

Analysis of Unlawful Acts in the Revocation of Nickel Mining Business Licenses



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ABSTRACT: The large number of miners carrying out nickel mining activities in Indonesia is one of the reasons why many investors from within and outside the country invest in Indonesia, because of the urge to gain as much profit as possible. However, there are quite a few miners who do not fulfill the formal legal aspects, or carry out mining activities that violate the law. Based on this, the government conducted an evaluation by increasing supervision accompanied by imposing sanctions on miners who violate laws and regulations. The research method in this study is normative juridical by analyzing library materials, to conduct studies and analyzes in order to obtain alternative legal solutions for the analysis of unlawful acts in the revocation of nickel mining business licenses. The results of this study are that first, unlawful acts (PMH) are a legal concept that exists in civil law but are related to State Administrative Decisions, when the State Administrative Decision is detrimental to a person or legal entity in a civil manner. In fact, PMH is currently often used as an argument for plaintiffs in the State Administrative Court (PTUN). Second, PMH carried out by the government in revoking nickel mining business licenses in fact occurred in the revocation of nickel IUPs in several companies, precisely in 2022.

KEYWORDS: Mining; Nickel; Unlawful Acts; Business Licenses

I. INTRODUCTION

The large number of miners carrying out nickel mining activities in Indonesia is one of the reasons why many investors from within and outside the country are investing in Indonesia, because of the urge to gain as much profit as possible. However, there are quite a few miners who do not fulfill the formal legal aspects, or carry out mining activities that violate the law. Based on this, the government is conducting an evaluation by increasing supervision accompanied by imposing sanctions on miners who violate laws and regulations. Starting from ordinary warning sanctions to revocation of business licenses as a form of evaluation. This is important to conduct the evaluation, which is carried out administratively through the issuance of a decree from the state administrative official.¹

The decision will be followed up by the government in the form of a State Administrative Decree (state administrative decision). This is as happened in the revocation of the Mining Business License in the nickel sector (nickel). The Indonesian government since the leadership of President Jokowi has been aggressively pushing for the arrangement of IUP nickel, on the grounds that many nickel are still legally problematic, so they must be reviewed such as arrangement to revocation in the form of issuance of state administrative decision by the relevant ministry.

Conceptually, state administrative decision must be interpreted as: First, a decision made through a legal document in the form of a decree, which limits the authority of a person or legal entity. Second, state administrative decision on the authority of the Government within the scope of every state power, whether in the legislative, executive and judiciary or other state administrators. Third, based on positive legal norms and general principles of good governance. Fourth, the decision is final and universal. Fifth, a decision in the form of a decision that has legal impacts. Fifth, the decision is binding on the public.²

¹ Armin Hasti, Abrar Saleng & Juajir Sumarji, Kewenangan BKPM dalam Mencabut Izin Usaha Pertambangan, *Al-Manhaj*, Vol. 5, No. 2, July-Desember 2023, hlm. 1196.

² Dola Riza, State Administrative Decisions According to the State Administrative Court Law and the Law on Government Administration, *Jurnal Bina Mlua Hukum*, Vol. 3, No. 1, September 2018, p. 91.

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Legally, the State Administrative Decision (state administrative decision) as referred to in Article 1 number 3 of Law No. 5 of 1986 in conjunction with Article 1 number 9 of Law No. 51 of 2009 and has been reviewed previously, has the following elements:¹

1. Written decision;
2. The state administrative official who issued the decree;
3. The material regulated is an explanation of the legal actions of state administrative officials;
4. Its creation is based on positive legal norms;
5. The nature of the decision is concrete, individual and final;
6. Gives rise to legal consequences for a person or civil legal entity, has legal implications for legal entities and individuals in civil matters.

It is interesting if we study Article 1 number 3 of Law No. 5 of 1986 in conjunction with Article 1 number 9 of Law No. 51 of 2009 specifically in point 6 there is a phrase "causing legal consequences for a person or civil legal entity". This means that the implications of state administrative actions will have the potential to cause civil losses or legal actions that violate the provisions of civil law norms. This is often the case in unlawful acts which conceptually are in the civil scope with private law characteristics, but in practice occur in legal events related to state administrative law with public law characteristics. For example, there is a state administrative decision that violates a person's business rights, namely the act of revoking a business license resulting in business losses, which shows that has occurred.

