

LEASING OF LAND BY INDONESIAN RAILWAYS - LEGAL OR NOT?

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ABSTRACT

PT Kereta Api Indonesia (Persero) (Indonesian Railways) is a state-owned enterprise, which carries out its business by requiring lands. In order to optimize the business, Indonesian Railways leases the land to the people along the lines which are not used for transportation, either because the consideration that they are not effective and should be closed, diverted, or because the train does not operate anymore. The leasing of this land is done to the land that is already certificated and not certificated. Since the independence of Indonesia, many railways in West Sumatera no longer work, but Indonesian Railways keeps renting the lands. The leasing is implemented in the form of a letter of lease whose format is determined by the Indonesian Railways itself, similar to a standard contract. In the lease, there is an impression that the State leases, and the tenant has only the obligation to pay the rent and enjoy the use of such land, not having the concept of agreement that is balanced (Article 1320 jo 1338 of the Civil Code). Based on that, the problem formulated is: How are the regulation and status of right and land leasing by Indonesian Railways to the people – legal or not? The research methods used are normative research and juridical empirical research, with data collection techniques through the study of literature (library research) coupled with secondary data of field research. Location of the research is conducted in the Regional Division II West Sumatera and the tenant communities of lands which by Indonesian Railways are considered assets. Selection of location is done purposefully. Based on the results of the research, it is obtained that Indonesian Railways is conducting the leasing that bases on Decree of Minister of State-Owned Enterprises. Leasing of land by Indonesian Railways is apparently done with the basis of the Decree of Minister of State-Owned Companies, not specifically intended to Indonesian Railways.

Key Words: Leasing of Land, State-Owned Enterprise, Indonesian Railways

A. INTRODUCTION

Indonesian Railways is a state-owned enterprise regulated by Law of State-Owned Enterprises / Law No. 19 of 2003 (hereafter referred to as UUBUMN), specifically run by Law of Railways / Law No. 23 of 2007 (hereafter referred to as UUKA); and because categorized as a company, it complies with Law of Limited Company / Law No. 40 of 2007 (hereafter referred to as UUPU). In addition, it also must submit to Law which regulates land / Law No. 5 of 1960 (hereafter referred to as UUPA). Trains as public transport always need lands functioned as lane foundation, warehouse area, office, station, et cetera. It cannot be denied how important the land is for lives and human life individually and collectively, also for private and public enterprises such as state-owned companies, always involving lands because most of their lives depend on lands¹. The development of science and technology has given the consequence that a relationship between law and land is absolutely necessary.

In history, railway business in Indonesia has already begun before the independence of Indonesia (in the Dutch colonial era) done by State Company (SS) and Private Company (VS). After Indonesia got its freedom, all companies of the Netherlands were nationalized and gradually fixed and until now railway business is administered by the state in the form of a state-owned company, Indonesian Railways. In Sumatera, especially West Sumatera (Regional Division II Indonesian Railways), the construction began in 1891-1894 called railway lines in the Minang Land². The train construction was based on *Statblad* 1887 No. 163, where development was first made over four years and later developed in stages³. The development was for the area of Bukittinggi – Limbanang, Pariaman – Sungai Limau – Muaro Kalaban – Muaro and completed in 1924⁴. Lands, in where the railway was made, were from lands controlled by the community (communal lands), freehold lands and free lands – the state's lands (domain principle)⁵. In some provisions, including in *Bijblad* 11372 and *Bijblad* 12476, lands used for railway in West Sumatera with the border of left and right rails were approximately ten meters. Regarding lands derived from freehold lands (*eigendom, opstal, erpach*, and other titles), procurement of lands were done with purchase by Dutch Railway Company either the private one or the state one. Regarding lands originating from communal lands (which now still exist in West Sumatera), it was done by basing on borrowing agreement with the indigenous people and also often by force (plundering). Regarding state lands (lands owned by the state), it was done by making a particular planning managed by *governeman* (Dutch government). The operation of trains in West Sumatera (*Sumatra's West Kust*) has no purpose but to gain profit commercially. In regional economic policy of Dutch government in West Sumatera, this policy was called *Pilot Project Systeem Linkage*, so anyone who

¹ Ramli Zein, 2005, Hak pengelolaan Dalam Undang-undang Pokok Agraria, Rineka Cipta, Jakarta p. 2

² [http://www, penyelamatan aset PT.KAI](http://www.penyelamatan aset PT.KAI) , accessed on 14 Maret 2016, at 14.27 wib.

