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DECISION Jur .ber 650 K/TUN/2022 FOR JUSTICE BASE. UN THE ONE ALMIGHTY GOD SUPREME COURT

examining site 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 la an

Medan Merdeka Selatan Number 18, Cantal, akarta; In this case represented by attorney *√*. Idr. *F*. Sihite, SH, MH, the position of Head of the Legal by reau at the Secretariat General of the Ministry CEnergy and Mineral Resources, and friends, bare, or Special Power of Attorney Number 13.Kc/h. (05/MEM .S/2021, July 15, 2021; **Cassation Petitioner I**;

II. PT. MINE MAS A LIHE, a seat at Noble *Houses 30th* floor, Jala ... de Anak Agung Gde Agung Kaveling 4.2, Nur of 2 Joub Blok 6.7), Mega Kuningan, South Jakarta, represented by Terrence Kirk Filbert, President rector, and Gerhardus Antonius Kielenstyn, Director, based on the Deed of Meeting Resolutions of PT. Tambang Mas Sangihe, Number 2, dated 2 June 2017, made before Notary Yudha Setyagraha Tedianto, TH, MM, M.Kn., Notary in Bekasi and Deed of Statem, at of Meeting Resolutions of PT. Tambang Mar San rihe, Number 5, dated 14 May 2020, made Schore Jotary Yudha Setyagraha Tedianto, SH, MM, 1.n., Notary in Bekasi, in accordance with the Pecree of the Director General of General Legal Ad. Sincaration, Ministry of Law and Human Righ's Ath. Republic Indonesia Number AHU-008176 A. .01.11 of 2020, May 14, 2020;

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Further no. , in this matter represented by Dr. Rico P in 'en oc, SH, LL.M., Indonesian citizenship, and friends, Advocates and Legal Consultants at the Rico Fandeirot & 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, p. ce lives in Bowone Village, South Santra Tabukan District, Sangihe Archipelag K gency, North Sulawesi Province, take care of the household;

2. AGUSTINUS MAL AN THAS, Indonesian citizenship, domiciled in CL nnelg Village, South Central Tabukan DL trict, Sangihe Archipelago Regency, Nort Vula esi Province, occupation of Farmer;

STEPANUS MAATE, citizenship Indonesia, 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 ining in Bulo Village, South Central Tabukan District, Sangihe Islands Regency, North Sultwesi Province, work as a fisherman;

5. CHRISTIAN

citizenship

Indonesia, living in (a) ipung Kalagheng, District of South Central i (b) kan, Regency

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> Samin 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 citizen, hp, residence in Kampung Laine, Mar. an. Selatan Tengah District, Sangihe Archi, Jago Regency, North Sulawesi Province, oc.up ation of driver;

In this case represented by autorney Johny Nelson Simanjuntak, SH, K, Y, 1, donesian citizenship, and friends, Advocates nu Legal Advisers at JNS & Partners Law Firm, have a their address in Central Jakarta, based on a Spe iz. Pover of Attorney dated June 3, 2021;

THE APLICANTS TO CASES I;

- ADELMAN MAKADAPA. citizenship Indonesia, residence in Dagho Village, Tamako District, Sangihe Islands Regency, North Sulawes. Province, occupation Farmer/Garden;
- 2. YENI TELI MAHENGKENG, Indonesian c. izenship, living in Hesang Village, Tamako D. trict, Sangihe Islands Regency, North Sulawe P ovince, taking care of the household;
- **3. NOVITA MALANSF** . . de nesian citizenship, residing in Hesang Villa anako District, Sangihe Archipelage Regency, Province Pager o. 6 Jages. Decision Number 650 K/TUN/2022 onesic

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North Lawesi, household work;

4. S, TRIA REAGENT MAHENGKENG, Indonesian citizenship, domicile in Dagho Village, Hesan District, Sangihe Islands Regency, North Sulawesi Province, work as farmer;

5. TRULY STEVYA YOLANDA SAMATARA, Jodo visian citizenship, living in Hesang Villago Ta. тако District, Sangihe Islands Reger V, North Sulawesi Province, taking care of the iovisenold;

