



DECISION

Number 650 K/TUN/2022

FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD

SUPREME COURT

examining State administrative cases at the cassation level has decided as follows in the case:

I. MINISTER OF ENERGY AND MINERAL RESOURCES OF

THE REPUBLIC OF INDONESIA, domicile at Jalan Medan Merdeka Selatan Number 18, Central Jakarta; In this case represented by attorney M. Idris F. Sihite, SH, MH, the position of Head of the Legal Bureau at the Secretariat General of the Ministry of Energy and Mineral Resources, and friends, based on Special Power of Attorney Number 13.Ks/H.105/MEM .S/2021, July 15, 2021;

Cassation Petitioner I;

II. PT. MINE MAS SANGIHE, a seat at NobleHouses 30th floor, Jalan Dr. Soedjatmo Anak Agung Gde Agung Kaveling 4.2, Number 2 (Sub Blok 6.7), Mega Kuningan, South Jakarta, represented by Terrence Kirk Filbert, President Director, and Gerhardus Antonius Kielienstyn, Director, based on the Deed of Meeting Resolutions of PT. Tambang Mas Sangihe, Number 2, dated 2 June 2017, made before Notary Yudha Setyagraha Tediando, SH, MM, M.Kn., Notary in Bekasi and Deed of Statement of Meeting Resolutions of PT. Tambang Mas Sangihe, Number 5, dated 14 May 2020, made before Notary Yudha Setyagraha Tediando, SH, MM, M.Kn., Notary in Bekasi, in accordance with the Decree of the Director General of General Legal Administration, Ministry of Law and Human Rights of the Republic Indonesia Number AHU-00817C3.A.01.11 of 2020, May 14, 2020;

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Furthermore, in this matter represented by Dr. Rico Pandeirot, SH, LL.M., Indonesian citizenship, and friends, Advocates and Legal Consultants at the Rico Pandeirot & Co. Law Office, having their address in Central Jakarta, based on Special Power of Attorney Number 01/RPCO.SK.01/2022, January 3, 2022;

Cassation II Petitioner;

Against

- I. 1. ELBI PIETER**, Indonesian citizenship, place of residence lives in Bowone Village, South Central Tabukan District, Sangihe Archipelago Regency, North Sulawesi Province, take care of the household;
- 2. AGUSTINUS MAIAN THAS**, Indonesian citizenship, domiciled in Crannelg Village, South Central Tabukan District, Sangihe Archipelago Regency, North Sulawesi Province, occupation of Farmer;
- 3. STEPANUS MAATE**, Indonesian citizenship, residence in the village of Malamenggu, District of South Central Tabukan, Sangihe Archipelago Regency, North Sulawesi Province, occupation of farmer;
- 4. DESMON SONDAK**, Indonesian citizenship, living in Bulu Village, South Central Tabukan District, Sangihe Islands Regency, North Sulawesi Province, work as a fisherman;
- 5. CHRISTIAN TELATI**, Indonesian citizenship, living in Kampung Kalagheng, District of South Central Tabukan, Regency

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Sangihe Islands, North Sulawesi Province, Farmer
occupation;

6. S. EIFENLIE POINT, citizenship
Indonesia, residence in Birahi Village, South Central
Tabukan District, Sangihe Archipelago Regency,
North Sulawesi Province, occupation of Driver:

7. WILSON ZETH RORONG, Indonesian citizenship,
residence in Kampung Laine, Manggani Selatan
Tengah District, Sangihe Archipelago Regency,
North Sulawesi Province, occupation of driver;

In this case represented by attorney Johny Nelson
Simanjuntak, SH, Indonesian citizenship, and
friends, Advocates and Legal Advisers at JNS & Partners
Law Firm, having their address in Central Jakarta, based
on a Special Power of Attorney dated June 3, 2021;

THE APPLICANTS TO CASES I:

1. T. ADELMAN MAKADAPA, citizenship
Indonesia, residence in Dagho Village, Tamako
District, Sangihe Islands Regency, North Sulawesi
Province, occupation Farmer/Garden;

2. YENI TELI MAHENGKENG, Indonesian citizenship,
living in Hesang Village, Tamako District, Sangihe
Islands Regency, North Sulawesi Province, taking
care of the household;

3. NOVITA MALANSF. Indonesian citizenship, residing
in Hesang Village, Tamako District, Sangihe
Archipelago Regency, Province

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North Sulawesi, household work;

4. SATRIA REAGENT MAHENGKENG,

Indonesian citizenship, domicile in Dagho Village, Hesang District, Sangihe Islands Regency, North Sulawesi Province, work as farmer;

