

# ENVIRONMENTAL PROTECTION IN THE PERSPECTIVE OF THE PRINCIPLE OF STATE RESPONSIBILITY

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## *Abstract*

*Everyone has the right to live in a good and healthy environment, this is stated in the Constitution Article 28H Paragraph (1). As a country that is carrying out a sustainable development process, Indonesia emphasizes that the earth, water and the wealth in it are controlled by the state to support welfare. public. Exploitation of natural resources continues, one of which is taking coal in South Kalimantan. A decree regarding coal production in the area has been issued, but negative reactions have been given by the community around the mining area and the Indonesian Forum for the Environment. This research describes mining by raising the study of coal mining permits in South Kalimantan. The research method uses qualitative methods, namely procedures that present descriptive data from social observations in people's lives. Referring to the title, this research uses a case study. Research conducted in an incentive at an institution and certain symptoms (Arikunto, 2002: 14). The purpose of this research is to study and analyze the application of the principle of state responsibility from the cancellation of the Decree of the Minister of Energy and Mineral Resources of the Republic regarding mining permits in the South Kalimantan region.*

**Keyword:** Coal; Environment; State Responsibilities.

## I. INTRODUCTION

Getting a good and healthy living environment is a human right in the world. Indonesia as a sovereign country has recognized this right. The Constitution of the Republic of Indonesia has emphasized the right to the environment in Article 28H paragraph (1). If you look at this, then the state has a responsibility to provide a good and healthy environment for every citizen. The form of state responsibility is evident from the enactment of the environmental law in 1992, which regulates mining, forests and environmental utilization activities. To guarantee legal certainty in order to keep up with developments in society, the law has been amended twice, namely in 1997 and 2009.

Sustainable development is a way to carry out a development to support the lives of present and future generations. The development activities carried out must strive for the greatest prosperity of the people. However, if it is seen in practice that

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every development will basically have an impact on the environment<sup>3</sup>. To anticipate negative and positive impacts from an early age, sustainable development is currently using sustainable principles with environmental insight. This is intended to continue to carry out development without neglecting the impact of such development on the environment.

The negative impact of development is unavoidable, this problem is increasing day by day. The exploitation of natural resources is the main cause of the poor quality of the environment, especially in the communities around the exploitation. To anticipate this, the government has actually issued a special provision that is related to spatial planning and environmental impact analysis (AMDAL). This has been stated in Law Number 32 of 2009 concerning Environmental Protection and Management.

One of the natural exploitation that has been intensified from the past is coal mining. This is also confirmed by the issuance of Law Number 3 of 2020 concerning Mineral and Coal Mining or the Minerba Law. However, since the issuance of this law, it has drawn criticism and a pessimistic attitude from the public and academics in the environmental field. WALHI, as an environmental activist foundation, has also accused that the Minerba Law is full of the interests of capital owners and is more in favor of mining corporations and tends not to involve communities affected by mining.<sup>4</sup>

Coal is one of the leading natural resources in Indonesia. Director General of Mineral and Coal of the Ministry of Energy and Mineral Resources (ESDM) Ridwan Djamaluddin said Indonesia's coal reserves currently reached 38.84 billion tons<sup>5</sup>. The coal is spread in several areas, ranging from Sumatra, Kalimantan and Papua. Coal is one of the combustible sedimentary rocks, formed from plant remains in varying degrees of preservation, bound by the compaction process and buried in basins at varying depths, from shallow to deep. (The International Hand Book of Coal Petrography 1963).

South Kalimantan as one of the provinces in Indonesia which has abundant natural wealth. Storing a lot of potential for coal, iron ore and the largest diamond producer in Indonesia. In this regard, the Government plans to open coal exploitation in the area in 2017 through PT Mantimin Coal Mining (PT MCM). The plan was realized with the Decree of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 441.K/30/DJB/2017 concerning the

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<sup>3</sup> Maret Priyanta. 2018 "*Optimalisasi Fungsi Dan Kedudukan Kajian Lingkungan Hidup Strategis Dalam Penyusunan Dan Evaluasi Rencana Tata Ruang Dalam Sistem Hukum Lingkungan Indonesia Menuju Pembangunan Berkelanjutan*", Kajian Hukum dan Keadilan IUS. p. 389-401