- 6. IVONE MANDAGI, I. do. esian citizenship, living in Hesang Village, Tai tako District, Sangihe Islands Regency, Norti Sulawesi Province, taking care of the houser, lo;
- 7. PLT'.: SIMON, Indonesian citizenship, residence in Hesang Village, Tamako 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 Re אראין אראין North Sulawesi Province, work as Honc rary Employee;
- 9. Jansen Heskiel Andarise, Indonction citizenship, residence in Lesabe I Villace, South Tabukan District, Sangihe Archi, ماد ماد o Regency, North Sulawesi Province, יסי cas BUMN employee;

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> 10. OKT 1. CELISYE PAUSUSEKE, Indonesian :iticanship, 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, Ce. tr.l Tabukan District, Sangihe Islands Regency North Sulawesi Province, occupation Farcher, Garden;

12. FEBRIAN RIDMAR LAIGHAN J, inconesian citizenship, living in Kar. pung Kulur II, Central Tabukan District, Can, the Islands Regency, North Sulawesi Province, httper occupations;

13. MARK LAIGHANG, citizenship Indo resia, residence in Kampung Kulur II, Central a whan 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 citizens, odmicile in Kampung Kulur II, Central Tab. ka District, Sangihe Islands Regency, Jorth Sulawesi Province, work as farmer/plante

16. JUSTINUS DALITA, nd nesian citizenship, living in Kampung Kulu, II, District

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> Certira. Tabukan, Sangihe Archipelago Regency, North Survesi Province, farmer/planter occupation; 17. NICHAEL 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 M^N. 10BA, Indonesian citizenship, residence ... Ka pung Kulur II, Central Tabukan Distr 🐟, Sar gihe Islands Regency, North Sulawesi Province, student occupation;

19. MARLINA METUSA' A, 'nuonesian citizenship, living in Kampung Kellar, Keentral Tabukan District, Sangihe Archip Jago Regency, North Sulawesi Province work in managing the household;

20. NO 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 citize in jp, residence in Kampung Kuma I, Central Teockan District, Sangihe Archipelago Regency, Youh Sulawesi Province, self-employed;

22. YANTI METARIANG, Indoresian citizenship, living in Kaluwatu Village, Sout. M. nganitu District, Sangihe Islands Reger by, North Sulawesi Province, taking care of the pousehold;

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Office of the Supreme Court of the Republic of 1. nesta strives to always include the most current and accurate in ansparence and accountability in the rove from time to time. In the tation of judicial functions. However, in certa. ases as still possible for technical problems to occur related to the accuracy and up-to-date info ation contained on this site or ratic at should be available, but is not yet available, please immediately contact the Registrar's Office of the Supreme Court of the Republic Email : clerkship@mahkamahagving. id 1. ; 021-384 3348 (ext.318)

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> 23. JOHAN TH. NELWAN, Indonesian citizenship, es. Jence in Kaluwatu Village, South Manganitu District, Sangihe Islands Regency, North Sulawesi Province, self-employed;

- esté 24. ADOLF BASTIAN MANUMPERI, Indonesian citizenship, residence in Kaluwatu Village, Coub Manganitu District, Sangihe Islands Regenery North Sulawesi Province, work as Honor. v L ppioyee;
- 25. LEXYO RAKINAUNG, Indonesian citizenship, residence in Kaluwatu Vilage, South Manganitu District, Sangihe I. 'an. 's megency, North Sulawesi Province, work as a carpenter;
- **26. ANICE BOMBO**. **1**, indonesian citizenship, living in Laine Villag, South Manganitu District, Sangihe Islan is Reconcy, North Sulawesi Province, working s household manager;
- 2,. 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 cit. renship, residence in Hesang Village, Taman District, Sangihe Archipelago Regency, Jo h Sulawesi Province, work yet/not wo king;

29. APRIUS MAKATAN IN

citizenship

Indonesia, livin ir Kampung Malamenggu, South Tabukan D. tri t, Islands Regency onesiz

