

RESTRUCTURATION OF PT KAI (PERSERO) LAND ASSETS ON THE RAILWAY TRACK OF THE RAILWAY INFRASTRUCTURE

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ABSTRACT

Due to the transformation of PJKA (Indonesian Railway Service Company) into Perusahaan Umum Kereta Api / Railway Public Company (PERUMKA), and later into PT KAI, the railway infrastructures are set as the State's Property which are controlled by the government. This provision has caused some complicated debate and issues on the ownership right of infrastructure namely the railway infrastructure built on the Land Asset. The division of the land assets infrastructure ownership status has led to some issues which hinder the development of PT KAI especially in term of its operation. This research aims to identify the legal problems of the implementation of the restructuration policy of PT KAI land assets into Railway infrastructure as state property, the impact of such provision to the related parties, and the legal model which may serve as the solution to the matter. This research is a normative legal research as a process to identify and provide policy prescriptions on the restructuring policy of PT KAI land assets which become railway infrastructure. This research employs statute approach, conceptual approach, and case approach. The data of this research are legislations, documents, and supporting information derived from interview, regarding the restructuration policy of PT KAI Land Assets into Railway infrastructure as government property. The findings of this research conclude that; (1) the implementation of the legislations restructuring PT KAI land assets into railway infrastructure as state property does not work well due to conflict of interest and difference of opinion in the minutes of coordination meeting among the parties; (2) there are operational problems caused by this provision which lead to the operational shut down of some rail tracks area and the decreasing quality of service to the passenger thus causing decrease on the passenger number; (3) The government need to formulate a new legislation to attend to this matter so that PT KAI can function better, and it is suggested that the government should return the ownership of the railway infrastructure to be managed by PT KAI (Persero)

Keywords: Restructuration, PT KAI Land Asset, Railway Infrastructure.

I. Introduction

A. Background

Throughout the history of the Indonesian Railway Company, the form of the company had been changing in accordance with the state legislations on the railway company restructuration. The form of the railway company had successively changed from its first entity as *Djawatan Kereta Api Republik Indonesia (DKA-RI/ Railway Service Company)* based on the Edict of the Ministry of Transport No. 1 / KA Year 1946. Then, according the decree of Ministry of Transportation and Public Works No. 2 of 1950, DKA RI transformed into *Djawatan Kereta Api (DKA/ Department of Railways)*. After that, based on Government Regulation No. 22 1963, DKA transformed into *Perusahaan Negara Kereta Api (PNKA / State Railway Company)*. Then, according to Government Regulation No. 61 1971, DKA transformed into *Perusahaan Jawatan Kereta Api (PJKA / Railway Service Company)*. As the consequence of its restructured form, PJKA Company was obliged to perform the Company's operations and conduct the State's duties of providing public service in rail transport service, which were financed by the State Budget, and thus, the Company's revenues were also deposited to the State Treasury. According to the Government Regulation No 57 of 1990 PJKA transformed into *Perusahaan Umum Kereta Api (PERUMKA/Railway Public Company)*. The consequence of its entity as *PERUMKA* is that the company is expected (obliged) to perform its operations and carry out the obligations of public service in rail transport services which are funded by state assets set aside, hence, *PERUMKA* was still not required to make a profit. However, these changes had not been able to meet the demands of quality service for the service users and the demand of quantity / volume transported. And finally, *PERUMKA* transformed to *PT Kereta Api Indonesia (Persero / Limited Liability Company)*,¹ hereinafter called PT KAI. And starting from 2009, the railway company has made several transformations in managing its business operation.

¹PT KAI is a company established according to *Limited Liability Company Article of Association on The Notarial Deed of IMAS FATIMAH Bachelor of Law No. 2 of 1999 which has been revised and issued on the state news of the Republic of Indonesia and its final revision as stated in Deed No. 139 of December 31 of 2012, drafted on the presence of Surjadi Jasin, S.H., a Notary in Bandung, of which the report is recorded in the data base of Legal Entity and Human Right Administration System s of the Republic of Indonesia as state on its deed No. : AHU-AH.01.10-03072 dated February 4th2013 and the Change of latest Management as stated in the Deed No. 108 dated February 27, 2014, made before Surjadi Jasin, SH, Notary in Bandung, of which notification reports has*

During the period of *Djawatan Kereta Api Republik Indonesia* / Railway Service of The Republic of Indonesia (DKA-RI) to *Perusahaan Jawatan Kereta Api* / Railway Service Company (PJKA), the railway infrastructures were set as integrated part of the railway facility and were controlled by the railway company. Since PJKA was transformed into *Perusahaan Umum Kereta Api* / Railway Public Company (PERUMKA), and later into PT KAI, the railway infrastructures become State Property which are controlled by the government.