<sup>4</sup> Derita Prapti Rahayu, Faisal. 2021. "*Politik Hukum Kewenangan Perizinan Pertambangan Pasca Perubahan Undang-Undang Minerba*", Jurnal Pandecta. p. 164-172

<sup>5</sup> Kementerian Energi Dan Sumber Daya Mineral. "Cadangan Batubara Masih 38,84 Miliar Ton, Teknologi Bersih Pengelolaannya Terus Didorong". <https://www.esdm.go.id/>. Diakses pada tanggal 17 Oktober 2021

Adjustment of the Activity Stage of the Coal Mining Concession Work Agreement of PT Mantimin Coal Mining to the Production Operation Stage.

The decree above is the government's move to open coal production areas in three areas which include Balangan, Tabalong and Hulu Sungai Tengah (HST) Regencies with a total land area of 5,908 hectares. However, the decision received a negative reaction from local residents. The community considers that coal mining activities will not bring prosperity but instead cause damage to nature and the environment as well as cause social impacts for the community.

Cases of environmental damage due to mining have become an open secret, throughout 2020 there were around 45 mining conflicts with environmental damage covering an area of 714,692 hectares.<sup>6</sup>. The case increased dramatically from the previous year, even though this kind of thing should be minimized by applying *amdal* and looking at spatial management in the mining area. This environmental damage has also become the fear of the people of South Kalimantan about the existence of coal production activities in their area, mining activities in Kab. HST is considered to be able to cause and exacerbate the flooding that has been occurring and inundated in the HST area due to the loss of water catchment areas. In addition, the existence of mining in Districts. It is also feared that HST can cause pollution in the rivers in HST. In fact, the life of the HST community is very dependent on the river.

With the above, WALHI, the largest environmental movement organization in Indonesia, sued for the cancellation of the decision letter regarding coal production by PT MCM. The issuance of the State Administrative Decree is not based on law, because it is issued on a karst area which is a geological protected area as well as in a protected forest area and can cause geological and environmental damage that has an impact on natural disasters in the South Kalimantan region. the area is also a habitat for endemic and protected animals in South Kalimantan, namely the habitat for hornbills and proboscis monkeys. The surrounding community does not want the biodiversity, natural resources and potential of the Germplasm owned by the Meratus ecosystem to be lost due to the exploitation of coal.

The decision letter regarding the coal mining permit issued by the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 441.K/30/DJB/2017 was finally annulled by the Supreme Court Cassation decision in 2019. Furthermore, the decision was also strengthened by the results of the Judicial Review issued in this year 2021. The decree is considered to have contradicted the provisions of Law Number 32 of 2009 concerning Environmental Protection and Management as well as general principles of good governance, namely the precautionary principle. Apart from being judged to have violated this matter, related to the enactment of Law Number 11 of 2020 concerning the Job

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<sup>6</sup> Andita Rahma. "JATAM Nasional Catat ada 45 Konflik Tambang Sepanjang 2020". <https://nasional.tempo.co/>. Diakses pada tanggal 18 Oktober 2021

Creation, it will also have an impact on other similar cases regarding new coal mining permits that will be carried out.

Seeing the background above, the problems raised in this study are as follows: First, how is the regulation of the principle of state responsibility in coal mining licensing in Indonesia?. Second, how is the application of the principle of state responsibility in providing a good and healthy environment through a case study of the Supreme Court's decision regarding the cancellation of the coal mining permit decree issued by the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 441.K/30/DJB/2017?

## II. DISCUSSION

The Environment according to Article 1 point 1 of Law Number 32 of 2009 concerning Environmental Protection and Management is the unity of space with all objects, forces, conditions, and living things, including humans and their behavior, which affect nature itself, the continuity of life, and welfare of humans and other living things. A good and healthy environment is a human right of every citizen, this has been mandated by the 1945 Constitution of the Republic of Indonesia.<sup>7</sup> Edith means that the right to the environment is a human right or human right to live in an environment with a minimum quality that allows the realization of a dignified and prosperous life<sup>8</sup>.