Losses that arise civilly will be accounted for civilly, as long as the losses experienced are also purely civil. The Existence of civil liability is intended to provide protection to each individual, with a concept that emphasizes that anyone must respect a person's private rights. The rights in question, for example, are regarding a person's business rights that must not be violated and if a violation of the law occurs, it can be ascertained that the action is a category of unlawful acts

The emerging facts show that there are quite a few state administrative decisions that harm a person's business that The public is not aware of that the action is part of an unlawful act. So in this case Gusman, Rosari & Pratama, describe the results of their research. That in reality the PMH actions carried out by the government seem to be commonplace in society. This happens because from a lay perspective, Act against the law is often identified with civil law and has no connection with the government. In fact, the potential for Act against the law is very possible for the government to carry out, due to the large authority that the government has by law. for example, there is a decision to revoke someone's business license without going through a legal process such as giving a warning or summoning the person concerned. Therefore, such government action can be categorized as Act against the law.

Based on the research of Delfina, Rosari & Pratama above, it can be understood that PMH in the aspect of state Administrative law has great potential to occur. This is what happened in the action of revoking the nickel mining business permit carried out by Bahlil Lahadalia, as Minister of Investment/Head of the Investment Coordinating Board of the Republic of Indonesia. Bahlil's reason, the revocation of the nickel IUP was based on the following reasons: First, the forest area borrow-to-use permit has not been owned by the company, coupled with the work budget and cost plan that has never been submitted by the company. Second, the practice of buying and selling permits between entrepreneurs has given rise to a mafia in mining business permits. Third, Article 33 of the 1945 Constitution is the basis for conducting evaluations until the revocation of mining business permits is carried out by the government, revocation of mining business permits by companies that do not comply with regulations.²

The act of revoking the nickel mining business permit (mining business permit) carried out by Bahlil on the one hand is indeed a commendable act in order to save national wealth assets. However, this must be reviewed seriously, because it could be done arbitrarily, considering the government's limitations to conduct a review of hundreds of thousands of nickel IUPs in a short time is very unlikely, for several reasons, namely, First, the government must check the accuracy of the data. Second, the government must see the mining location. the review must be carried out carefully on each company that has a nickel mining business permit.

The act of revoking mining business permit that is not careful will potentially violate which is indicated by the arbitrary revocation of mining business permit. Based on the provisions of Article 1365 of the Indonesian Civil Code, it can be seen that the meaning of an unlawful act is interpreted as a civil act that violates legal norms in the form of legislation and its derivative regulations. The existence of such unlawful acts, it can be ascertained that there must be compensation because material losses have occurred. The existence of these sanctions shows that is closely related to the protection of individuals with decisions of control that harm a person's business rights.

In response to the revocation of the Government's nickel mining business permit, legal efforts were then taken by companies that felt that the government had committed an unlawful act. Among them were PT. Abadi Jaya Nikel, PT. Dewi Rinjani and PT. Sheniu Ming Indonesia. The government did not remain silent, even though at the initial level (state administrative court), the

¹ Tohadi, Frieda Fania and Dadang Gandhi, Theoretical Problems and Practical Implications of Changes in State Administrative Decisions, *Ius Quia Iustum Law Journal*, No. 3, Vol. 26, September 2019, p. 515

² <https://nasional.kompas.com/read/2022/01/07/19404961/menteri-investasi-sebut-pencabutan-izin-usaha-pertambanganmulai-berlaku> accessed 14 Mei 2024.

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government was defeated, legal efforts continued to be made until cassation at the Supreme Court. Although in the end the three nickel companies won in the legal process at the.

The PMH carried out by the government was not brought in a civil lawsuit at the District Court. So even though the issue that became the important point of the problem was the company that questioned the decision of the Minister of Investment/Head of the Investment Coordinating Board. However, the object of the lawsuit was the administrative decision, which consists of the following: First, the Decree of the Minister of Investment/Head of the Investment Coordinating Board of the Republic of Indonesia Number 20220218-01-57864, dated February 18, 2022, regarding the business actor PT Mandiri Jaya Nickel. Second, Decree of the Minister of Investment/Head of the Investment Coordinating Board of the Republic of Indonesia Number 20220510-0187189, dated May 10, 2022 concerning the Upgrade of the Mining Business Permit (mining business permit) Exploration to the Mining Business Permit (mining business permit) Manganese Metal Production Operation of PT Dewi Rinjani, dated May 9, 2016. Third, Decree of the Minister of Investment/Head of the Investment Coordinating Board of the Republic of Indonesia Number 20220603-01-85129 dated June 3 concerning the revocation of the mining business permit in the name of PT Shenniu Mining Indonesia Number 540/322/2014.

