assets including fixed objects such as land is obligatory in principle as set forth in Act No. 1 of 2004 on State Treasury, and certifying *Grondkaart* land is also required in the Act No. 23 of 2007 on Railways.

Based on the Regulation of the Minister of Agrarian No. 9 of 1965, it is confirmed that the lands controlled by government agencies with entitlements (*beheer*) as of the date of 24 September 1960 converted into Management Rights and Usage Rights is valid as long as it is used. According to the author, the PT. KAI's lands asset should be certified with management rights. Unlike the usage rights, it can be served as the basis for other rights such as the usage rights and development rights under Section 21 of Government Regulation No. 40 of 1996. The procedure for application of management rights sets out in Regulation of the Minister of Agrarian / Head of the Land Agency No. 9 of 1999 on Granting and Cancellation on Rights on State Land and the Land Management Rights.

In filing land certification for the management rights, it is important to scrutinise on whether the PT. KAI is subject / applicant to the management rights. PT. KAI as a State Owned Enterprise is one of the parties that may request for Management Rights (HPL). Based on Article 67 of Regulation of the Minister of Agrarian/ Head of National Land Agency No. 9 of 1999 on subject / applicant management rights, namely:

- 1) Government agencies including Local Government;
- 2) State-owned enterprises;
- 3) Regional owned enterprises;
- 4) PT. Persero (Limited);
- 5) Authority Body;
- 6) Other Legal Entities appointed by the government.

Information about the applicant consists of: Name of legal entity, domicile, deed or founding regulations in accordance with the provisions of the legislation in force. Things to consider in the filing of management rights are:

- a. Land use plan.
- b. Type of land: agricultural or non-agricultural

The document that must be prepared, namely:

- a. A photocopy of identity formation requested or a decree or certificate of incorporation in accordance with the legislation in force;
- b. Land utilisation plans both short term and long term;
- c. Location permit or permit designation of land use or land permit for reserve in accordance with the Spatial Plan Area;

For more details, in the case of an application for registration is submitted to the Minister for the Management of Agricultural and Spatial through the Land Office with the following stages:

- a. Applicant applies for the Management Rights to the Minister through the Head Office of Land Region where the authority includes the lay of the land area concerned with the document as mentioned in the section of land licensing and control of land above.
- b. After the document is accepted, Head of the Land Office shall take action as follows:
 - a. inspect and examine the completeness of the juridical and physical data;
 - b. fill the form fields;
 - c. provide a receipt of acceptance of the document; and
 - d. notify the applicant to pay the necessary costs of such a request for finalization with the details in accordance with applicable law.
- c. Head of the Land Office then checking eligibility for further processing in accordance with applicable laws.

- d. In the case of the requested land has no letter of measurement, the Head of the Land Office is instructed by the Section Chief of Land Infrastructure to prepare a measurement certificate or take measurements.
- e. Further, the head of the Land Office ordered to:
 - a. Head of Land Acquisition Section or a designated officer to check for the right to land that is already registered, as long as all the physical data and juridical data has satisfied to make a decision as stated in the Minutes of Examination Land (establishing Rapport); or
 - b. Land Research team to check for the right to land that has not been registered as outlined in the report; or
 - c. A Land Audit Committee to examine the request for the right to land in addition to being examined as referred to in paragraphs a and b, as outlined in the Proceedings of the Land Investigation.
- f. If the juridical and physical data are incomplete, Head of the Land Office notify the applicant to complete it.
- g. Once the application has been qualified. Head of the relevant Land Office file convey the request to the Head of Regional Office accompanied by the opinion and judgment.
- h. After receiving the application file that accompanied the opinion and judgment, Head of Regional Office instructed the Head of Section Land Rights to:
 - a. Record in the form fields.
 - b. Inspect and examine the completeness of the juridical and physical data, and if it is not complete then immediately asked the head of the relevant Land Office to complete the requirements.
- i. Head of the Regional Office would check the feasibility of application for management rights for further processing in accordance with the applicable law.
- j. Once the application has been qualified. Head of Regional Office bersangkutanmenyampaikan file the request to the Minister accompanied danpertimbangannya opinion.
- k. After receiving the application file and consideration by its opinion, the Minister order the designated Officer to:
 - a. Record in the form fields.
 - b. Inspect and examine the completeness of the juridical and physical data, and if it is not complete immediately asked the Head of the Regional Office concerned to complete it.
- l. Minister examined the completeness and accuracy of juridical and physical data on land that applied for by considering the views and considerations Head Regional Office and further examined whether or not granted in accordance with the provisions of applicable law.
- m. Minister issue a decree on management rights on the land applied for or refusal with disapproval reasons.