A good environment affects the health aspects of humans or other living creatures around them. The environment has a very important role for health, in this case it can be said that the environment and health are interconnected with each other. In order for the environment to be well maintained, there is a need for regulation in the form of law<sup>9</sup>. In Indonesia, this arrangement already exists at the level of applicable positive law. This is stated in Law Number 32 of 2009 concerning Environmental Protection and Management. The issuance of these regulations is based on the desire to create a good and healthy environment as a human right of every citizen and is caused by the existence of national economic development based on the principles of sustainable development and environmental insight. In addition, recently, reforms in the environmental field were also carried out with the issuance of Law No. 11 of 2020 concerning Job Creation which in its provisions also regulates Environmental Protection.

The spirit of environmentally sound economic development is an effort in order to realize a development without damaging or ignoring negative impacts on the environment. In essence, the implementation of development affects and is

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<sup>7</sup> Pasal 28H Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Lihat juga: Pasal 9 Ayat (3) Undang-Undang No. 39 Tahun 1999 tentang Hak Asasi Manusia

<sup>8</sup> Fajri Fadhillah. 2018. *"Hak Atas Lingkungan Hidup Yang Baik dan Sehat Dalam Konteks Mutu Udara Jakarta"*, Indonesian Center for Environmental Law, p. 3

<sup>9</sup> Rosmidah Hasibuan, S.Pd, M.Si. 2018. *"Pengaturan Hak Atas Lingkungan Hidup Terhadap Kesehatan"*, Jurnal Ilmiah "Advokasi". Volume 06 Nomor 02. p. 93-101

influenced by the environment. Like a system, the two cannot be separated from one another. In general, development aims to improve the quality of people's lives and better meet the basic human needs of the people. In this effort, as is the goal of development, the ability of the environment to support life at a higher level should be protected from the risk of damage<sup>10</sup>.

In the environment, the development of culture in humans affects the development of the environment. This shows that human needs are not just the necessities of life biologically, but indirectly humans seek to improve the quality of their lives by making changes, management and utilization of the environment. The pattern of human interaction with the natural environment has changed the natural environment into an artificial environment (man-made environment), this indirectly affects the balance in the environment in supporting human life and other living things.<sup>11</sup>.

In principle, an environment must be protected for its full function. All components of life essentially interact with each other and need each other. Humans need the environment, because the environment is a place where he stands, breathes and a place that provides sources of life for him. Amiruddin A. Dajaan stated that land space, ocean space and air space are one unit of space that cannot be separated. Space has potential that can be utilized according to different levels of intensity for human life and other living things. These three spaces are gifts that must be protected and utilized very well so as not to damage their function and identity as habitats that hold many benefits for the survival of living things.

Indonesia is a country with abundant natural wealth. In fact, this is what makes the history of colonization in this country so long. One of the natural resources that become pearls is coal. Sukandarrumidi (1995) stated that coal is a solid hydrocarbon fuel formed from the process of peat and coalification in a basin in this case is a swamp area which in geological time includes bio-geochemical activity against the accumulation of flora in nature containing cellulose and lignin. The coalification process is also assisted by the pressure factor in depth and temperature and the water content in it.

Coal is very useful for human life in their daily lives. As a source of power generation, coal is the main benefit contained in coal. In addition, the natural gas produced by coal also serves as the creation of gas products that can be used in human daily life, such as for industrial fuel, gas power plants, diesel and other products. The myriad of benefits that underlie the conduct of a coal mine, this is related to the fulfillment of social needs. According to the Minister of Energy and

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<sup>10</sup> Mira Rosana. 2018. "Kebijakan Pembangunan Berkelanjutan Yang Berwawasan Lingkungan Di Indonesia", *Jurnal KELOLA : Jurnal Ilmu Sosial*. Vol 1 No 1. p. 148-163

<sup>11</sup> Maret Priyanta. 2018. "Optimalisasi Fungsi Dan Kedudukan Kajian Lingkungan Hidup Strategis Dalam Penyusunan Dan Evaluasi Rencana Tata Ruang Dalam Sistem Hukum Lingkungan Indonesia Menuju Pembangunan Berkelanjutan", *Jurnal IUS Kajian Hukum Dan Keadilan*. Volume 6 No. 3. p. 389-401

Mineral Resources (ESDM), the total amount of coal available in Indonesia reaches 38.84 billion tons<sup>12</sup>.