Based on this, the author will conduct a research focus on PMH that is related to state administrative decisions, in the revocation of nickel mining business permit. PMH referred to in civil law and state administrative law, must be reviewed, studied and analyzed in depth, on the grounds that the concept used in questioning the government's decision, is an affirmation that the revocation of nickel mining business permit could be a that could harm the national investment climate for nickel mining investors. However, on the other hand, it could also be a sign that the government is truly maintaining the national investment climate in the nickel mining sector.

II. MATERIALS AND METHODS

The research used in this study is normative juridical by analyzing library materials, to conduct studies and analyses in order to obtain alternative legal solutions to the analysis of unlawful acts in the revocation of nickel mining business permits.

III. RESULTS AND DISCUSSIONS

1. Unlawful Acts in Relation to State Administrative Decisions

Act against the law is not only about acts that violate applicable laws and regulations, but also related to acts that Violate morality, careless attitudes, carrying out actions that are far from propriety and propriety in society. The existence of PMH is intended to create social control, through the provision of sanctions in the form of compensation for anyone who violates a person's civil rights unlawfully.³

Historically, in 1919 the Netherlands and Indonesia (as the Dutch East Indies) had been dealing with Act against the law, which was interpreted broadly to include the following description: a. Someone's rights are violated

This is related to the existence of someone's rights being violated (*inbreuk opeens anders recht*) which is one of the acts included in Act against the law. The reason it is called violating someone's rights is because previously there was a status of ownership rights which were recognized by law as property and may only be transferred by the owner, such as rights regarding:

- 1) Personal ownership (*persoonlijkheidsrechten*).
- 2) Ownership of property (*vermogensrecht*).
- 3) Freedom.
- 4) A good name that must be respected.

b. Legal obligations violated

The legal obligation that is violated is someone who has an obligation and must carry it out, therefore if it is not carried out then the person has denied his obligation as someone who is entrusted with a task or trust, so the term legal obligation arises.

c. Occurrence of actions that violate morality

The immorality that is done is also a category of unlawful acts. This has become a consensus in society, because it disturbs the surrounding environment, so that if immorality is done then it is part of Act against the law (Article 1365 of the Civil Code).

d. Actions that are contrary to caution or requirements in social

Actions that are contrary to caution or the requirements of good social interaction, or what is known as *zorgvuldigheid*, are also considered to be unlawful acts.

In relation to the explanation of the historical aspect of Act against the law above, the government's actions that Neglect its obligations can be called unlawful acts. Although the question then arises whether the government can act in a civil manner, so that it can be associated with Act against the law. Of course, it is very possible for the government to take civil action,

³ Rini Dameria, Achmad Busro & Dewi Hendrawati, Unlawful Acts in Medical Procedures and Their Settlement in the Supreme Court (Case Study of Supreme Court Decision Number 352/PK/PDT/2010), Diponegoro Law Journal, Vol. 6, No. 1, February 2017, p. 2.

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by becoming part of the subject of civil law. In fact, the government is very likely to be Act against the law, on the grounds that every government decision will apply immediately, be generally binding and have legal Consequences at that time. This is what Van Vollenhoven calls an act of protecting the state directly related to citizens as civil individuals.⁴

Continuing Van Vollenhoven's opinion above, the legislators reformulated the meaning of state administrative decision in Law No. 5 of 1986 concerning State Administrative Courts. This can be seen in Article 1 number 3 of Law No. 5 of 1986 in conjunction with Article 1 number 9 of Law No. 51 of 2009 which expands state administrative decision to also concern Act against the law which has so far only been known in civil law, resulting in the expansion of the definition of state administrative decision itself. The implications of the expansion of the meaning of State Administrative Decisions, make the absolute authority of the State Administrative Court also change. Based on the provisions contained in SEMA No. 4 of 2016 section (e) of the Legal Formulation of the State Administrative Chamber concerning the Competence of State Administrative Courts after the enactment, including:⁵ a.