- n. The decision to grant or refusal to grant management rights conveyed to the applicant by registered mail or in any other way that ensures that decision when he got to the beneficiary.

Based on the description above, it can be concluded that the *Grondkaart* land can also be registered as management rights and PT. Kereta Api Indonesia also qualified as a subject of management rights holders. Nevertheless, in the implementation hampered by fact that the land is physically controlled by people whereas the important aspect in making land certification is not only legally entitle but also master the land as evidenced by:

- a. Proof of ownership and proof of land acquisition in the form of certificates, designation or surrender of the government, the release of forest area from the competent authority, the deed of release of former land belonging to indigenous or other proof of land acquisition;
- b. The layout, the boundaries and the extent (if any Measure Letter or Picture situation mentioned dates and number);
- c. Status of the land (state land or land rights);
- d. Information about the number of fields, spacious and status of lands owned by the applicant, included the land requested.

Conclusion and recommendation

Conclusion

Dispute settlements between PT.KAI (Kereta Api Indonesia) against communities or people on *Grondkaart* land could use a MAC Method (Mediation, Certification, and Agreement) as an alternative dispute settlement without harming or damaging the parties so that they carried the spirit of a win-win and not win-lose solution.

Recommendation

The Government should establish a policy in the form of a Ministerial Decree of Agrarian and Spatial Planning concerning Resolution for Land Disputes which are indicated as *Grondkaart* land.

REFERENCES

- Arie Sukanti Hutagalung dan Oloan Sitorus, *Seputar Hak Pengelolaan*, Cetakan pertama, STPN Press, Yogyakarta, 2011.
- Bernhard Limbong, *Konflik Pertanahan*, Pustaka Margaretha, Jakarta, 2012.
- Benhard Limbong, *Reforma Agraria*, Pustaka Margaretha, Jakarta, 2012 .
- Benhard Limbong, *Hukum Agraria Nasional*, Pustaka Margaretha, Jakarta, 2012.
- Benhard Limbong, *Politik Pertanahan*, Pustaka Margaretha, Jakarta, 2014.
- Boedi harsono, *Hukum Agraria Indonesia : Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya jilid 1* (cet.12), Djambatan, Jakarta, 2008.
- Djoko Marihandono dkk, *Nalika Tanah Jawa Sinabukan Ril Konsesi NV. NISM di Jawa Tengah 1863-1958. Aset Non Railway Direktorat Aset Tanah dan Bangunan PT. Kereta Api Indonesia (Persero) Jl. Perintis Kemerdekaan No 1 Bandung*, 2018.
- Elza Syarief, **Menuntaskan Sengketa Tanah Melalui Pengadilan Khusus Pertanahan**, Kepustakaan Populer Gramedia, Jakarta, 2012.
- Imam Koeswahyono, *Disertasi :Politik Hukum Tukar Menukar Barang Milik Negara/Daerah Dalam Konteks Pengelolaan Barang Milik Negara/Daerah Yang Berkeadilan*, Program Doktor Ilmu Hukum Fakultas Hukum Universitas Brawijaya, 2016, hlm. 1-2.
- Jhon W. Newstrom, Keith Davis, *Organizational Behaviour: Human Behaviour at Work*, Mc. Graw-Hill Companies, 1997. Dalam Benhar Limbong, 2012, *Konflik Pertanahan*, Pustaka Margaretha, Jakarta.
- M. Machfudh Zarqoni, *Hak Atas Tanah, Perolehan, asal dan turunannya, serta kaitannya dengan Jaminan Kepastian Hukum (Legal Guarantee) Maupun Perlindungan Hak Kepemilikannya(Property Right)*, Prestasi Pustaka Publisher, 2015.
- PT. Kereta Api (Persero), *Tanah Kereta Api Suatu Tinjauan Historis, Hukum Agraria/Pertanahan dan Hukum Perbendaharaan Negara*, (Semarang: Seksi Hukum PT. Kereta Api (Persero), 2000).
- Rusmadi Murad, *Adiministrasi Pertanahan Pelaksanaan Hukum Pertanahan Dalam Praktek Edisi Revisi*, Mandar Maju, Bandung.