The rights of railway infrastructure management and railway facilities in most of other countries are set to be a single entity managed by the railway company. The railways in France are managed by Société Nationale des Chemins de Fer SNCF², in Japan managed by Japan National Railway (JNR)³, and in Russia managed by Rossiyskie Zeleznye Dorogi (RZD-the Russian Railway)⁴. Railway companies in other countries are single business entity which manage and control the facilities of railways and railway infrastructure at the same time. This setting has allowed the development of the railways in France, Japan and Russia to grow very rapidly, and become very advanced with better management. However, this kind of management had seized to apply in Indonesia since the restructuring policy which separates the status and control of land asset infrastructure namely the rail tracks from the control and management of PT KAI into the state's property. This provision has led to a more complicated bureaucracy in the operation and management of the Indonesian railways. And due to the unique nature of this matter, the researcher has not find any studies on this issue particularly of Indonesian origin. Thus, these facts motivate the researcher to take on this issue as the object if the scientific research.

According to the description above, the author determines the following title of scientific journal : RESTRUCTURATION OF PT KAI (PERSERO) LAND ASSETS ON THE RAILWAY TRACK OF THE RAILWAY INFRASTRUCTURE

B. Formulation of Problem

According to the background description, the problems are formulated as follow:

1. What are the legal bases and reasoning of PT KAI's land assets restructuring on the railway track of the railway infrastructure to be set as government property?
2. What are the impacts of the restructuring policy which separates the land assets on the railway track of the railway infrastructure from PT KAI into the state's assets?
3. What is the legal legislation model which is appropriate to solve the issues caused by the reconstruction policy on the restructuring of PT KAI's Land Assets on the Railway Track of the Railway infrastructure as the state's assets?

C. Mind Frame

In planning the design or the architecture of the restructuring legislation of PT KAI Land assets according to the applicable regulation, a systemic approach which emphasizes on coherence, non-contradiction, and completion, as well as other supporting elements is applied. According to Bernard Arief Sidharta⁵, in relation to the restructuring policy, the system approach sees the legislations of the restructuring policy as a dynamic interaction among the judicial elements, which is the regulation of the restructuring policy of PT KAI's land assets which become railway infrastructure as a unity in its relation to other elements. The legal system of the restructuring policy of PT KAI's Land assets which become the railway infrastructure consists of layers of legislations built on top of each other. There is a layer that does not require justification namely *Pancasila* as the Meta principle. Meuwissen divides the discipline of law into three levels of analysis; the first level, the philosophy of law to realize the foundation of the whole theory of law (in a broad sense); the second level, the theory of law (in the narrow sense), and the third level, the science of law, which includes dogmatic of law, legal history, comparative law, sociology of law, and the psychology of law⁶.

Thus, in order to design a legal system of the restructuring policy on PT KAI's land assets which become the railway infrastructure there should be coherence, comprehension, and other supporting elements in all layers of jurisprudence, namely meta-principle, philosophy of law, legal theory, dogmatic of law, and legal practices, as seen in illustration 1 and 2 below:

been received and recorded in the database of Ministry Justice and Human Rights Administration System of the Republic of Indonesia as stated in his deed No. AHU-AH.01.10-09465 dated March 7, 2014.

² <https://www.collinsdictionary.com/us/dictionary/english/SNCF> : *Société Nationale des Chemins de Fer (SNCF): the French National Railway System*, diakses 27 Juli 2017.

³ Fumitoshi Mizutani, Kiyoshi Nakamura, *The Japanese Experience with Railway Restructuring, Governance, Regulation, and Privatization in the Asia-Pacific Region*, NBER East Asia Seminar on Economics, Volume 12, *e-paper*, University of Chicago Press, 2004, hlm. 305

⁴ "Russian Railway Reform Programme", diunduh dari <http://www.ebrd.com/documents/evaluation/special-study-russian-railway-sector-evaluation-working-paper-1.pdf>, 30 Maret 2017

⁵ Bernard Arief Sidharta. *Refleksi Tentang Struktur Ilmu Hukum Sebuah Penelitian tentang Fundasi Kefilsafatan dan Sifat Keilmuan Ilmu Hukum*, 2009 page 118.

⁶ JJ Bruggink, *Rechtsreflecties*, Kluwer, Belanda, Terj. B. Arief Sidharta, *Refleksi Tentang Hukum*, Citra Aditya Bakti, Bandung, 1999, hlm 162

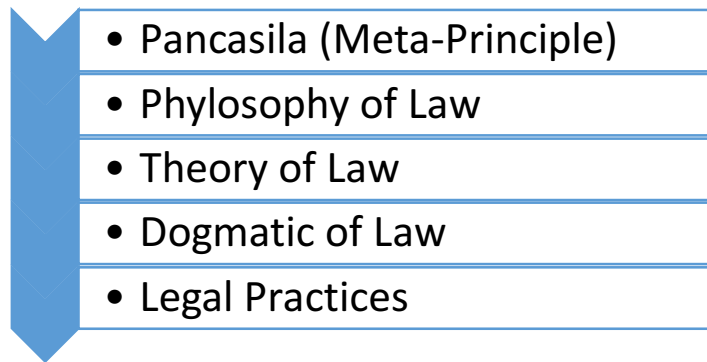


Illustration 1: System approach in Restructuration policy on PT KAI's land assets which become railway infrastructure.