The fulfillment of social needs must be accompanied by environmental protection. National development efforts cannot be justified without paying attention to aspects of the ability of the environment to meet development resources. In this case the state must be present in all coal mining activities in any area, this is to realize the basis of sustainable development with environmental insight. The responsibility of the state is not only in terms of providing economic needs, but also the protection of environmental functions that must be maintained by taking into account its sustainability for future generations.

### **Principles of State Responsibility in Coal Mining Licensing in Indonesia**

Coal mining has been regulated in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Coal mining is a research effort. Management starts from exploration investigations, feasibility studies, construction, mining, processing and refining, transportation and sales, and post-coal mining activities. Mining business is further elaborated in Government Regulation Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities, which in the PP further elaborates on mineral and coal mining business permits (IUP).<sup>13</sup>.

In carrying out mining activities, certain conditions must be met in the IUP. It regulates administrative, technical, environmental and financial conditions, development and supervision of the mining business. When viewed in existing practice, there is a discrepancy between the conditions for granting permits and the real consequences seen in mining areas. The decline in environmental quality, land damage, a dirty and unhealthy environment and other negative impacts that cannot be avoided from every mining business in Indonesia.

Law Number 32 of 2009 concerning Environmental Protection and Management has mandated that the state must be responsible for providing a good and healthy environment for every citizen. In relation to coal mining, the state must ensure that coal mining activities must provide the maximum benefit to the welfare and quality of life of the people without neglecting the aspect of the right to a good and healthy environment. The state must prevent the use of natural resources activities that cause pollution and environmental damage which will have a negative impact on the quality of life of the community around the mining area.

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<sup>12</sup> Kementerian Energi dan Sumber Daya Mineral, Cadangan Batubara Masih 38,84 Miliar Ton, Teknologi Bersih Pengelolaannya Terus Didorong, <https://www.esdm.go.id/>, Diakses pada tanggal 23 Oktober 2021

<sup>13</sup> Iriantini M. J Takalapeta, Jimmy Pello, Saryono Yohanes. 2019. "Pengaturan Perizinan Pengelolaan Tambang Batubara Dalam Mendukung Pembangunan Berkelanjutan", Jatiswara. Vol. 34 No. 3. p. 268-282

The government through the Job Creation Law has changed some of the substances contained in the previous Mining Law. It is undeniable that mineral and coal is a crucial factor for the state. The state in its control over natural resources has the function of policy, management, regulation, management and supervision of all mining activities<sup>14</sup>. The Job Creation Law in its issuance has stated that there is a temporary suspension of the authority of the Regional Government in the Mineral and Coal Mining Sector related to the issuance of new permits for a maximum period of 6 (six) months. This is a regional fear of the existence of new mines that are more in favor of economic fulfillment than the environmental aspect of the community.

The responsibility for providing a good and healthy environment is an obligation that must be fulfilled by the government, because it is related to the rights of its citizens. The public's fear of the new regulations must be used as a limitation in granting new mining permits. Coal mining permits must refer to the concept of environmentally sound development, because this can be an effective way to avoid pollution and environmental damage

The welfare state states that the state is responsible for the implementation of every state activity. The state is responsible for realizing the welfare of all its people. Every economic and development activity is an effort to realize national goals and ideals for each of its citizens. The responsibility attached to this state is one of the obligations of the government as the task of carrying out government functions. This responsibility is a result of the authority and power attached to it. This power has a role that can determine the fate of millions of people. The basis of legality is the basis in every state and government administration, every state and government administration must have the authority granted by law. Means that the substance of the principle of legality is authority. The source of government authority comes from the order of the law. This authority is obtained in three ways, namely: attribution, delegation and mandate<sup>15</sup>.