³ In *Gedenkboek der Staatsspoor en Tramwegen in Nederlandsch Indie 1875-1925* published in 1925, it is written that the making of railways in West Sumatera is done in stages and continually from year to year.

⁴ <http://www>, Kereta Api Angkutan Massal Perintis Di Sumatera Barat , accessed on Monday, 15-03-2016 at 12.47 WIB

⁵ Introduction and General Explanation of Law No. 5 of 1960 on Basic Regulations of Agrarian Principles.

does it, it must be executed completely.⁶ Development for Sawah Lunto – Teluk Bayur (*Emmahaven*) for the benefit of Ombilin Coal Mine, all 300 kilometers, costs pretty much, reaching 35.034.000 Gulden⁷

In 1950, based on Decree of Minister of Power Transportation and Public Work of Republic of Indonesia No. 2 of 1950, railway company was administered by *Djawatan Kereta Api* (DKA). In 1963, based on Government Regulation of Republic of Indonesia No. 22 of 1963, it was done by Indonesian State Railway Corporation (PNKA: *Perusahaan Negara Kereta Api*). In 1971, according to Government Regulation No. 61 of 1971, PNKA was converted into Indonesian Railways Corporation (PJKA: *Perusahaan Jawatan Kereta Api*). In 1990, according to Government Regulation No. 57 of 1990, PJKA was converted into Public Railway Corporation (PERUMKA: *Perusahaan Umum Kereta Api*). In 1992, Law No. 13 of 1992 and Government Regulation No. 69 of 1998 on Infrastructures and Facilities of Train were taken place. Then, according to Government Regulation No. 19 of 1998, PERUMKA was converted into Indonesian Railways (PT. KAI: *PT. Kereta Api Indonesia (Persero)*).

Many railways in West Sumatera since in the 50s were not functioned and used, either because its course had been closed, or because they were considered unprofitable when used⁸. In this circumstance, Indonesian Railways under management of DKA PNKA, PJKA started to lease lands around the railways to the people. However, from the 70s to 1998, collection of rent money did not run smoothly or was relatively non-existent. This caused a citizen, who was a user of former land of the railways, to request to the state freehold title over the land through Land Agency (previously Agrarian Directorate). By National Land Agency (BPN), Title of Use was given in the period of 5-10 years by issuing certificate of Title of Use over former land of the railways (leasehold title). Since the management is in Indonesian Railways' hands, the director has been encouraging to re-inventory former lands of the railways, and revive the leasing by estimating the collection of rent money that long have not been paid, and significantly increasing rent money until 500 %. Collection of leasing money is done on site, in which it is likely that if the tenants do not want to pay the rent, buildings on the site can be demolished. Indonesian Railways leases lands on the basis of UUBUMN, UUKA and some circulars such as Circular of MENEG BUMN (Minister of State-Owned Enterprises) No.SE-09/BU/2008, Circular of MENEG BUMN No.SE- 03/MBU/2009, Circular of MENEG BUMN No.SE- 05/MBU/2009, Permen BUMN (Regulation of Minister of State-Owned Enterprises) No.PER -06/MBU/2011, Permen BUMN No.PER-09/MBU/2014 and Direction Instruction of Indonesian Railways No.18/JB-310/KA/2010⁹ which allow Indonesian Railways to lease its assets either certificated or non-certificated as evidence of land rights for Indonesian Railways. In West Sumatera, one of the land rights for railways recorded in map of railway land (*groundkar*) is communal land classified as *Kaum* communal land, *Suku* communal land and *Nagari* communal land.¹⁰ In addition, in Local Regulation of West Sumatera No. 6 of 2008¹¹ on Use of Communal Lands, it is mentioned about another communal land, which is *Rajo* communal land.

B. PROBLEM FORMULATION

How is the regulation of status of land rights and land leasing by Indonesian Railways to the people? Is it legal or not?

C. RESEARCH METHOD

The research was conducted in West Sumatera with the location picked in a purposive way, with the variable in which lands leased by Indonesian Railways have not been long used by Indonesian Railways. Presently, trains that are still operating are economy-class trains which are sadly managed, old, with torn apart carriages, increasing the number of mortality. This type of research is prescriptive research using normative and sociological approach¹². Normative approach is meant about norms from a phenomenon or reality, while juridical and sociological approach emphasizes the words, not only limited to figures¹³. The primary data are literature data, documentation, books, laws, journals, et cetera, whereas the field data are used as supporting data.¹⁴ The material of this secondary law is used as the research implementation.¹⁵ Data collection technique used is Structured Interview. Technique of examination of the validity of data is by cross-checking. Data analysis is the process of systematically arranging data by using qualitative data analysis with inductive technique that refers to theory of legislation.