5. TRULY STEVYA YOLANDA SAMATARA,

Indonesian citizenship, living in Hesang Village, Tabako District, Sangihe Islands Regency, North Sulawesi Province, taking care of the household;

6. IVONE MANDAGI,

Indonesian citizenship, living in Hesang Village, Tabako District, Sangihe Islands Regency, North Sulawesi Province, taking care of the household;

7. PLIN SIMON,

Indonesian citizenship, residence in Hesang Village, Tabako District, Sangihe Archipelago Regency, North Sulawesi Province, work as Private Employee;

8. CRISNALGHAMAMBANUA LAHIPE,

Indonesian citizenship, residence in Lesabe I Village, South Tabukan District, Sangihe Archipelago Regency, North Sulawesi Province, work as Honorary Employee;

9. Jansen Heskiel Andarise,

Indonesian citizenship, residence in Lesabe I Village, South Tabukan District, Sangihe Archipelago Regency, North Sulawesi Province, work as BUMN employee;

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10. **OKTAVIA ELISYE PAUSUSEKE**, Indonesian citizenship, residence in Lesabe I Village, South Tabukan District, Sangihe Archipelago Regency, North Sulawesi Province, student occupation;
11. **CHRISTOPHEL LUKE**, citizenship Indonesia, residence in Kampung Kulur II, Central Tabukan District, Sangihe Islands Regency, North Sulawesi Province, occupation Farmer, Gardener;
12. **FEBRIAN RIDMAR LAIGHANG**, Indonesian citizenship, living in Kampung Kulur II, Central Tabukan District, Sangihe Islands Regency, North Sulawesi Province, other occupations;
13. **MARK LAIGHANG**, citizenship Indonesia, residence in Kampung Kulur II, Central Tabukan District, Sangihe Archipelago Regency, North Sulawesi Province, work as Village Official;
14. **ALPRINTJE DALITA**, Indonesian citizenship, domicile in Kampung Kulur II, Central Tabukan District, Sangihe Archipelago Regency, North Sulawesi Province, work as household manager;
15. **ALEX DALITA**, Indonesian citizenship, domicile in Kampung Kulur II, Central Tabukan District, Sangihe Islands Regency, North Sulawesi Province, work as farmer/planter;
16. **JUSTINUS DALITA**, Indonesian citizenship, living in Kampung Kulur II, District

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Central Tabukan, Sangihe Archipelago Regency, North Sulawesi Province, farmer/planter occupation;

17. MICHAEL BAMBUT MONTHS, Indonesian citizenship, residence in Kampung Kulur II, Central Tabukan District, Sangihe Archipelago Regency, North Sulawesi Province, work yet/not working;

18. CHRISTANTO SAPUTRA MAMALIOBA, Indonesian citizenship, residence in Kampung Kulur II, Central Tabukan District, Sangihe Islands Regency, North Sulawesi Province, student occupation;

19. MARLINA METUSANA, Indonesian citizenship, living in Kampung Kulur II, Central Tabukan District, Sangihe Archipelago Regency, North Sulawesi Province, work in managing the household;

20. ROSELY KARMAN MAKAWOKA, Indonesian citizenship, residence in Kampung Kulur II, Central Tabukan District, Sangihe Archipelago Regency, North Sulawesi Province, work as a Village Official;

21. CHRISTIAN TAPADONGKO, Indonesian citizenship, residence in Kampung Kuma I, Central Tabukan District, Sangihe Archipelago Regency, North Sulawesi Province, self-employed;

22. YANTI METARIANG, Indonesian citizenship, living in Kaluwatu Village, South Mangaitu District, Sangihe Islands Regency, North Sulawesi Province, taking care of the household;

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- 23. JOHANNES H. NELWAN**, Indonesian citizenship,
residence in Kaluwatu Village, South Manganitu
District, Sangihe Islands Regency, North Sulawesi
Province, self-employed;
- 24. ADOLF BASTIAN MANUMPERI**, Indonesian
citizenship, residence in Kaluwatu Village, South
Manganitu District, Sangihe Islands Regency, North
Sulawesi Province, work as Honorary Employee;
- 25. LEXYO RAKINAUNG**, Indonesian citizenship,
residence in Kaluwatu Village, South Manganitu
District, Sangihe Islands Regency, North Sulawesi
Province, work as a carpenter;
- 26. ANICE BOMBONA**, Indonesian citizenship, living in
Laine Village, South Manganitu District, Sangihe
Islands Regency, North Sulawesi Province, working
as a household manager;
- 27. VENETSIA V. ANDEMORA**, Indonesian citizenship,
living in Bentung Village, South Tabukan District,
Sangihe Archipelago Regency, North Sulawesi
Province, doing household chores;
- 28. ELVITA SUSANTI LIPUT**, Indonesian citizenship,
residence in Hesang Village, Tamahan District,
Sangihe Archipelago Regency, North Sulawesi
Province, work yet/not working;
- 29. APRIUS MAKATANTIN**, Indonesian citizenship
Indonesia, living in Kampung Malamenggu, South
Tabukan District, Islands Regency