The government's responsibility for environmental law enforcement is provided for by law. Law No.32 of 2009 concerning Environmental Protection and Management in Article 1 paragraph (37), (38) and (39). The central government, hereinafter referred to as the Government, is the President of the Republic of Indonesia who holds the governing power of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia. Regional government is the governor, regent or mayor, and regional apparatus as elements of regional government administration. Minister is the minister who carries out government affairs in the field of environmental protection and management.

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<sup>14</sup> Putusan Mahkamah Konstitusi Nomor 001-021-022/PUU-I/2003, atas permohonan Pengujian Undang-Undang Nomor 20 Tahun 2002 tentang Ketenagalistrikan.

<sup>15</sup> Abdul Halim Barkatullah, Dadang Abdullah. 2016. *"Tanggungjawab Pemerintah Dalam Menjaga Kualitas Lingkungan Di Wilayah Penambangan Intan Tradisional Cempaka"*. Al Adl, Volume VIII Nomor 3. p. 1-22

Efforts to protect and manage the environment are systematic and integrated efforts carried out to preserve environmental functions and prevent environmental pollution and or damage which include planning, utilization, control, maintenance, supervision and law enforcement. The duty of the Government to carry out its functions and authorities to improve the welfare of its citizens is stated in the preamble of the 1945 Constitution, paragraph 4 and the body of the 1945 Constitution, Article 28 (H) paragraph (1), Article 28 (I) and Article 33 paragraphs (3) and (4). Exploitation of natural resources always brings consequences, in an effort to implement national development activities in various sectors will always have a direct or indirect impact on the environment, both positive and negative on the quality of environmental functions. The powers granted by Law no. 32 of 2009 that the Central Government, the President in this case the Minister, governor, or regent/mayor in accordance with their respective authorities are obliged to supervise the obedience of the person in charge of the business and/or activity to the provisions stipulated in the legislation in the field of environmental protection and management.

The Minister, in this case the Minister of Environment, governors, or regents/mayors, supervisory officials in accordance with their respective authorities are obliged to supervise the compliance of the person in charge of businesses and/or activities with respect to environmental permits. The Minister can supervise the obedience of the person in charge of the business and/or activity whose environmental permit is issued by the regional government if the government considers that a serious violation has occurred in the field of environmental protection and management. The Minister can supervise the obedience of the person in charge of the business and/or activity whose environmental permit is issued by the regional government if the government considers that a serious violation has occurred in the field of environmental protection and management. The environmental supervisory officer as referred to in Article 71 paragraph (3) has the authority to: a. carry out monitoring; b. ask for information; c. make copies of documents and/or make necessary notes; d. enter a certain place; e. take pictures; f. make audio-visual recordings; g. take sample; h. check equipment; i. inspect the installation and/or means of transportation; and/or j. stop certain offences. Environmental law is basically a set of legal rules that aim to regulate the environment.

Environmental arrangement implies that what is arranged is the relationship between humans and their environment, both with the environment of other living creatures (flora, fauna and other organisms) as well as with the natural or physical environment. Most environmental law experts admit that the substance of environmental law is the largest part of administrative law law. Siti Sundari Rangkuti said that administrative environmental law arises when the decision of the authorities that is of a discretionary nature is expressed in the form of ruling

(beshickking), for example in terms of licensing, determining environmental quality standards, AMDAL procedures. If we look closely, the administrative environment law is actually not that simple, because it is not only related to environmental policy in the form of behikking, but also involves regulatory decisions (regulation). Environmental law will be closely related to environmental policies set by the competent authorities in the field of environmental management in Indonesia.

In relation to the enactment of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (UU Minerba) where there are many reforms in it, starting from licensing authority, permit extension, regulation of People's Mining Permits (IPR) and environmental aspects, downstreaming, divestment, to arrangements that are claimed to strengthen state-owned enterprises (BUMN). In the Minerba Law, the management and licensing authority is related to the control of mineral and coal. The government and the DPR agree that the control of mineral and coal is carried out by the central government through the functions of policy, regulation, administration, management, and supervision. In addition, the Central Government has the authority to determine the amount of production, sales, and prices of metallic minerals, certain types of non-metallic minerals and coal<sup>16</sup>.