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Annsparence and accountability in the ent to public serv tation of judicial functions. However, in certa ases still possible for technical problems to occur related to the accuracy and up-to-date infor on we present, which we will continue to rove from time to time. In the ev accurate information contained on this site or ratic at should be available, but is not yet available, please immediately contact the Registrar's Office of the Supreme Court of the Republic Email : clerkship@mahkamahagving. id 1. ; 021-384 3348 (ext.318)

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> Sample North Sulawesi Province, occupation of an...er/planter;

30. OTIFAR 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 Harimudo n, 🙄 Indonesian citizenship, and friends, Advocates of the Office of the Mining Advocacy Network (IA. \M), having their address at South Jakarta, bas i on a Special Power of Attorney dated Septer pc : 2021;

Cassation Respondents II;

the Supreme Court;

Read the relevant documents with re an integral part of this decision;

me Considering, that based c tr e letters concerned, the Plaintiffs in their lawsuit request the Court t' render a decision as follows:

1. Granted the Plain *it.s*' lawsuit in its entirety;

- 2. Declare cance durinvalid the Defendant's Decision, namely the Decree of the Minister of Energy and Mineral Resources Number 163.K/MB.04/DJB/ 2021, unted January 29 2021, concerning the Approval of the Increase in th、^D oduction Operations Stage of the Contract of Work of PT Tam var Mas Sangihe;
- Requiring the Defendant to revoke the Defendant's De ree, nonely the Decree of the Minister of Energy and Mineral Resources Number 163.K/MB.04/DJB/2021, dated January 29, 2021, regulating Approval of the Increase in the Production Operations states of PT. Mas Sangihe Mine;

4. Punish the Defendant to pay court fee

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Considering, that again. the lawsuit, the Defendant and Intervening Defendant II filed the ic lowing exceptions:

Defendant's Exception:

- 1. Exception of Abcolu ____ompetence (Competence to Adjudicate);
- 2. The plantin has no legal interest (legal standing) to file a lawsuit aquo;
- 3. T e p aintiff's lawsuit was premature;
- 4. Plaintiff's Lawsuiterror in objecto;
- 5. The Plaintiffs' lawsuit is unclear (obscuur libel);

Exception of Defendant II Intervention:

- 1. Exception of Absolute Competence The State Advision Strative Court is not authorized to examine and adjudicate cose saquo;
- 2. Exceptions The Plaintiffs have no right to the a lawsuit (exceptio legitima persona standi in judio / disqualif 'ralin', in person);
- 3. The exceptions to the Plaintiffs' Invisit are vague and unclear (*exception* obscuur libel);
- 4. Lawsuit aquopast the receiver ind of 90 (ninety) days from the date of receipt or announcement of the decision of the State Administrative Agency or Official stipulated in Article 55 of Law Number 5 of 1986 concerning _ he Administrative Court (exceptio temporis peremptoria or e: <code>o'red cxception);</code>

considering, that the lawsuit was declared unacceptable by the Jol arta state Administrative Court, with Decision Number 146/G/202. PTUNJKT, April 20, 2022, then at the appeal level the decision vas ranceled by the Jakarta High Administrative Court, with a Decision Jumber 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 Petition recassation II respectively on September 1, 2022, then the Petitioner fo. Cassation I and the Petitioner for Cassation II filed an oral cassation equest respectively

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on September 12, 2022, receively, the application was followed by Cassation Memories an Peulioner I and Cassation Appellant II which contain the reasons rec ived 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 aquoalong with the reacers, have been carefully notified to the opposing party, subm. 'te.' within the time limit and in the manner specified in the law, there, are the request for cassation can be formally accepted;

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

Judgin

1. Received the cassation request and Memoran, m of Cassation from Cassation Petitioner I (formerly Appellant I/Defendant);

2. Canceled the Decision of t c jrka ta State Administrative High Court Number 140/B/2022. [...]KT., 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 Millie er of Energy and Mineral Resources of the Republic of Indonesia Uniber 153.K/MB/04/DJB/2021, dated January 29, 2021 concerning Approviol he Increase in the Production Operations Stage of a Mining Wirk Could act Mas Sangihe;

B. In Exception;

- 1. Accept and grant the exception of Appellent Vormerly Appellant I/ Defendant) in its entirety;
- 2. Declare the lawsuit of the Cassatio. R. spondents unacceptable (niet ontvankelijk verklaard);