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Sangihe, North Sulawesi Province, occupation of
farmer/planter;

30. MOTIFAR KAGANSA, Indonesian citizenship,
domicile in Bowone Village, South Tabukan District,
Sangihe Islands Regency, North Sulawesi Province
work as farmer/planter;

In this case represented by attorney Harimudon, S.H.,
Indonesian citizenship, and friends, Advocates of the
Office of the Mining Advocacy Network (IAHAM), having
their address at South Jakarta, based on a Special
Power of Attorney dated September 2021;

Cassation Respondents II;

the Supreme Court;

Read the relevant documents which are an integral part of this
decision;

Considering, that based on the letters concerned, the Plaintiffs in
their lawsuit request the Court to render a decision as follows:

1. Granted the Plaintiffs' lawsuit in its entirety;
2. Declare canceled or invalid the Defendant's Decision, namely the Decree of
the Minister of Energy and Mineral Resources Number 163.K/MB.04/DJB/
2021, dated January 29 2021, concerning the Approval of the Increase in
the Production Operations Stage of the Contract of Work of PT Tambara
Mas Sangihe;
3. Requiring the Defendant to revoke the Defendant's Decree, namely the
Decree of the Minister of Energy and Mineral Resources Number
163.K/MB.04/DJB/2021, dated January 29, 2021, regarding Approval of
the Increase in the Production Operations Stage of PT. Mas Sangihe
Mine;
4. Punish the Defendant to pay court fees;

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Considering, that against the lawsuit, the Defendant and Intervening Defendant II filed the following exceptions:

Defendant's Exception:

1. Exception of Absolute Competence (Competence to Adjudicate);
2. The plaintiff has no legal interest (*legal standing*) to file a lawsuit *aquo*;
3. The plaintiff's lawsuit was premature;
4. Plaintiff's Lawsuit *error in objecto*;
5. The Plaintiffs' lawsuit is unclear (*obscuur libel*);

Exception of Defendant II Intervention:

1. Exception of Absolute Competence - The State Administrative Court is not authorized to examine and adjudicate *aquo*;
2. Exceptions The Plaintiffs have no right to file a lawsuit (*exceptio legitima personae standi in iudicio / disqualification in person*);
3. The exceptions to the Plaintiffs' lawsuit are vague and unclear (*exception obscuur libel*);
4. Lawsuit *aquo* past the force period of 90 (ninety) days from the date of receipt or announcement of the decision of the State Administrative Agency or Official as stipulated in Article 55 of Law Number 5 of 1986 concerning State Administrative Court (*exceptio temporis peremptoria* or expired exception);

Considering, that the lawsuit was declared unacceptable by the Jakarta State Administrative Court, with Decision Number 146/G/2022/PTUN.JKT, April 20, 2022, then at the appeal level the decision was canceled by the Jakarta High Administrative Court, with a Decision Number 140/B/2022/PT.TUN.JKT, August 31, 2022;

Considering, that after this final decision was notified to the Petitioner for Cassation I and the Petitioner for Cassation II respectively on September 1, 2022, then the Petitioner for Cassation I and the Petitioner for Cassation II filed an oral cassation request respectively

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on September 12, 2022, respectively, the application was followed by Cassation Memories of Petitioner I and Cassation Appellant II which contain the reasons received at the Registrar Office of the Jakarta State Administrative Court on September 26, 2022 and September 22, 2022 respectively;

Considering, that the petition for cassation *aquo* along with the reasons, have been carefully notified to the opposing party, submitted within the time limit and in the manner specified in the law, therefore the request for cassation can be formally accepted;

Considering, that based on the Memorandum of Cassation received on 26 September 2022 which is an integral part of this Decision, Appellant for Cassation I requests that:

Judgment

1. Received the cassation request and Memorandum of Cassation from Cassation Petitioner I (formerly Appellant I/Defendant);
2. Canceled the Decision of the Jakarta State Administrative High Court Number 140/B/2022/PTUN.JKT., dated August 31, 2022;

Judge yourself:

A. On Delay;

Declared null and void and has no binding legal force on the Postponement of the Implementation of the Object of the Dispute, namely the Decree of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 153.K/MB/04/DJB/2021, dated January 29, 2021 concerning Approval of the Increase in the Production Operations Stage of a Mining Work Contract Mas Sangihe;

B. In Exception;

1. Accept and grant the exception of Appellant I (formerly Appellant I/Defendant) in its entirety;
2. Declare the lawsuit of the Cassation Respondents unacceptable (*niet ontvankelijk verklaard*);



C. In the Main Case;

1. Reject the lawsuit of the Cassation Respondents in its entirety;
2. Declare that the Object of the Dispute is valid and valid in the form of a Decree of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 163.K/MB/04/DJB/2021, dated 29 January 2021, regarding the Approval of the Increase in Production Operations Stage on the Mas Sangihe Mine Contract of Work;
3. Punish the Cassation Respondents to pay court fees arising from this case;

Or;

If the Panel of Supreme Court Judges at the cassation level examining this case has a different opinion, please make the fairest decision possible (*ex aequo et bono*);

Considering, that based on the Memorandum of Cassation received on 22 September 2022 which is an integral part of this Decision, Petitioner for Cassation II requests that:

Specifically, requesting:

1. Received the cassation request from the Cassation Petitioner/formerly Appellant II/ previously Intervening Defendant II in its entirety;
2. Granted the cassation request as well as the Memorandum of Cassation from the Cassation Petitioner/formerly Appellant II/ previously Intervening Defendant II in its entirety;
3. Cancelled the Decision of the Jakarta State Administrative High Court Number 140/B/2022/PT.TUN.JKT., dated August 31, 2022;

Judge yourself:

A. On Delay;

1. Rejecting the request for postponement of the implementation of the decision on the object of dispute being sued filed by the Cassation Respondents/formerly Appellant I and Comparator II/ previously the Plaintiffs and Intervening Plaintiffs;
2. Revoking the postponement of implementing the decision on the disputed object;



B. In Exception;

1. Accepting the exceptions filed by the Cassation Petitioner/formerly Appellant II/formerly Intervening Defendant II, concerning Absolute Authority;
2. Declare that the Jakarta State Administrative Court has no authority to examine and adjudicate cases *a quo*;
3. Declare the lawsuits of the Cassation Respondents/previously Appellant I and Comparator II/previously the Plaintiffs and Intervening Plaintiffs cannot be accepted (*niet ont van kelijke verklaard*);

C. In the Main Case;

1. Reject the lawsuits of the Cassation Respondents/previously Appellant I and Comparator II/previously the Plaintiffs and Intervening Plaintiffs in their entirety;
2. Punish the Cassation Respondent/formerly Appellant I and Comparator II/previously the Plaintiffs and Intervening Plaintiffs to pay court costs at all levels of justice jointly and severally;

Or;

If the Panel of Judges is of a different opinion, ask for the fairest decision possible (*ex aequo et bono*).

Considering, that against the Cassation Petitioners I and Cassation II Petitioners, the Cassation Respondents I and Cassation Respondents II have filed Counter Cassation Memorandums respectively on October 14 2022 and October 10 2022, which are essentially to reject the cassation request from Cassation Appellant I and Cassation II Appellant;

Considering, that against the reasons for cassation, the Supreme Court is of the opinion that these reasons cannot be justified, because *Judex Facti* The Jakarta State Administrative High Court is correct and there is no mistake in applying the law with the following considerations:



- Whereas the Decision on the Object of the Dispute as a follow-up to the Contract of Work between the Government of the Republic of Indonesia represented by the Minister of Mines and Energy (Petitioner for Cassation I) and PT. Mas Sangihe Mine (Appellant for Cassation II) as an implementation of the Letter of the President of the Republic of Indonesia Number B.143/Pres/3/1997, dated March 17, 1997 regarding Approval for 68 (sixty eight) Contracts of Work in the Context of Foreign Investment in the General Mining Sector is KTUN and fulfill the qualifications of Article 1 point 9 of the State Administrative Court Law *juncto* Article 87 of the Administrative Law Government;
- Whereas the Plaintiffs (Defendant Cassation I) and Intervening Plaintiffs (Defendant Cassation II) are community members who own houses and their supporting facilities, agricultural land, plantation land located in the Mining Business Permit area who should be involved in their roles as local wisdom and community aspirations;
- Whereas the AMDAL on the Environmental Permit for Gold Mining Activities of PT Tambora Mas Sangihe does not involve the community and local wisdom. The Contract of Work for Sangihe Islands which is a Small Islands category is also not accompanied by a permit/ recommendation from the Minister of Maritime Affairs and Fisheries, so the object of dispute must be canceled because it is contrary to Article 10 paragraph (2) letters d and e of Law Number 32 of 2009 concerning Protection and Environmental Management and Article 26 A point of Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Zone and Small Islands;