- a. Have the authority to try cases with applications and lawsuits;
- b. The authority to try Act against the law whose subject is the government, in this case the person being tried is on behalf of a government agency/official;
- c. State administrative decisions that have been examined and decided through administrative appeals become the authority of the State Administrative Court.

General Law doctrine as stated by Frank J. Van Ommeren, actually civil law and administrative law do not have fundamental differences. Civil law and administrative law are related in terms of the emergence of individual losses due to state administrative decisions. For example, a Minister who issues a decree revoking a business license, unilaterally and harms someone whose business license is revoked. This problem is a state administrative problem, because the initial emergence of losses is a result of the decree revoking the license issued by the Minister. This provides confirmation that administrative law is related to civil law.⁶

Empirically, this happened in 2021, there was a lawsuit case at the Pematang Siantar District Court Number 3/Pdt.G/2021/PN.PMS. filed by Heryanto as the Plaintiff against the Bailiff at the Pematang Siantar Pratama Tax Service Office as the Defendants. The beginning of this problem was related to the actions of the Bailiff at the Pematang Pratama Tax Service Office who took Heryanto and his friends hostage. Then Haryanto brought the matter through litigation to the District Court, not to the State Administrative Court. This shows that state administrative cases do not rule out the possibility of being brought within the scope of the District Court or civil.

In line with the lawsuit at the Pematang Siantar District Court Number 3/Pdt.G/2021/PN.PMS., it can be seen that civil law and state administrative law are related if the following actions occur:⁷

- a. The time or timing of the adoption or appointment of civil law rules to become State Administrative Law rules;
- b. The State Administration Agency carries out acts authorized by civil law;
- c. If a case is governed by civil law and state administrative law, then the case is resolved based on the provisions of State Administrative Law.

Act against the law that comes from the authorities, in principle, illustrates that Act against the law can be said to be very potential to be carried out by the Government. Thus, PMH that comes from the authorities can still be subject to Article 1365 of the Civil Code, but in this case the Government is not a public legal entity, but a civil legal entity, therefore to be subject to Article 1365 of the Civil Code, when carrying out Act against the law it will be very possible. There are several elements in the formulation of the article on unlawful acts regulated in Article 1365 BW, including:⁸ a. First there is action;

- b. Violation of the law in the nature of the act;
- c. The perpetrator must be at fault;
- d. This action causes losses; And
- e. There is a causal relationship between the act and the loss.

⁴ S.F. Marbun, Moh. Mahfud Md, Principles of State Administrative Law, (Yogyakarta: Liberty, 2009), pp. 70-71. Kholiq Hadi Rohman, Problems of the Authority of State Administrative Courts in Resolving Disputes over Unlawful Actions by the Government, Jurnal Restorasi Hukum, Vol. 6, No. 2, November 2023, p. 90.

⁵ Erna Ratnaningsih, Compensation Claims for the Expansion of the Authority of the State Administrative Court (Case Study of the Jakarta and Banjarmasin Floods), Tanjungpura Law Journal, Vol. 7, Issue 1, January 2023, p. 39.

⁶ Valentino Dandi Sukmanagara, Lapon Tukan Leonard & Kartika Widya Utama, Legal Review of Compensation in State Administrative Disputes Related to Factual Actions (Case Study: Jayapura Ptun Decision No: 11/G/2017/PTUN.JPR), Diponegoro Law Journal, Vol. 10, No. 4, October 2021, p. 6.

⁷ I Nyoman Artayasa, Legal Position of State Administration in Legal Science, Cakrawarti Journal, Vol. 2, No. 1, February-July 2019, p. 36.

⁸ Muhammad Arauf & Gusliana HB, Implementation of Compensation for Community Members Due to Unlawful Acts of the Government (Onrechtmatige Overheidsdaad) Through State Administrative Courts. Riau Law Journal, Vol. 7, No. 2, November 2023, p. 235.