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nesia strives to always include the most curre ansparence and accountability in th n of judicial functions. However, in certa. rases ...s still possible for technical problems to occur related to the accuracy and u we from time to time. In the tion contained on this site o at should be available, but is not vet available, p Email : clerkship@mahkamahaovng. id 1、: 021-384 3348 (ext.318)

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C. In the Main Case;

- 1. Reject the lawster of the cassation Respondents in its entirety;
- 2. Declare that the Object of the Dispute is valid and valid in the form of a In ¹/ne. ¹a 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 ... this case;

Or;

If the Panel of Supreme Court Judges at the cassation level e. m hing this case has a different opinion, please make the fairest decision poss ple(ex aequo et bono);

Considering, that based on the Mem ra, dum of Cassation received on 22 September 2022 which is an integal art of this Decision, Petitioner for Cassation II requests that:

Jud Jing:

- 1. Received the cassation rec. the Cassation Petitioner/formerly Appellant II/ previously Intervening Deindant II in its entirety;
- 2. Granted the cassatio veruest as well as the Memorandum of Cassation from the Cassation Pet. 'onc.'/formerly Appellant II/previously Intervening Defendant II in its entir v;
- 3. Canceled the Decision of the Jakarta State Administrative High Court Nu....ser 140/B/2022/PT.TUN.JKT., dated August 31, 2022;

Judge yourself:

A. On Delay;

1. Rejecting the request for postponement of the imp en entation of the decision on the object of dispute being sued fied by the Cassation Respondents/formerly Appellant I and Com, arator II/previously the Plaintiffs and Intervening Plaintiffs;

2. Revoking the postponement of implaneating the decision on the disputed object;

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fice of the Supreme Court of the Republic of 1. nesia strives to always include the most current and accurate in ansparence and accountability in th n of judicial functions. However, in certa. rases ...s still possible for technical problems to occur related to the accuracy and u we from time to time. In the tion contained on this site or at should be available, but is not yet available, please Email : clerkship@mahkamahaovng. id 1, : 021-384 3348 (ext.318)

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B. In Exception;

- 1. Accepting the corptions filed by the Cassation Petitioner/formerly Appellant II/formurly Intervening Defendant II, concerning Absolute Authority;
- 2. De Hare that the Jakarta State Administrative Court has no authority to examine and adjudicate cases aquo;
- 3. Declare the lawsuits of the Cassation Respondents/previously Appellant I and Comparator II/previously the Plaintiffs and Intervenin 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/previous / the Plaintiffs and Intervening Plaintiffs in their entire.
- 2. Punish the Cassation Responden. 'formerly Appellant I and Comparator II/previously the Plaintiffs and Intervening Plaintiffs to pay court costs at all $|ev \in c|$ justice jointly and severally;

Or;

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

Consideing, that against the Cassation Petitioners I and Cassation II Petitionars, the Cassation Respondents I and Cassation Respondents II have f. Counter Cassation Memorandums respectively on Octobe 14 2022 and October 10 2022, which are essentially to reject the call ation request from Cassation Appellant I and Cassation II Apperant;

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

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- Whereas the Decision on the Oriect of the Dispute as a follow-up to the Contract of Work by an ane Government of the Republic of Indonesia represented by the M. ister of Mines and Energy (Petitioner for Cassation I) and PT. Mas Sa ille Mine (Appellant for Cassation II) as an implementation of the Lette of the President of the Republic of Indonesia Number B.143/ Pres/3/19.7, dated March 17, 1997 regarding Approval for 68 (sixty eight) Contracts of Work in the Context of Foreign Investment in the General Numing Sector is KTUN and fulfill the qualifications of Article 1 point 9 of the State Administrative Court LawjunctoArticle 87 of the Administrative Law Government:
- Whereas the Plaintiffs (Defendant Cassation I) and in ervening Plaintiffs (Defendant Cassation II) are community members who own houses and their supporting facilities, agricultural lend, plantation land located in the Mining Business Permit area who include the involved in their roles as local wisdom and community aspire 'io. s;
- Whereas the AMDAL on the cyvin nmental Permit for Gold Mining Activities of PT Tamb, nr Mas Sangihe does not involve the community and local wisdom. The Contract of Work for Sangihe Islands which is a Small Islands cote. ry is also not accompanied by a permit/ recommendation from the Minister of Maritime Affairs and Fisheries, so the ol oct of dispute must be canceled because it is contrary to Article 10 par א קר, א (2) letters d and e of Law Number 32 of 2009 concernin 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 Smill Islands;