According to the government, represented by the Minister of Energy and Mineral Resources (ESDM), although the authority to manage mining is held by the Central Government. However, there is a regulation that there are types of permits that will be delegated to local governments, including small-scale rock permits and People's Mining Permits (IPR). The withdrawal of authority to the center for metal and coal commodities is more effective, while for non-metals, rocks and IPR can be delegated to the local government.

Seeing the above, that mining control at this time has been controlled by the Central Government. The responsibility of the Central Government will be higher in terms of natural exploitation through mining. The local government will find it difficult to interfere in matters related to mining even though the mining is in its territory. With the amendment to the Minerba Law regarding the responsibility of the Central Government, the Central Government must ensure that all mining licensing and exploitation actions do not undermine the aspirations of the area around the mine and do not ignore the rights of citizens to a good and healthy environment.

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<sup>16</sup> Joni, 2020, <https://innews.co.id/pengelolaan-potensi-minerba-sebelum-dan-menurut-undang-undang-cipta-kerja-7/>, di akses pada tanggal 15 November 2021

## **Case Study of the Supreme Court Decision Regarding the Cancellation of the Decree of the Coal Mining Permit Issued by the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 441.K/30/DJB/2017**

Coal mining is the process of extracting coal from the ground. Coal is valuable for its energy content, and, since the 1880s, has been widely used to generate electricity. The steel and cement industries use coal as a fuel for extracting iron from iron ore and for cement production.

Kalimantan is the area with the largest coal reserves in Indonesia. of 62.1% billion tons of coal reserves spread across several areas in Kalimantan. This reserve has a period of up to 65 years<sup>17</sup>. Coal production is used to meet domestic needs as well as export activities. Seeing this, it would not be surprising if the government tried to take advantage of the existing coal reserves. This relates to the function of coal that can be utilized to meet the needs of the community and can increase domestic income through export activities to several countries such as China, India and other countries.

Exploration IUP is a permit granted for general investigation, exploration, and feasibility studies in the context of mining. There are 3 forms of mining business in Indonesia, namely: Mining Business Permit (IUP); People's Mining Permit (IPR); and. Special Mining Business Permit (IUPK).

The Forum for the Environment (WALHI) is a foundation for environmental activists, WALHI has taken many actions against the opening of coal mines. On December 4, 2017 the Government through the Decree of the Minister of Energy and Mineral Resources of the Republic of Indonesia issued SK Number 441.K/30/DJB/2017 regarding the Adjustment of the Work Agreement Stage of PT Mantimin Coal Mining's Coal Mining Activities to the Production Operation Stage. The decree is a step for the Government to produce coal in 3 districts, namely Tabalong, Balangan and Hulu Sungai Tengah districts in South Kalimantan covering an area of 5,908 hectares.

Since the issuance of the above decree, waves of protests have continued to emerge, both from the people of Kalimantan themselves and from environmental activists. Petitions expressing their disapproval of mining in 3 districts in South Kalimantan have been made and signed by thousands of people. The community considers the coal mine to have a negative impact on the community's environment and a negative impact on their social values. Residents in the 3 regencies where mining production will be carried out also consider that this activity will not bring prosperity to the surrounding population.

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<sup>17</sup> Menurut Direktur Jenderal Mineral dan Batubara Kementerian ESDM, Ridwan Djamaluddin dalam siaran persnya, 26 Juli 2021, seperti dipublikasikan dalam laman Kementerian ESDM, Artikel "Apa Pulau dengan Potensi Cadangan Batubara Terbesar di Indonesia?", <https://www.detik.com/edu/detikpedia/d-5690757/apa-pulau-dengan-potensi-cadangan-batubara-terbesar-di-indonesia>, Diakses pada tanggal 23 Oktober 2021

Coal production according to SK Number 441.K/30/DJB/2017 will cause flooding in the area around the mine, due to the loss of water catchment areas. In addition, the rivers around the area will also be affected even though the community is very dependent on the river. In addition, the area is also a habitat for endemic and protected animals in South Kalimantan, namely the habitat for hornbills and proboscis monkeys. The community does not want the biological wealth to become extinct as a result of coal production<sup>18</sup>.