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From a theoretical perspective, it can be analyzed that government legal actions are divided into two groups, namely government actions based on public law and government actions based on private law. Factually, it cannot be denied how the government then carries out actions that are part of civil law. Such as conducting sales and purchases, Contracting out work, holding various business contracts and auction activities which in their implementation are regulated by civil law.⁹

The following is an example of a state administrative decision decision that examines and tries a State Administrative Decision which is a Civil Law Act between PT Bajatra as the plaintiff against PT Kereta Api Indonesia as the defendant. Among them are as follows: Decision of the Bandung state administrative decision Number 74/G/2014/PTUN.BDG, Decision of the Jakarta PT TUN Number 88/B/2015/PT.TUN.JKT, Decision of the Supreme Court Number 582/K/TUN/2015, Decision of the Supreme Court Number 181/PK/TUN/2016. The object of the lawsuit is the Decree of the Executive Vice President of Logistic PT. Kereta Api Indonesia (Persero), namely Letter number: PL.105/V/6/KA – 2014, dated May 30, 2014 regarding the blacklist of PT. Bajatra as a Partner of PT. Kereta Api Indonesia (Persero).¹⁰

Although they have similarities, on the other hand, the procedural law and civil procedural law certainly have Differences, as a science that stands alone. Namely, for state administrative decision procedural law, the prerequisite for input is that the application must be preceded by the issuance of a state administrative decision which is a product of the authorities. While for civil procedural law, there is no prerequisite for the issuance of a state administrative decision first, if an application is to be submitted in the form of a lawsuit, by individuals or legal entities.¹¹

2. Unlawful Acts of the Government in revoking nickel mining business permits

The strong natural resource strength encourages investors to invest in the nickel sector. This shows that Indonesia is in a strategic position in the nickel mining business sector. The reason investors dare to establish nickel factories in Indonesia is based on the spirit to gain benefits from the nickel business. Moreover, there are various types of nickel in Indonesia. The types of nickel produced by Indonesia include nickel ore (nickel in raw form for industrial raw materials) and ferronickel (a mixture of nickel and iron smelting used in making stainless steel). The large reserves and competence and production capabilities make Indonesia superior to other countries with similar resources such as the Philippines, Russia, New Caledonia, Australia, Canada, China, Brazil, and the United States. Of the total sales transactions of nickel products from Indonesia, nickel ore is the main commodity sold in the global market so that Indonesia becomes the number one nickel producer in the world.¹²

Nickel ore is a raw commodity or the most basic component of nickel that can be applied and adjusted to the needs of nickel use. The large reserves of nickel ore owned, Indonesia's high ability to produce, and special characteristics (laterite limonite and saprolite) cause high export demand along with the need for industrial raw materials and the increasing need for battery production. This is what motivates the government to conduct an evaluation, It's just that the evaluation actions that were carried out actually violated the applicable legal rules, by revoking the mining business permit.

The government should revoke mining business permit by considering the legal aspects, starting from the evaluation of each mining business permit to the revocation in accordance with applicable laws and regulations. Before conducting the evaluation, the government should establish a good system so that there is no overlapping of permits. Then it is also important to establish clear procedures, adequate time and reasonable costs, with the aim that the government will not appear to complicate investment, which was originally intended to improve the system but instead killed the national economy in the nickel mining industry.¹³

Currently, the government is revoking permits and business use rights from various mining businesses that do not use or even misuse permits issued by the government. "Bahlil Lahadalia, Minister of Investment/Head of the Investment Coordinating Board, announced at a press conference on January 7, 2022, that after the revocation of permits, business management will be given to companies with good credibility, as well as various community groups and business groups. The procedures for transferring permits and managing these companies will be regulated by regulations set by the Ministry of Investment. Before managing companies whose permits have been revoked, community groups, religious organizations, or will be selected by the Ministry of Investment/BKPM". Unfortunately, this has not been clarified, until the lawsuits were addressed to the government one after another.

⁹ Mutia Jawaz Muslim, Legal Review of State Administrative Decisions Which Are Civil Legal Acts, *Fundamental Justice Journal*, Vol. 1, No. 1, April 2020, p. 51.

¹⁰ *Ibid.*

¹¹ Made Martha Widyadnyana & I Wayan Suardana, Legal Review of Expansion of Subjects and Objects of Disputes in State Administrative Courts, *Kertha Negara: Journal of Legal Science*, Vol. 7, No. 7, August 2019, p. 11.

¹² Novi Ratna Cahyani, Indonesia's Nickel Ore Export Cessation Policy in 2020: A Neomercantilism Review, *Ganaya: Journal of Social Sciences and Humanities*, Vol. 6, No. 2, May 2023, p. 424.