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

- That/udex FactiThe Jakarta State Admin. Tra ive High Court has misapplied legal considerations;
- Whereas the State Administrative Decree a. he bject 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 p situan, so based on Article 2 letter a Law Number 9 of 2004 concerning A nendments 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;

- The trased on the provisions of Article 169 of Law Number 4 of 200 at the time this law comes into effect, all Contracts of Work and Contracts of Work for coal mining operations that existed before the chactment of this law remain in effect until the expiration of the contrac.s/ agreements, so work contract aquoremain valid und 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 Mac Vinc had not yet ended at the time the lawsuit was filed aquo, so that the priract of work between the government and PT. The Sangit e. tas Mine cannot be categorized as a permit, but is categorized a re co. tract of work;
- Whereas based on the area considerations, the Plaintiffs' lawsuit must be declared unaccentable as considered by the Jakarta State Administrative Tould

Consigning, that because there are different opinions in the Panel of Judges a deliberations have been made in earnest, but no consensus kan been eached, in accordance with Article 97 paragraph (3) of Law Nurse er o o 1986 concerning State Administrative Court, Article 30 paragrap. (5, Law Number 14 of 1985 concerning the Supreme Court as amende ' 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, n. m. y rejecting the cassation requests from Cassation Petitioners J an II;

Considering, that apart from that these easons are in essence regarding the evaluation of the results of this idence that are in appreciation of a fact, which matters cannot be one dered in

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examination at the cassation is el, 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 19 3 concerning the Supreme Court as amended by Law Number 5 on 100-4 and second amendment with Law Number 3 of 2009;

Considering, that based on the above considerations, the optional Judes FactiThe State Administrative High Court of Jakarta in this core does ... st conflict with the law and/or statutes, therefore the car atic a request must be rejected, and as the losing parties Cassation A pella it I and Cassation Appellant II are ordered to pay court cost a cassation level;

Taking into account the articles of L w Jumper 48 of 2009 concerning Judicial Power, Law Number ເວັກ 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment by Law Number 3 of 205, Law -Law Number 5 of 1986 concerning State Administrative Court as amended by Law Number 9 of 2004 and the second ar. or diment by Law Number 51 of 2009, as well as other related laws and regulations;

IUDGE:

1. Rejeting the cassation request from Petitioner for cassation I: MINISTER ENERGY AND MINERAL RESOURCES OF THE REPUBLIC OF INDONE . And Cassation II Petitioners: PT. MINE MAS SANGIHE;

2. Convict Cassation I and Cassation II Petitioners to pay curt fees at cassation level in the amount of Rp. 500,000.00 (five hundred thousand Rupiah);

Thus it was decided in the deliberative me tin; of the Panel of Judges on Thursday, January 12, 2023, by H. Is Suda, on), 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 Mart no Nahyunadi, SH, MH,

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and Dr. H. Yosran, SH, M.H. m., Supreme Court Justices as Members, and pronounced in a heat (n) open to the public on the same day by the Chairman of the Panel ... the presence of the Member Judges and Retno Nawangsih, SH. 1. Alternate Registrar without attended by the parties.

Assembly Members:

signed . H. Yodi Martono Wahyunadi, SH, MH

H. Is Sudary no, SH, MH

chairman of the assembly

signed

2518

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

Substitute Registrar,

signed Retno Nawangsih, SH, MH Indonesia

Fees: 1. Seal Rp 10,000.00 Rp 10,000.00 2. Editor 3. Cassation admin. travonIDR 480,000.00 IDR 500,000.00 Amount reme

RI SUPREME COURT

on behalf of the Registrar Junior Registrar of State Administration,

> SIMBAR KRISTIANTO, Sh NIP 19620202 15 31. 1 001

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