The refusal of coal mining was also shown by the Regent of Balangan, Tabalong and Hulu Sungai Tengah (HST) with the issuance of Letter from the Regent of HST No. 800/288/DLHP/2017 regarding the rejection of mining in HST. This proves that the area where mining production will be carried out based on the Decree of the Minister of Energy and Mineral Resources above does not reflect the fulfillment of the right to a good and healthy environment for every citizen. The precautionary principle must be implemented immediately in anticipating damage and environmental pollution considering the condition of the 3 mining areas listed in the decree is an area that has karst areas that must be protected.

The lawsuit regarding the cancellation of the Decree dated December 4, 2017 Number 441.K/30/DJB/2017 concerning the Adjustment of the Work Agreement Stage of PT Mantimin Coal Mining's Coal Mining Activities to the Production Operation Stage of Activities has been submitted by Walhi to the Jakarta Administrative Court and on appeal at the High Court, but the 2 lawsuits that were submitted turned out to be unacceptable and rejected. Then on February 28 2018, Walhi together with legal counsel who are members of the environmental service advocacy team registered a lawsuit against the Minister of Energy and Mineral Resources to the Supreme Court.

The Cassation legal effort submitted by Walhi turned out to be granted in its entirety, the Cassation decision Number 369 K/TUN/LH/2019 dated October 15, 2019. The Decree of the Minister of Energy and Mineral Resources regarding coal production in 3 South Kalimantan regencies stated that it had to be cancelled. The legal considerations of the Supreme Court cassation judges are more on facts and conditions in South Kalimantan which has a karst area that must be protected. The judge assessed that part of the MCM mining area located in the karst area was a geological protected area. If this area is exploited, it has the potential to damage the function of the natural water aquifer which functions as a reservoir and distributor of water for the surrounding area. In addition, the MCM mining area is also located in the Meratus Mountains which is a protected area as referred to in Article 56 paragraph (1) of the South Kalimantan Provincial Regulation Number 9 of 2015

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<sup>18</sup> Isi Petisi Batalkan SK Menteri ESDM No.441.K/30/DJB/2017 tentang Izin Eksploitasi Batubara di Kab.HST, <https://www.change.org/p/kementrian-esdm-republik-indonesia-batalkan-sk-menteri-esdm-no-441-k-30-djb-2017-tentang-izin-eksploitasi-batubara-di-kab-hst>, Diakses Pada Tanggal 23 Oktober 2021

concerning the 2015-2035 South Kalimantan Provincial Spatial Plan, and in the mountains crossing the Batang Alai River which is used for agricultural irrigation, fisheries and drinking water sources, so that if exploitation is carried out it has the potential to disrupt water sources.

The legal action of the Minister of Energy and Mineral Resources on the issuer of the coal mining decree in South Kalimantan is stated to have contradicted Article 21 paragraph (3) letter g of Law Number 32 of 2009 concerning Environmental Protection and Management, Article 52 paragraph (5) letter c in conjunction with Article 53 paragraph (3) letter a Government Regulation Number 26 of 2008 concerning the National Spatial Plan, and Article 56 paragraph (1) of the Regional Regulation of the Province of South Kalimantan Number 9 of 2015 concerning the Regional Spatial Plan of the Province of South Kalimantan for 2015-2035 and is declared to have contradicted with the general principles of good governance, namely the principle of prudence.

Nur Hidayati, National Executive Director of Walhi, said the MEMR permit for MCM is against the spatial plan and the Hulu Sungai Tengah area. Unfortunately, the presence of the omnibus law on the Job Creation Law and the Minerba Law, makes local governments unable to optimally regulate regional spatial planning in preventing future environmental damage<sup>19</sup>. In addition, the provisions of Article 162 of the Minerba Law are amended, so that it reads: "Anyone who hinders or interferes with mining business activities from IUP, IUPK, IPR or SIPB holders who have fulfilled the requirements as referred to in Article 86F letter b and Article 136 paragraph (2) shall be sentenced to a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah)." Amendment to Article 162 of the Minerba Law further emphasizes the criminalization of people who are considered to be hindering or interfering with mining business activities that have permits. The criminal threat is in the form of imprisonment for a maximum of 1 year or a fine of a maximum of IDR 100 million<sup>20</sup>.