D. OUTCOME AND DISCUSSION

1. Status and Regulating Lands for Indonesian Railways

As fundamentally known, land is controlled (not owned) by the state as the highest entity, which is given the people power to regulate, assign, use, provide, caring for the land, and give legal certainty for land rights by issuing of perfect evidence in the form of certificates of land rights. In the highest level, it is all for the people's welfare (Article 2 of UUPA). The state is intended for the people's interest and benefit, thus, control and need of lands are granted with special Right of Use, for free, tax-free,

⁶ <http://www.keretaapi.go.id>, Kereta Api Angkutan Massal Perintis Di Sumatera Barat , accessed on Monday, 15-03-2016 at 12.47 WIB

⁷ *Opcit Gedenkboek der Staatsspoor en Tramwegen in Nederlandsch Indie 1875-1925.*

⁸ <http://www.keretaapi.go.id>, penyelamatan aset PT.KAI , accessed on 14 Maret 2016, at 14.27 wib

⁹ Letter of Indonesian Railways to the people who used former lands of railways, on 9 Desember 2016. No. KA.205/XII/I/DV.2-2016.

¹⁰ Yulia Mirwati, 2015, *Konflik tanah Ulayat*, Penerbit Universitas Andalas, p. 25

¹¹ Regional Regulation of West Sumatera No. 6 of 2008 on Utilization of Communal Lands.

¹² Sanapiah Faisal, 2001, *Format2 Penelitian Sosial Dasar-dasar dan Aplikasi*, Rajawali Pers, Jakarta, p. 20

¹³ Lexy J.Moleong , 2007, *Metode Penelitian Kualitatif*, Remaja Rosdakarya, Bandung p. 3

¹⁴ Hilman Hadikusuma, *Metode Pembuatan Kertas Kerja / Skripsi Ilmu Hukum*, Mandar Maju Bandung, 1995, p. 61.

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, Cet.VI, Kencana, Jakarta, p. 35.

through a planning program (Article 2, 4, 14, 41 jo 42 UUPA). The planning of the public interest has to be socialized to the people, and if the land used for the public is owned by an individual or a legal entity, it must be converted into a state land by giving compensation, and if the land is a communal land, it also can be converted by giving compensation or recognition. After being a land controlled by the state, the program can be implemented. If the people or communities do not agree with the land acquisition and cannot be moved to other locations, rights over the land can be terminated (Article 18 UUPA jo Law No. 20 of 1961). Land acquisition for land procurement for the state to fulfill public interest is executed by the committee of land-right acquisition (Regulation of Minister of Home Affairs No. 5 of 1975, No. 6 of 1976, No. 2 of 1982, Presidential Decree No. 55 of 1993, Regulation of President No. 36 of 2005 jo No. 65 of 2006 which was later refined with Law No. 2 of 2012). After all need of acquiring lands is met and all has become state land, proof of right will be given to the entity or state-owned enterprise with special Right of Use, as long as it is used for its interest of duty (Article 41 jo 43 UUPA jo Article 50 Subsection (2) UUPA). Henceforth, after the issuance of right of land development through Government Regulation No. 40 of 1996, right of management is granted to entities, departments, non-departments, state-owned enterprises or government agencies, for the sake of public interest. Particularly for Indonesian Railways, the right of management is based on its basic duty and function, which is train public transport. Therefore, land rights of Indonesian Railways are only Special Right of Use and Special Right of Management (Article 39-58 of Government Regulation No. 40 of 1996). These special rights of use and management cannot shift and be switched – including because of death and other legal occurrences such as buying and selling, grant, leasing, and guaranty or security.

In Article 1 Subsection (2), it is pointed out that Land Procurement is an activity of providing land by giving fair and just compensation to parties entitled. Land procurement is a public legal action, so it is basically dedicated to public interest. One of the public interests is one concerning train transportation. Land procurement for railways submits to land procurement for government. Land procurement is done with acquisition, release and or termination of land rights.