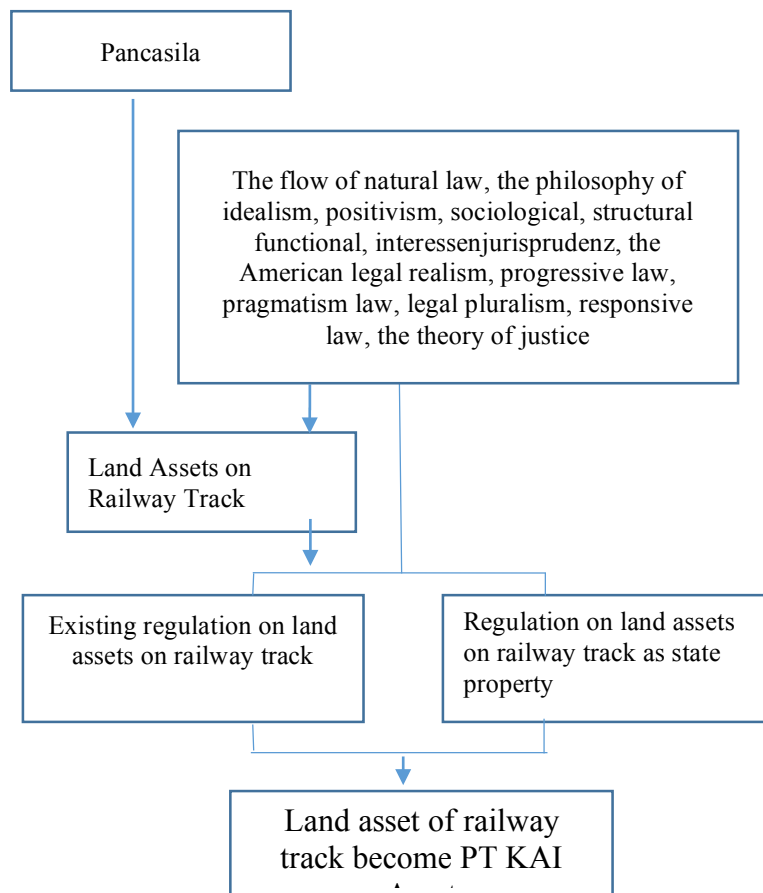


Illustration 2: Framework

D. Research Method

1. Type of Research

This research is a normative legal research as a process to identify and provide policy prescriptions on the restructuring policy of PT KAI land assets which become railway infrastructure.

2. Research Approach

This research employs statute approach, conceptual approach, and case approach. Statute approach is utilized to identify *ratio legis* and *ontologism* foundation for the establishment of the legislations related to the research problem. By studying the *ratio legis* and *ontologism* foundation of certain legislation, it is expected that the philosophical values of the legislation can be discovered

II. Research Results

A. The legal bases and reasoning of PT KAI's land assets restructuring on the railway track of the railway infrastructure to be set as government property?

Pancasila economic system is reflected in the 1945 Constitution Article 33 paragraph (2) which states that production branches which are important for the State and dominate the livelihood of many people are controlled by the State. Mubyarto argues that the 1945 Constitution requires all companies that produce goods of general interest or public utilities,⁷ such as the railways, should be in the hands of the government. According to the authors, public utility is another word of public service in the field of railway transportation mode. The railway has become the livelihood of many people thus the state is obliged to manage it, as mandated by Article 33 paragraph (2) of the 1945 Constitution. Public opinion claim that if the railway operation is managed directly by the state, then the state can intervene directly when the quality of service is not in accordance with the provisions of the legislation, thus there is an assurance that people will get better railway transportation services.

The railway company restructuring after the government regulation number 57 of 1990 should be designed with the purpose to make the railway company better with land assets as its fixed asset. However, with the issue of Law number 57 of 1990, the separation of of the railway infrastructures which were previously owned by the railway company (PERUMKA/PT KAI) are now owned by the government as state property.