Sahnan, Hukum Agraria Indonesia, Setara Press, Malang, 2016.

The Liang Gie, Teori-teori Keadilan, Supersukses, Yogyakarta, 1982.

Takdir Rahmadi, Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat, PT Radja Grafindo Persada, Jakarta, 2010.

Urip Santoso, Kewenangan Pemerintah Daerah Terhadap Hak Penguasaan Atas Tanah, (Jurnal Jurnal Dinamika Hukum Vol. 12 No. 1 Januari 2012), halaman 191.

Umar Said Sugihartono dkk, Hukum Pengadaan Tanah, Pengadaan Hak Atas Tanah Untuk Kepentingan Umum pra dan Pasca Reformasi. Setara Press, Malang, 2014.

Yance Arizona, Konstitusionalisme Agraria, STPN Press, 2014.

Journal

Agus santoso, Penilaian ganti kerugian dalam pengadaan tanah untuk kepentingan umum : Perpspektif HAM, Jurnal Bhumi Jurnal Agraria dan Pertanahan Volume 5 Nomor 1 Mei 2019.

Kausarian, H., Sri Sumantyo, J. T., Kuze, H., Aminuddin, J., & Waqar, M. M. (2017). Analysis of polarimetric decomposition, backscattering coefficient, and sample properties for identification and layer thickness estimation of silica sand distribution using L-band synthetic aperture radar. *Canadian Journal of Remote Sensing*, 43(2), 95-108.

Kausarian, H., Sumantyo, J. T. S., Kuze, H., Karya, D., & Panggabean, G. F. (2016). Silica Sand Identification using ALOS PALSAR Full Polarimetry on The Northern Coastline of Rupert Island, Indonesia. *International Journal on Advanced Science, Engineering and Information Technology*, 6(5), 568-573.

Kausarian, H., Lei, S., Goh, T. L., & Cui, Y. (2019). A new geological map for formation distribution on southern part of south China sea: West Kalimantan, Indonesia. *International Journal of GEOMATE*, 17(63), 249-254.

LBH Bandung, Hak Asasi Manusia bab yang hilang dalam cerita pembangunan, LBH Bandung-Bandung, 2017, hlm. 2017. Dalam Jurnal Bhumi Jurnal Agraria dan Pertanahan Volume 5 Nomor 1 Mei 2019.



Laws and Regulations

Constitution of Republic of Indonesia Year 1945

Law Number 5 of 1960 on Basic Regulation on Agrarian Principles (UUPA)

Law Number 1 of 2004 on State Treasury

Law Number 23 of 2007 on Railways

Government Regulation Number 27 of 2014 on the Management of State Property

Government Regulation Number 24 of 1997 on Land Registration

Government Regulation Number 41 of 1959 on Nationalization Railways Company and
Tilpon of Netherlands

Regulation of Head of National Land Department Number 1 of 2010 on Service Standard and
Land Regulation

Regulation of Minister of Agrarian Number 9 of 1965 on the Conversion of Rights to land for
state land and provisions on the next policy.

Regulation of Minister of Agrarian Number 9 Tahun 1999 on Procedure of Granting an
Cancellation of Rights to land of State land and Management Land.

Regulation of Minister of Agrarian Number 3 of 1997 on Implementation Provisions of
Government Regulation Number 24 of 1997 on Land Registration.

Website

<https://sumateradeadline.co.id/20/03/2018/sumsel/muara-enim-2/warga-muara-gula-tuntut-pt-kai-selesaikan-sengketa-lahan/>

<https://regional.kompas.com/read/2014/11/11/10315681/PT.KAI.Wargalah.yang.Serobot.Lahan>

<https://www.kompasiana.com/simbolontua/5ab12868dcad5b36447d7402/lagi-pt-kai-persero-harus-menghadapi-penyerobot-aset-negara>