Considering, that in the deliberations of the Panel of Judges there were differences of opinion (*dissenting opinion*) from Member of Assembly 2, Dr. H. Yosran, SH, M.Hum., as follows:

- That *Judex Facti* The Jakarta State Administrative High Court has misapplied legal considerations;
- Whereas the State Administrative Decree as the object of the dispute was born out of existence

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contract of work between the Government and PT. The Mas Sangihe Mine is in an equal position, so based on Article 2 letter a Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court cannot be sued in the State Administrative Court as considered by the Administrative Court Jakarta State;

- That based on the provisions of Article 169 of Law Number 4 of 2002 at the time this law comes into effect, all Contracts of Work and Contracts of Work for coal mining operations that existed before the enactment of this law remain in effect until the expiration of the contracts/agreements, so work contract *aquo* remain valid until the end of the original contract;
- Whereas based on the facts of the trial, the contract of work between the government and PT. The Sangihe Mas Mine had not yet ended at the time the lawsuit was filed *aquo*, so that the contract of work between the government and PT. The Sangihe Mas Mine cannot be categorized as a permit, but is categorized as a contract of work;
- Whereas based on the above considerations, the Plaintiffs' lawsuit must be declared unacceptable as considered by the Jakarta State Administrative Court;

Considering, that because there are different opinions in the Panel of Judges and deliberations have been made in earnest, but no consensus has been reached, in accordance with Article 97 paragraph (3) of Law Number 5 of 1986 concerning State Administrative Court, Article 30 paragraph (5) Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment by Law Number 3 of 2009, the Panel of Judges decided with a majority of votes, namely rejecting the cassation requests from Cassation Petitioners I and II;

Considering, that apart from that these reasons are in essence regarding the evaluation of the results of evidence that are in appreciation of a fact, which matters cannot be considered in

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examination at the cassation level, because the examination at the cassation level is only concerned with not being carried out or there are errors in the implementation of the law, as referred to in Article 30 of Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and second amendment with Law Number 3 of 2009;

Considering, that based on the above considerations, the decision of *Judex Facti* The State Administrative High Court of Jakarta in this case does not conflict with the law and/or statutes, therefore the cassation request must be rejected, and as the losing parties Cassation Appellant I and Cassation Appellant II are ordered to pay court costs at cassation level;

Taking into account the articles of Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment by Law Number 3 of 2009, Law Number 5 of 1986 concerning State Administrative Court as amended by Law Number 9 of 2004 and the second amendment by Law Number 51 of 2009, as well as other related laws and regulations;

JUDGE:

1. Rejection of the cassation request from **Petitioner for cassation I: MINISTER OF ENERGY AND MINERAL RESOURCES OF THE REPUBLIC OF INDONESIA** And **Cassation II Petitioners: PT. MINE MAS SANGIHE**;
2. Convict Cassation I and Cassation II Petitioners to pay court fees at cassation level in the amount of Rp. 500,000.00 (five hundred thousand Rupiah);

Thus it was decided in the deliberative meeting of the Panel of Judges on Thursday, January 12, 2023, by H. Is Sudarsono, SH, MH, the Supreme Court Justice appointed by the Chief Justice of the Supreme Court as Chair of the Panel, together with Dr. H. Yodi Martono Wahyunadi, SH, MH,

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and Dr. H. Yosran, SH, M.Hum., Supreme Court Justices as Members, and pronounced in a hearing open to the public on the same day by the Chairman of the Panel in the presence of the Member Judges and Retno Nawangsih, SH, MH Alternate Registrar without attended by the parties.

Assembly Members:

chairman of the assembly,

signed

signed

Dr. H. Yodi Martono Wahyunadi, SH, MH

H. Is Sudaryono, SH, MH

signed

Dr. H. Yosran, SH, M. Hum.

Substitute Registrar,

signed

Retno Nawangsih, SH, MH

Fees:

- | | |
|-----------------------------|-----------------------|
| 1. Seal | Rp 10,000.00 |
| 2. Editor | Rp 10,000.00 |
| 3. Cassation administration | <u>IDR 480,000.00</u> |
| Amount | IDR 500,000.00 |

RI SUPREME COURT

on behalf of the Registrar
 Junior Registrar of State Administration,

SIMBAR KRISTIANTO, SH
 NIP 19620202 19751 1 001

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