Legislations related to the restructuring policy on PT KAI Land Assets into Railway infrastructure as state property are as follow:

1. Basic Constitutions of 1945
2. Law number 19 of 2003 on State Owned Enterprise
3. Law number 23 of 2007 on Railways
4. Law number 40 of 2007 on Limited Liability Company
5. Government Regulation No. 57 of 1998 on Tranformation of *Perusahaan Jawatan* / service company into *Perusahaan Umum Kereta Api* / Railway Public Company
6. Government Regulation No. 19 of 1998 on Transfer of *Perusahaan Umum Kereta Api* (*Perum* / Railway Public Company) into Limited Liability Company (*Perseo*)
7. Government Regulation number 56 of 2009 on the Railway management
8. Government Regulation number 72 of 2009 on Railway Transport and Traffic
9. Government Regulation number 6 of 2009 on the Types and Tariff of Non-Tax State Revenues applicable on Transportation Ministry
10. The Decree of the President of the Republic of Indonesia number 32 of 1979 on the Concerning the Principles of Policy in the Framework of Granting New Rights to the Land of Conversion of the Rights of the West
11. Presidential Decree No. 17/2007 concerning the State Property Control Team
12. Regulation of the Minister of Agrarian Affairs No. 9 of 1965 on the Implementation of Conversion of Concession Rights on State Land and Provisions on Subsequent Policy

Railway infrastructures are railway tracks, train station, and operational facility to support the operation of trains⁸. PT KAI is the only State Owned Enterprise which operate the railway infrastructure in Indonesia. Thus, the railway infrastructures are vital parts in PT KAI's operational activity.

One of the railway infrastructures is the railway track. The railway track is built on land assets. The land asset is the place where the railway track foundation is located. So the railway track is built on land assets, thus there will never be a railway track if there is no land asset.

The railway track includes: *ruang manfaat jalur kereta api*⁹ / utilization space of railway track (hereinafter referred as *rumaja*), *ruang milik jalur kereta api*¹⁰ / property space of railway track (hereinafter referred as *rumija*), and *ruang pengawasan jalur kereta api*¹¹ / supervision space of railway track (hereinafter referred as *ruwasja*).

⁷ Mubyarto & Revrison Baswir, Ibid pg 79

⁸ Undang-Undang Nomor 23 Tahun 2007 Tentang Perkeretaapian Pasal 1 angka 1

⁹ Law Number 23 of 2007 on Railways Article 37 paragraph (1) The railway utilization space as referred to in Article 36 letter a consists of rail track and ground plane on the left and right of the railroad along with the left, right, upper and lower side which are used for railway construction and the placement of rail operations facilities and other complementary buildings

¹⁰ Law Number 23 of 2007 on Railways Article 37 paragraph (2) The property space of the railway track as referred to in Article 36 letter b shall be the plot of land on the left and on the right of the utilization space of the railway track which is used for the security of railway construction

¹¹ Law Number 23 of 2007 on Railways Article 37 paragraph (3) The railway supervision space as referred to in Article 36 letter c shall be the plot of land or other plane on the left and on the right of the property space of the railway track for the security and smooth operation of the trains..

Regarding the railway track, According to the letter of The Committee of Legal Form Transformation from *Perusahaan Jawatan / Service Company* into *Perusahaan Umum Kereta Api / Railway Public Company* (PERUM), Number 05/Pan/VII/1991 dated January 5th 1992 on the report of PJKA Liquidation Implementation, it was stated that:

- a) In item 2 letter a point 1) Fixed Assets : Rp. 1.247.067.496.693,-
- b) In item 3 letter k of Supporting Book 10 in the Form of Inventory of Infrastructure Assets Per December 31, 1990

There is significant difference on the area of land asset of PT KAI and the land asset of Directorate General of Railways at Ministry of Transportation. The difference causes disharmony in the management of Railway Infrastructures as State Property.

According to the inventory report and assessment of Railway Infrastructures of The State Property on the land asset on the Utilization space of the railway tract (*rumaja*) and Property space of the railway tract (*rumija*)¹², the data are as follow :

NO	Railway Infrastructure of State property	PT KAI	Inventory Report	Difference
1	2	3 (M2)	4 (M2)	5= 4-3
1	RUMAJA	57.510.403	57.541.947	31.543
2	RUMIJA	0	52.899.065	52.899.065
3	AMOUNT	57.510.403	110.441.012	52.930.608

Primary data source, 2017 analyzed

The data are the result of inventory through the SIMAK BMN Filling system which was on an ongoing process. In the Coordination Meeting between PT KAI and Directorate General of Railway Ministry of Transportation on May 19, 2011, minutes regarding the Coordination Meeting between PT KAI and Directorate General of Railways Ministry of Transportation was issued. The Directorate General of Railway Ministry of Transportation claimed that the process of data filling through SIMAK BMN had been completed. While PT.KAI had the opinion that the Minute has not been completed because, according to the Guidelines of State Property Control in the form of Railway Infrastructures at the Directorate General of Railways Ministry of Transportation, it is stated that:

- a. The Directorate General of Railways Ministry of Transportation and PT KAI: Made an agreement on the ownership status of the land for railway track especially *Ruang Milik Jalan / Property space of the railway track (Rumija)*.
- b. However, the Minutes and Attachments as referred to in letter a above shall be matched according to the document of Land Assets of Operational Area in Java and Regional Division in Sumatera and to be followed with :
 - 1) The signing of the document by the Task Force Executive Team of The Directorate General of Railways Ministry of Transportation, the team of PT KAI, and the executive team Directorate General of State Assets (DJKN) of the Ministry of Finance.
 - 2) After the document was signed and sealed with the stamp by the task force team of The Directorate General of Railways Ministry of Transportation, the local representative of PT KAI (persero) (Operational Area in Java and Regional Division of Sumatra), and the executive team Directorate General of State Assets (DJKN) of the Ministry of Finance.

The data of land assets owned by PT KAI until February 2016 can be seen in the following table:

Land of KAI (<i>Right of Way</i>)	: 262.581.957,56 m ²
Governmental Lands (<i>Non Right of Way</i>)	: 57.510.403,21 m ²
Land that has been certified	: 120.184.527 m ²
Land that is not certified yet	: 142.397.430 m ²

Data source : <https://www.kai.id/>, accessed Agust 1, 2017.

Land Assets on railway infrastructure has economical value and legal value both from the aspect business activities of railway companies. One of land assets on railway infrastructure is railway station. Railway station Places to raise and lower passengers using rail transport services.

Modern railway station¹³ must have fasilitas: parking, toilet, waiting room, medical service, mosque, coffe shop, library etc. Railway station facilities filled with passengers open up opportunities for railway companies to develop non-core business. Railway station as well as Train Distination Operation (TOD). TOD has a very high economic value, because it is an area to increase railway passengers in addition to property business activities are very promising.

¹²Interview result with Handy Purnama as the Vice President of Public Service Obligation, Infrastructure Maintenance Operation, and Track Access Charge of *PT Kereta Api Indonesia (Persero)* conducted on June 14th 2017

¹³A **train station, railway station, railroad station, or depot** (see below) is a **railway** facility where **trains** regularly stop to load or unload **passengers** or **freight**.

Legal value will provide assurance about the status of corporate assets, legal status in the perspective of agrarian law, management of railway operations, and maintenance. Status Land Assets are fixed assets of companies that have a very strategic position for the company. Fixed assets may be used as collateral in the infestation of the development of business activities. Legal status in the perspective of agrarian law is very important. In agrarian law the land asset as a company asset must be certified. Certificate is a proof of ownership of land assets for railway companies. Station is management of railway operations. The station has a function as the railway operasi pulse, so the status of the land must be owned by PT KAI. Maintenance of railway infrastructure is done by PT KAI, so that infrastructure should be owned by PT KAI.

Reconciliation of the status of the ownership of land assets in the railway infrastructure is very important problems. Reconciliation for the transfer of status land asset in railway infrastructure to PT KAI has the consequences of the need for the railway company to be able to support and develop itself (to be self-sufficient), to be flexible in management, and to improve service, income and cost efficiency (profit taking).

B. The impacts of the restructuration policy which separates the land assets on the railway track of the railway infrastructure from PT KAI into the state's assets?

1. Internal Impacts between PT KAI and the Government

De facto, the Land Assets of PT KAI which become the Railway Infrastructure between PT KAI with Directorate General Railway Ministry of Transportation are controlled by PT KAI. The document of land certificate and its administration are on the control of PT KAI. This happens because up to the railway company form was PJKA there is no separation between railway facility and railway infrastructure. Even the certifications conducted by PT KAI during PJKA form are mostly on behalf of the Department of Transportation c. q. The Railway Service Company, and after PJKA was transformed into PERUMKA, the certification was on using the name of the Department of Transportation c. q. PERUMKA, and even as the certificates which were made before the company became PT KAI, the certificate was on the behalf of the Ministry of Transportation.

At the time of the PERUMKA balance sheet opening as well as PT KAI, PT KAI land assets which become The Railway Infrastructure were included in the Opening Balance Sheet of PERMKA and PT KAI.

The things mentioned above resulted in PT KAI does not necessarily remove PT KAI Land Assets which become the Railway Infrastructure, because in order to do so, the removal from book assets of the limited liability company is required. Such a situation would result in the reduction of the fixed assets of PT KAI, and of course PT KAI will need to consider further to release the Land Assets of PT KAI which become the Railway Infrastructure that has been in its control.

On the other hand, the Directorate General of Railways at the Ministry of Transportation received leverage in accordance with Government regulation PP 57 of 1990 stating that the government owns the railway infrastructure. So that the Directorate General of Railways at Ministry of Transportation Directorate claims that the Land Assets of PT KAI which become the Railway Infrastructure belong to the Directorate General of Railways of the Ministry of Transportation. In addition, PT KAI Land Assets which Become Railway Infrastructure have been certified under the name: Department of Transportation; Department of Transportation c.q Railway Company; Department of Transportation c.q PERUMKA.