¹³ Syukron Mahal Frawansa & Anna Maria Tri Anggraini, Ease of Business Licensing in the Nickel Mining Sector in Indonesia After the Enactment of Law Number 11 of 2020 Concerning Job Creation, *Unnes Law Review Journal*, Vol. 5, Issue 4, June 2023, p. 2322.

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The Act against the law carried out by the government was carried out by revoking the nickel mining business permit without really examining and reviewing and providing logical reasons, what were the reasons for the revocation of the mining business permit. Furthermore, to measure the Act against the law carried out by the government in the revocation of the nickel mining business permit, it can be seen from various jurisprudence that provide criteria regarding when a government action is said to have violated the law. There are at least two jurisprudence that can illustrate the shift in this criteria. First, is the Supreme Court decision in the Kasum case (Decision No. 66K/SIP/1952), which in essence confirms that an unlawful act occurs when there is an arbitrary act by the government or an action that does not have sufficient elements of public interest? Second, is the Supreme Court decision in the Jasopandojo case (Decision No. 838K/SIP/1970), in this case the Supreme Court is of the opinion that the criteria for legal overheidsdaad are the applicable laws and formal regulations, the propriety of society which must be obeyed by the authorities.¹⁴ Based on the explanation of the jurisprudence above, it can be analyzed that the carried out by the government in revoking the nickel mining business permit was carried out arbitrarily. The basis for arbitrariness can be seen in several state administrative decisions consisting of the following: First, Decision Number 127/G/2022/PTUN.JKT, between PT. Abadi Jaya Nickel against the Minister of Investment/Head of the Investment Coordinating Board of the Republic of Indonesia. The object of the lawsuit is the Decree of the Minister of Investment/Head of the Investment Coordinating Board of the Republic of Indonesia Number 20220218-01-57864, dated February 18, 2022 against the business actor PT Mandiri Jaya Nickel. In essence, the lawsuit was granted by the Jakarta State Administrative Court with Decision Number 127/G/2022/PTUN.JKT, dated October 21, 2022, then at the appeal level the decision was upheld by the Jakarta High State Administrative Court with Decision Number 15/B/2023/PT.TUN.JKT, dated March 2, 2023.¹⁷

Second, PT. Dewi Rinjani against the Minister of Investment/Head of the Investment Coordinating Board of the Republic of Indonesia. The object of the lawsuit is the Decree of the Minister of Investment/Head of the Investment Coordinating Board of the Republic of Indonesia Number 20220510-0187189, dated May 10, 2022 concerning the Upgrade of the Exploration Mining Business Permit (mining business permit) to the Mining Business Permit (IUP) for Manganese Metal Production Operations of PT Dewi Rinjani, dated May 9, 2016. In essence, the lawsuit was granted by the Jakarta State Administrative Court with Decision Number 282/G/2022/PTUN.JKT, dated January 17, 2023. Then at the appeal level, the decision was upheld by the Jakarta High State Administrative Court with Decision Number 90/B/2023/PT.TUN.JKT., dated May 22, 2023.¹⁵

Third, PT. Sheniu Ming Indonesia vs. Minister of Investment/Head of Investment Coordinating Board of the Republic of Indonesia. Object of lawsuit, Decree of Minister of Investment/Head of Investment Coordinating Board of the Republic of Indonesia Number 20220603-01-85129 dated June 3rd regarding revocation of mining business permit in the name of PT Shenniu Mining Indonesia Number 540/322/2014. In essence, the lawsuit was granted by the Jakarta State Administrative Court, with Decision Number 300/G/2022/PTUN.JKT., dated February 7, 2023. Then at the appeal level, the decision was upheld by the Jakarta High State Administrative Court, with Decision Number 113/B/2023/PT.TUN.JKT., dated June 7, 2023.¹⁹

The decision stating that the government has carried out Act against the law is a form of legal protection for citizens. As stated by Sjachran Basah, providing legal protection for those who are harmed as recipients of the negative impacts of a policy must be protected by law. This is very important because legal protection for the harmed party is a form of absolute obligation. This is the reason that prompted the Supreme Court to clarify the criteria for Act against the law carried out by the authorities, then the Supreme Court anticipated this with that being a reasonable urgency, appearing and occupying a leading position in realizing the path of equal opportunity to obtain justice. The regulation of unlawful acts by the authorities is not clearly regulated by issuing Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Settlement of Disputes on Government Actions and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials.¹⁶