In Article 2 Subsection (2) of Presidential Regulation No. 65 of 2006, it is determined that land procurement for public interest in government projects can only be achieved if it is first stipulated in Regional Spatial Plans. In relation to land procurement for public interest by Indonesian Railways, it must be done with planning by Indonesian Railways – according to Article 82-86 UUKA – and with appropriate compensation granted to former right holders affected by the land procurement. The implementation of the land procurement must be adjusted to the spatial plans (Law No. 26 of 2007 on Layout). The land procurement process is done with committee of land procurement. The composition of the committee consists of Regional Secretary as the chairman of committee and member, a regional official in the level of Echelon II as the vice chairman and member members, the head of land agency of the county and city as the secretary and member, and the head of the agency/office/entity in county/city in the sector of land procurement or an official appointed as a member.

Land procurement intended for Indonesian Railways is the implementation of the principle about state-owned company that belongs to the public. Therefore, the main legal foundation is Article 33 Subsection (2) of 1945 Constitution that states that production branches, which are essential for the state and dominate the lives of many, are controlled by the state. Subsection (3): Earth and water and natural resources contained therein are controlled by the state and fully used for the people's welfare.

In UUPA, it is affirmed that the right of use is a right to use and / or collect the produce of the land that is directly controlled by the state or land owned by another person who has given the authority and obligations specified in the decision of administration by the competent authority or in agreement with owner of the land, which is not a lease agreement or land processing agreement, everything insofar as not inconsistent with the spirit and provisions of this law (Article 41 Subsection (1)). This right of use can be given as long as the land is used for certain needs and can be given for free. This matter is explained in UUPA mentioning that embassy buildings of foreign countries can also be given right of use, that is why the right can apply as long as the land is used for such purpose. If the right of use is not used anymore, the land legally returns to be the state land (land controlled by the state).

The second probability of land right for Indonesian Railways is right of management. Although this right is not confirmed in UUPA, it is in Government Regulation No. 40 of 1996 Article 1 Subsection (2), affirming that Right of Management is the right of the state to control in which the authority of implementation is partially given to the holder. Right of management is now registered in accordance with Government Regulation No. 24 of 1997 on Land Registration and published with a certificate of right of management. Then, in Regulation of Minister of Agriculture No. 9 of 1999 on Procedure of Granting and Cancellation of Right over State Lands and Right of Management, it is pointed out in Article 67 that the right of management may be given to:

- a. Government agencies including local governments;
- b. State-owned enterprises;
- c. Local-owned enterprises;
- d. Business entities;
- e. Authoritative agencies;
- f. Other government legal entities appointed by the government.

Furthermore, in Article 67 Subsection (2), it is also pointed out that all legal entities above can be granted Right of Management as long as it is in line with their main duty and function that concern with land management.

2. Leasing of Land by Indonesian Railways Division II West Sumatera

From the field results in West Sumatera, lands of Indonesian Railways', which are leased through collection of rental, are in majority not certificated with right of use and right of management. Some of lands of Indonesian Railways' in Payakumbuh and County of Lima Puluh Kota (used to be railways in Dutch colonial era) have been registered with right of management and even

granted right of building use above that right of management, basing on an agreement with the third party. The Right of Building Use above the Right of Management is for shop houses with the length of Right of Building Use of 20 years. This right of building use is put on sale for the people. After the time period of the right of building use ends, the right of management comes back to Indonesian Railways, and next, Indonesian Railways will collect rentals from such right of management, from the users of the shop houses.

In the County of Lima Puluh Kota, former railways from Payakumbuh to Limbanang, there are two categories of land use for the people there. First, in the early 70s, it was done through a leasing by a railway company (now called Indonesian Railways), in which then Indonesian Railways did not collect rentals anymore for several years. Then, on their own initiative, the people proposed a right or title to Land Agency (used to be Directorate of Agrarian Affairs), and were granted right of use with periods of time ranging from 5 to 10 years. All rights of use have ended, but the people still hold them as a proof of right. From field results from two locations, Padang and Payakumbuh, it can be seen that status of former lands of Indonesian Railways are: registered with Government Regulation No. 24 of 1997 with right of management and right of use, and not registered. According to National Land Agency's data, it is known that some railways of Indonesian Railways in West Sumatera have been granted right of management, and some others, right of use, on the basis that rights given by Indonesian Railways are *groundkar* recorded in assets of Indonesian Railways Division II West Sumatera. The authorization of land rights for Indonesian Railways West Sumatera is in line with regulations, including UUPA and Government Regulation No. 40 of 1996, Law of State-Owned Enterprises, Regulation of Minister of Agrarian Affairs No. 9 of 1999, Government Regulation No. 24 of 1997, and other regulations concerning.