If the land assets of PT KAI which become the Railway Infrastructure are owned by the Directorate General of Railways of the Ministry of Transportation, Directorate General of Railways of the Ministry of Transportation may seek to obtain non-tax revenues, and if that happens, then it will be a great accomplishment and performance of the Directorate General of Railways of the Ministry of Transportation. This interest is what creates the attraction to solve the problem of PT KAI Land Assets which Becomes Railway Infrastructure.

Reconciliation becomes very important in order to resolve disagreements related to the data regarding the restructuration of PERUMKA / PT KAI concerning Land Assets of PT KAI which become Railway Infrastructure.

Basically, the reconciliation step had been carried out by the Directorate General of Railways at the Ministry of Transportation with the team from PT. KAI and involves the Directorate General of State Assets (DJKN) of the Ministry of Finance

In the implementation of the reconciliation, the parties assign their teams, namely the Task Force Directorate General of Railways of the Ministry of Transportation, the team of PT. KAI (Persero), and the Executive Team of the Directorate General of State Assets (DJKN) of the Ministry of Finance.

But during the implementation of the reconciliation, there is a problem regarding the results of reconciliation in the meeting with the Minutes as the product of the reconciliation. PT KAI argues that the data recording process of SIMAK BMN was still on process and thus it cannot be used as valid data for final results. However, the task force of the Directorate General of Railways at the Ministry of Transportation considered that the process of data recording through SIMAK BMN had been completed and finalized at the time of reconciliation which was attended by third party, the executive Team of Directorate General of State Assets (DJKN) Ministry of Finance.

This resulted in disagreements that cannot be resolved to date. As a result, the status of PT KAI land assets claimed as railway infrastructure by the Directorate General of Railways of the Ministry of Transportation cannot be solved by the parties.

2. Impacts affecting railway facilities, infrastructure, and users.

If the railway infrastructure is owned by the government, it should be the government that maintains and cares for railway infrastructure. However, the government does not have experts who are in charge of maintaining the railways infrastructure. However, in the practice, the railway infrastructure is maintained by PT KAI. PT KAI is more aware and has the competence to perform railway infrastructure maintenance. The cost of railway infrastructure maintenance by PT KAI is billed to the government, based on BPK RI audit up to 2011 the government has not paid the 11 trillion of the railway infrastructure maintenance cost. This has resulted in the declining quality of infrastructure for railings, which causes the quality of the railway infrastructure to be below the operating standards. PT KAI has enormous potential to manage the national railway company because: (1) it has the experience in operating rail transportation services in urban areas; (2) it has the adequate skills to handle railway infrastructure such as steel roads, stations, and supporting facilities; (3) it has the skills to handle the infrastructures both in operating and maintaining the them in order to remain ready for operation; (4) it has qualified Human Resources (HR) with both managerial and skill quality, who are independent so that it will be easier to improve their professionalism and; (5) it has sufficient source of working capital from its railway business activities.

There is a complicated bureaucracy in the scheme of Infrastructure Maintenance and Operations (IMO) with Track Access Charge / TAC: Based on the Joint Decree of three ministers namely Minister of Transportation, Minister of Finance and State Minister for National Development Planning, KM 19 Year 1999, No. 83 / KMK03 / 1999 and No.KEP.024 / K / 03/1999 dated March 4, 1999, the distribution of obligations / responsibilities must be carried out by both the Government and the Company with respect to the providers of rail transport services. The obligations in question can basically be divided into 2 (two), namely: the first obligation of the Government to finance the public service activities of economy class passenger railways transport (Public Service Obligation/PSO) and to finance the maintenance and operation of rail infrastructure maintenance (Infrastructure Maintenance and Operation / IMO).

Conversely, the obligation for the Company is to pay the cost of using the railway infrastructure (Track Access Charge/TAC). TAC is the price which has been issued by the Ministry of Transportation to be paid by *PT Kereta Api Indonesia* (KAI) for using the state property in the form of railway. Bureaucracy requires the government to pay the railway infrastructure maintenance cost (IMO) through *Daftar Isian Pelaksanaan Anggaran* (List of Budget Implementation/DIPA) from the State Budget and to get Non-Tax Revenue (PNBP) from the payment of rental fee of the railway infrastructure (TAC) paid by PT KAI. Based on the *Rencana Kerja dan Anggaran Perusahaan* (Work Plan and Corporate Budget / RKAP) proposed by PT KAI, the government incorporates the PT KAI's proposed RKAP in the State Budget Plan, which will subsequently become List of Budget Implementation (DIPA) of the Infrastructure Directorate of The Railways General Directorate of The Ministry of Transportation. But in reality the government does not provide IMO budget as much as IMO budget proposed by PT KAI. Out of PT KAI's proposed IMO budget of Rp 1.650.000.000 in 2016, only Rp 1,142,000,000, - was approved in DIPA. Such conditions are very burdensome to PT KAI financial condition because it concerns the safety (security) of the train travel, then PT KAI was forced to cover for the IMO fee. Besides, due to the government's revised state budget (APBNP) in 2016, self blocking (budget reduction on certain items) was made to adjust to DIPA the changes in APBNP.