The cancellation of the coal mining plan in South Kalimantan has reflected the absence of a principle of state responsibility for preventing pollution or environmental damage and ensuring the fulfillment of a good and healthy environment for its citizens.

The following is the reason why the Court of Cassation revoked the mining permit:

- a. Some of the mining areas are in the karst area which is a geological protected area. If the area is exploited, it has the potential to damage the function of the

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<sup>19</sup> Della Syahni, 2021, *Walhi Menangkan Gugatan di MA: Rencana Eksploitasi Mantimin Mining di Meratus Batal*, <https://www.mongabay.co.id>, Diakses pada tanggal 23 Oktober 2021.

<sup>20</sup> Ady Thea DA, 2020, <https://www.hukumonline.com/berita/baca/lt5f8ef080e80a6/dua-pasal-uu-cipta-kerja-sektor-pertambangan-ini-dinilai-bermasalah/?page=1>, diakses pada tanggal 15 November 2021

water aquifer, because the karst ecosystem has a natural water aquifer function, as a reservoir and distributor of water for the surrounding area.

- b. The mining area is also located in the Meratus Mountains which is a protected forest area as referred to in Article 56 paragraph (1) of the South Kalimantan Provincial Regulation Number 9 of 2015 concerning the 2015-2035 South Kalimantan Provincial Spatial Plan, and in the mountains it crosses the Batang River. Alai is used for agricultural irrigation, fisheries, and drinking water sources, so that if exploitation is carried out it has the potential to disrupt water sources.
- c. The Minister of Energy and Mineral Resources issues a decision on the object of dispute contrary to Article 21 paragraph (3) letter g of Law Number 32 of 2009 concerning Environmental Protection and Management, Article 52 paragraph (5) letter c in conjunction with Article 53 paragraph (3) letter a Government Regulation Number 26 of 2008 concerning the National Spatial Plan, and Article 56 paragraph (1) of the South Kalimantan Provincial Regulation Number 9 of 2015 concerning the 2015-2035 South Kalimantan Provincial Spatial Plan and the general principles of good governance, namely the principle of prudence. - caution (precautionary principle).

The incoherence of coal mining licensing arrangements is indicated by the authority regulated by sector in terms of requirements, procedures, time, and costs for obtaining permits, making the process of issuing mining permits long and complicated. It is necessary to develop a legal system that is connected to the protection and management of the environment that is clear, firm, and comprehensive in order to ensure legal certainty as the basis for environmental protection and management of natural resources as well as other development activities, one of which is to develop a coal mining permit system that integrated. Law enforcement officers should be serious in carrying out their duties as mandated by laws and regulations and not selective in enforcing the law against mining companies that violate the rules.

### **III. CONSLUSION**

Law Number 32 of 2009 concerning Environmental Protection and Management has mandated that the state must be responsible for providing a good and healthy environment for every citizen. In relation to coal mining, the state must ensure that coal mining activities must provide the maximum benefit to the welfare and quality of life of the people without neglecting the aspect of the right to a good and healthy environment. The state must prevent the use of natural resources activities that cause pollution and environmental damage which will have a negative impact on the quality of life of the community around the mining area. The task of the Government to carry out its functions and authorities to provide a good and healthy environment is stated in the 1945 Constitution Article 28H paragraph (1).

The legal action of the Minister of Energy and Mineral Resources on the issuer of the coal mining decree in South Kalimantan is stated to have contradicted Article 21 paragraph (3) letter g of Law Number 32 of 2009 concerning Environmental Protection and Management, Article 52 paragraph (5) letter c in conjunction with Article 53 paragraph (3) letter a Government Regulation Number 26 of 2008 concerning the National Spatial Plan, and Article 56 paragraph (1) of the Regional Regulation of the Province of South Kalimantan Number 9 of 2015 concerning the Regional Spatial Plan of the Province of South Kalimantan for 2015-2035 and is declared to have contradicted with the general principles of good governance, namely the principle of prudence.

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