When carefully scrutinized, land leasing by Indonesian Railways to the people is done in written, but without stating the tenant and the lessor. The leasing by Indonesian Railways is by mentioning serial number and using a paper with logo of Indonesian Railways Regional Division II West Sumatera, in the form of Receipt: has been received from Mr. ..., Address on ..., and amount of money of Rp..., receipt on "Land Leasing" plus administration fee, collected by treasurer of Indonesian Railways.

In Article 84 of UUKA Subsection (1), land procurement for development of general infrastructure of railway system is conducted in accordance with main plan of railway system. The building of the infrastructure, both planning and implementation stage, of the railway system must be first socialized to the people, especially the lands that are needed for the building of the infrastructure. In Article 85 Subsection (1) of UUKA, it is affirmed that if deal cannot be reached and location of development cannot be moved, annulment of land right is conducted in accordance with laws and regulations in the sector of land affairs. In Article 86 of UUKA, lands controlled by Government, Local Government, or Business Entities in order to build infrastructure of railway system are certificated in accordance with laws and regulations in the sector of land affairs. If we connect UUKA with UUPT, there will be a difference in which in UUPT Limited Company may have rights over lands in the form of Right of Business Use, Right of Building Use and Right of Use. Besides, Limited Company, as private legal entity, can transfer land right, make collateral out of land right, and do other legal actions. In UUPA and Government Regulation No. 40 of 1996, private legal entities can own right of business use, right of building use and right of private use.

Concerning contract of land leasing, as we can see in Article 16 of UUPA that one of land rights is Leasehold. Leasehold only allows establishing buildings. Leasehold is only allowed because of freehold. The ones who are entitled to freehold are Indonesian people (Indonesian citizens) – Article 20 of UUPA. Holder of freehold over lands can lease his lands to particular tenants to establish buildings. Leasehold must have definite time period and rental price. Leasehold is not certificated. Leasehold in UUPA is actually a legal relationship that is based on lease agreement (Article 1548-1560 of Civil Code). Article 1548 of Civil Code: "A lease is an agreement with which one party ties itself to give other party a pleasure of an item for a particular time period and with particular price payment which is recently approved by that party". From that definition, we can see that there are: agreement of the parties; existence of items; existence of pleasure; particular time period; and rental price. If related to land law, this means that the one that can do land lease agreement is the holder of the freehold over lands who are Indonesian citizens, and the pleasure given is an ability or opportunity to establish building / buildings. Similarly, in Civil Code, only holders of freehold (*eigendom*) can lease lands (Article 1591 of Civil Code). In UUPA, it is pointed out – even made as a principle of national agrarian law – that the state does not have the position as the owner, only to control in order to organize or regulate public rights (Article 2 of UUPA jo Explanation Number II of UUPA. Indonesian Railways is a public legal entity because it is owned by the state.

If we compare Indonesian Railways with other state-owned enterprises such as Housing Agency as a state-owned enterprise and other private legal entities, it is clear that Indonesian Railways is¹⁶: 1. an enterprise whose capital is entirely or partly owned by the state; 2. through direct investments; and 3. from separated country's wealth. In relation to land leasing by Indonesian Railways, it can be understood that the subject who leases is an unauthorized subject, and the object leased by Indonesian Railways is a land that is controlled by the state because it is intended for public interest, that is, transportation. The lease agreement performed by Indonesian Railways is unlikely to be represented by the company director – as stipulated in UUPA, that who acts to be outside and inside the company is the direction. In reality, Indonesian Railways only has right of management and right of use, which both are in the specialty concerning public transportation, which, according to law, is not justified doing a legal action of transferring of rights including a matter related to lease.

Looking through the Circular of Minister of State-Owned Enterprises No. 09 of 2008 on Control of Assets, Circular of Minister of State-Owned Enterprises No. 03 of 2009 on Maintenance and Protection of Corporate Assets, Circular of State-Owned

¹⁶ Johannes Ibrahim, *Hukum Organisasi Perusahaan*, (Bandung: PT Refika Aditama, 2006), p. 61.

Enterprises No. 09 of 2009 on Setup, Control and Enforcement of Corporate Assets, including Regulation of Minister of State-Owned Enterprises No. PER-06/MBU/2011 and Regulation of Minister of State-Owned Enterprises No. PER-13/MBU/2014 on Utilization of State-Owned Enterprises' Assets, these regulations are not only devoted to Indonesian Railways because it is not the only state-owned company. The regulations are not merely determining the leasing of land of Indonesian Railways.