There is also the issue of non-operational rail tracks due to the government's lack of maintenance budget. The list of non-operational railway lines in Indonesia is as follows: Non-operational rail track data In Java include: Operation Area I Jakarta [255,235 KM]; Operation Area II Bandung: [200,358 KM] Operation Area III Cirebon: [69,924 KM] Operation Area IV Semarang: [519.83 KM] Operation Area V Purwokerto: [96,706 KM] Operation Area VI Yogyakarta: [91,74 KM] Operation Area VII Madiun: [363,959 KM] Operation Area VIII Surabaya: [718,209 KM] Operation Area IX Jember: [177,426 KM]. Total number of Non-Operational Railway track is 2493,387 KM.

From the description above, it can be concluded that the separation of the infrastructure asset has negative impact to all parties.

C. Appropriate legal legislation model to solve the issues caused by the reconstruction policy on the restructuration of PT KAI's Land Assets on the Railway Track of the Railway infrastructure as the state's assets.

1. Audit to identify the essential points to address the problems.

In order to resolve the problem, an audit can be conducted. Auditing can be done in two ways: firstly audit through the State Financial Institution i.e. *Badan Pemeriksa Keuangan* / Supreme Audit Board (BPK) or *Badan Pemeriksa Keuangan Pembangunan* / Development Finance Audit Board (BPKP); Second through a legal audit to ascertain the legal position of PT KAI Land Restructuration which become Railway Infrastructure between PT KAI and the Directorate General of Railways at the Ministry of Transportation.

The first audit aims to ensure legal and legal substantiality of the subject matter relating to the Restructuration of PT KAI's Land Assets which become Railway Infrastructure between PT KAI and the Directorate General of Railways at the Ministry of Transportation. The substance associated with PT KAI Land Assets which become Railway Infrastructure is basically an existing assets of PT KAI in the past. In the period before PERUMKA / PT KAI, the railway company manages the assets of railway facilities and railway infrastructure. But post PP 57/1990 railway infrastructure belongs to the government, in this case the Directorate General of Railways Ministry of Transportation.

From the legal culture aspect, PT KAI Land Assets which become Railway Infrastructure are basically PT KAI's assets in the past existence. Thus, the legal culture of PT KAI manages the Land assets of the Railway Infrastructure very carefully in accordance with prudential principles in line with the principles of Good Corporate Governance (GCG).

According to Lawrence Meir Friedman, the success or failure of law enforcement depends on the Law Substance, Legal Structure / Legal Institution and Legal Culture¹⁴.

As a substantial system that determines whether or not a law can be implemented. There are various legislation governing railway infrastructure, among others: Government Regulation Number 57 of 1990 About the transformation of *Perusahaan Jawatan Kereta Api* / Railway Service Company into *Perusahaan Umum* / Public Company (PERUM) Kereta Api and later into *PT Kereta Api Indonesia (Persero)* in accordance with Government Regulation Number 19 Year 1998 Act Number 23 of 2007 on Railways. The three legislations have not been properly implemented, because there is an overlap in the arrangements, making it difficult to enforce these laws by the railway operators (PT KAI) or by railway regulators (Directorate General of Railways at the Ministry of Transportation).

Legal structure is also called as a Structural system that determines whether or not the law can be properly implemented. The legal structure can also be associated in the case of the Restructuration of the Land Assets of PT KAI which become the Railway Infrastructures between PT KAI and the Directorate General of Railways of the Ministry of Transportation. Based on the Legal Structure / Legal Institution of PT KAI's Land Assets which become Railway Infrastructure, PT KAI looks forward to the possibility that in the future the Government will change the policy of the railway company by re-joining the railway infrastructures which are currently separated with the railway facility.

The reconciliation process of the Restructuration of PT KAI Land Assets which become the Railway Infrastructures between PT KAI with the Directorate General of Railways of the Ministry of Transportation has raised a very fundamental problem related to its status as State Property.

As the state Property, the land assets have the potential to be set into Non-Tax State Revenue (PNBP). This is what prompted the Directorate General of Railways at the Ministry of Transportation to make any effort necessary to take over the Land Assets of PT KAI which become the Railway Infrastructure under the control of the PT KAI.