Concerning lease, it is stipulated in Regulation of Minister of State-Owned Enterprises No. PER-13/MBU/09/2014¹⁷ that lease is a utilization of fixed assets by partners for a certain time period by giving compensation to the company. Partners refers to parties that utilize the state-owned company's fixed assets through collaboration tied in an agreement with the principle of mutual benefit. Lease is performed by keeping prioritizing the utilization such as Utilization to Establish Buildings and/or Infrastructures, Operational Collaboration, Business Collaboration, and Lease. The implementation of such utilizations will cost compensation, with stipulations: a. the state-owned enterprise is entitled to compensation from a partner, as outlined in an agreement. b. the compensation is preferred in the form of money, but can be in the form of non-money by noticing stipulations of regulations. These stipulations cannot merely be used by Indonesian Railways, but can be by Housing and Real Estate Enterprise, because its lands are for public interest (Law No.2 of 2012) with special purpose for train transport, which cannot be switched and redirected (being switched because of legal event, being redirected because of legal action) like buy and sell, guaranty and leasehold.

The role of state-owned enterprises is strategic as the implementer of public services, balancer of large private forces and takes part to develop small businesses / cooperative. State-owned enterprise is one of the sources of state revenue that is significant in many forms such as tax, dividend, and privatization result, in addition to as a tool of government discretion / agent of development. State-owned enterprises are demanded to carry out government mission and do their function simultaneously, even though this is done with different value between one and the others¹⁸.

In Government Regulation No. 8 of 1953 on Controlling Lands of The State, including controlling of lands of train transportation, asset lands of Indonesian Railways have the capacity as the country's wealth that is separated and submits to UUKA jo Government Regulation No. 66 of 2006 on Management of the State's Assets. According to Letter of Head of National Land Agency No. 500-125 of 4 Mei 1992, Indonesian Railways is included in the definition of government agency because Indonesian Railways is a state-owned company whose land procurement is intended for public interest, and which are granted special rights namely right of use and right of management which are in obedience to Regulation of Minister of Agrarian Affairs / Head of National Land Agency No. 9 of 1999 on Procedure of Granting and Cancellation of Right over State Lands and Right of Management. Based on Letter of Head of National Land Agency No. 570.32-3594-DIII of 29-10-1992 addressed to Head of Regional Office of National Land Agency, a land in the form of *grondkaart*, which shows the evidence of Indonesian Railways' asset which is physically controlled by other parties, cannot be granted to them as long as there is no approval from Minister of Finance. Based on Letter of Head of National Land Agency No. 500-1255 of 4 -5-1992 on Guideline of Implementation of Procedure of Right Administering and Making of Land Certificate Controlled by Government Railways and Letter of Head of National Land Agency No. 550.1-3987-D.III of 25-11-1992, regarding lands controlled by Indonesian Railways, Indonesian Railways can be granted right of use in the name of Ministry of Transportation.

E. CONCLUSION

- From the analysis above, regarding policies towards lands controlled by Indonesian Railways, it can be concluded as follows:
- Lands of Indonesian Railways, whose evidence of ownership is in the form of *Grondkaart*, are recognized as the state's wealth controlled by Indonesian Railways, but not as evidence of ownership of Indonesian Railways' land rights.
 - Land procurement for Indonesian Railways is for the interest of public transportation, which are granted with right of use and special right of management as long as used in the name of Ministry of Transportation and or State-Owned Enterprise.
 - In accordance with Article 44 of UUPA, Indonesian Railways is a special legal entity that operates for public interest, so its land rights must be in obedience to public legal regulations, in which cannot perform transfer of the land rights.
 - Leasing of land by Indonesian Railways, including former railway lands which are not functional anymore, have been deliberately closed, or are diverted, both with certificate and with certificate of right management and right of use, is an action against laws and regulations such as Civil Code, UUPA, Law of State-Owned Enterprises, and other implementing regulations.
 - Rights over lands managed and controlled by Indonesian Railways are special right of use and special right of management, thus, they cannot change, be shifted and be made collateral. Indonesian Railways gets its rights from land procurement for public interest, and it is not appropriate when the state has land rights. Therefore, the act of Indonesian Railways to lease lands is a violation of law (*onrechtmatigdag*).

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¹⁷ <http://agungibrahim13.blogspot.co.id/2014/11/tentang-pinjam-pakai-dalam-peraturan.html>, accessed on Sunday, 15 Januari 2017 at 9.32 WIB.

¹⁸ Ibrahim, *BUMN dan Kepentingan Umum*, (Jakarta: PT Citra Aditya, 1997), p. 135.

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