As we pointed out, the Directorate General of Railways of the Ministry of Transportation get leverage in accordance with Government regulation PP 57 of 1990 that the railway infrastructures are owned by the government. So the Directorate General of Railway of the Ministry of Transportation claims PT KAI land assets which become the Railway Infrastructure is owned the Ministry of Transportation. In addition, PT KAI Land Assets Which Become Railway Infrastructure have been certified under the name: Department of Transportation; Department of Transportation c.q Railway Company; Department of Transportation c.q PERUMKA. If the land assets of PT KAI which become Railway Infrastructure are the property of the General Directorate of Railways of the Ministry of Transportation, the General Directorate of Railways of the Ministry of Transportation may seek to obtain non-tax revenues, and if that happens, then it will be a great achievement and performance of the Directorate General of the Ministry of Transportation.

Meanwhile, PT KAI does not immediately release its Land Assets which become the Railway Infrastructure, because in order to do so, the removal from book assets of the limited liability company is required. Such a situation would result in the reduction of the fixed assets of PT KAI, and of course PT KAI will need to consider further to release the Land Assets of PT KAI which become the Railway Infrastructure that have been in its control since it will have larger effect and strategic impact on the capital structure of the Company.

This interest is what creates the attraction to solve the problem of PT KAI Land Assets which Becomes Railway Infrastructure.

Thus, there is urgency for a set of restructuration reconstruction that is capable of reconstructing the law enforcement to solve the problem of PT KAI Land Assets which become Railway Infrastructure in accordance with the Law Substance, Legal Structure / Legal Institution and Legal Culture of the parties. So that the laws and regulations related to Land Assets that become Railway Infrastructure can be enforced or implemented by Railway Operators (PT KAI) or by Railway Regulators (Directorate General of Railways Ministry of Transportation).

2. President Regulation as a legal model to address the problem

Some efforts have been made to create a policy model that can address the problems caused by the separation of the land assets on the railway infrastructure (track in railway infrastructure), among which is the railway company's breakthrough to take a segment of the land asset on the railway transportation infrastructure of urban / commuter lines in Jabodetabek (Jakarta, Bogor, Depok, Tangerang Bekasi) area by proposing the concept to make a presidential regulation which was agreed by the Government and become the Presidential Regulation of the Republic of Indonesia Number 83 Year 2011 on the Assignment of

¹⁴<http://orintononline.blogspot.co.id/2013/02/perdebatan-teori-hukum-friedman.html>, accessed, Juli 12, 2017

PT Kereta Api Indonesia (Persero) to manage and control the Infrastructure And Railway Facilities Of Soekarno-Hatta Airport And the Circle Line of Jakarta-Bogor-Depok-Tangerang-Bekasi.¹⁵

One of the positive impact of the President Regulation is the on-going project on the Infrastructure and Railway Facilities of the Soekarno-Hatta Airport. The Soekarno-Hatta Airport railway project will connect Soekarno-Hatta international airport to the center of Jakarta has long been discussed by the public. This project is made for the mobilization of passengers. In addition to the airport train line, a train station will also be built at the Soekarno Hatta airport. The management of Railway Infrastructure and Railway Facility in Jakarta-Bogor-Depok-Tangerang-Bekasi is carried out by controlling the railway infrastructure and the construction of all stations in the Jakarta-Bogor-Depok-Tangerang-Bekasi Ring Lane and purchasing of railway facilities which lead to the extraordinary improvement of the number of passengers per day from 450,000 to 950,000.¹⁶

III. CONCLUSIONS

According to the above description and analysis, the following conclusions are drawn:

1. **The implementation of the Restructuration of PT KAI Land Assets as the railway infrastructure owned by the State according to the Government Regulation No. 57/1990 and Government Regulation No. 19/1998 does not work properly due to the conflict of interest between PT KAI as the railway operator and the Directorate General of Railways at the Ministry of Transportation as the railway regulator.**
2. There are operational problems caused by the provision which lead to the operational shut down of some rail tracks area and the decreasing quality of service to the passenger thus causing decrease on the passenger number.
3. The government needs to formulate a new legislation to attend to this matter so that PT KAI can function better. The success of the Presidential Regulation of the Republic of Indonesia Number 83 of 2011 suggests that the government should return the land asset infrastructure ownership to PT KAI (Persero).

¹⁵ Mirza Pratiwi, http://kereta-api.info/jalur-kereta-bandara-soekarno-hatta-akan-jadi-tahun-depan-1342.htm?relatedposts_hit=1&relatedposts_origin=6520&relatedposts_position=0 , Accessed on August 3, 2017

¹⁶PT KAI President Director, <http://megapolitan.kompas.com/read/2017/05/10/08353531/penumpang.krl.jabodetabek.tembus.1.juta>. Peng guna, Accessed on August 3, 2017

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