Unfortunately, the Act against the law that was built in such a way by the Supreme Court, in its implementation still experiences obstacles. For example, in the revocation of nickel IUP, when the government refuses to issue nickel IUP that has been restored by the PTUN, the government will not receive strict sanctions. This is very dilemmatic, on the one hand the decision to revoke the has been cancelled in the eyes of the law. However, in its implementation it does not have any impact.¹⁷

¹⁴ Bagus Oktafian Abrianto, Xavier Nugraha, Nathanael Grady, Development of Lawsuits for Unlawful Acts by the Government Post-Law Number 30 of 2014, Jurnal Negara Hukum, Vol. 11, No. 1, June, 2020, p. 51. ¹⁷ Putusan Nomor 390 K/TUN/2023, hlm. 2

¹⁵ Putusan Nomor 534 K/TUN/2023, hlm. 3.

¹⁹ Putusan Nomor 502 K/TUN/2023, hlm. 3.

¹⁶ Muhammad Addi Fauzani & Fandi Nur Rohman, Problematics of Settlement of Unlawful Acts Disputes by Authorities in Indonesian Administrative Courts (Critical Study of Supreme Court Regulation Number 2 of 2019), Jurnal Widya Pranata Hukum, Vol. 2, No. 1, February 2020, pp. 20-21

¹⁷ Dezonda Rosiana Pattipawae, Implementation of the Execution of State Administrative Court Decisions in the Era of Autonomy, SASI Journal, Vol. 25, No. 1, January-June 2019, p. 102.

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The situation shows that the state administrative decision is not authoritative in enforcing the law, with the reason that the execution is weak. This can cause disappointment, because the community will find it difficult to control power, with the reason that even a class like the state administrative decision is unable to move in the face of power.¹⁸ State administrative decision when issuing a Decision has the potential to be considered unauthoritative and tends to no longer be trusted by the public. This is a problem in itself, if the District Court, for example, has something like a bailiff, then this does not apply to state administrative decision. In principle, even if the state administrative decision Court's decision has permanent legal force, in its implementation the execution of the state administrative decision Decision cannot be carried out immediately, on the grounds that the sanctions for not implementing the state administrative decision Decision are not that strong.¹⁹

In fact, the state administrative decision Decision will be easy to execute when the parties follow the state Administrative decision Decision with an open heart and full awareness. Unfortunately, institutional egocentrism is often seen, so that the design of the state administrative decision Decision should be coercive and have criminal and civil sanctions. It is impossible for a Court Decision to be obeyed if there are no strict sanctions, for example, those who do not obey the state administrative decision Decision will be subject to civil sanctions in the form of confiscation of state officials' assets and if the civil sanctions are not implemented, they will be continued with criminal sanctions. In this case, the winning party will certainly experience a dilemma and disappointment, because there will be a feeling that the state administrative decision has no meaning in enforcing the law. So that the crisis of trust in law enforcement institutions will continue to occur.²⁰

Based on research conducted by Latif Usman (2021), it is revealed that a decision that has permanent legal force but cannot be implemented should not have existed from the start. The reason is that justice seekers have certainly spent quite a bit of money, made worse by the fact that even though they obtain legal certainty, this certainty cannot be felt. In fact, a decision should be generally binding, take effect immediately and provide clarity, so in this case the parties are obliged to implement the state administrative decision decision. In this way, justice, positivity and coherence can be maintained for the parties.²¹

Oddly enough, even though the state administrative decision decision has no teeth in terms of the authority to cancel the nickel mining business permit, the cancellation of the normative nickel mining business permit is still within the authority of the state administrative decision. It's just that it is indeed a question mark, even though the state administrative decision does not have any meaningful authority, the object of the nickel mining business permit is always attached with a decree. The reason is because the object in question is always related to an administrative decree.²²

There needs to be a legal formulation that allows the District Court to decide cases related to administration. The method is that the object of the state administrative decision is not viewed in terms of the contents of the formal letter issued, but rather the loss due to the decision letter will be the main object. This is as supported by the opinion that positions the government as a public legal entity that at the same time can also act as a civil legal entity. German scholars position it as *de heersende' leer*, which in Indonesian positive law is regulated in Article 1653 of the Civil Code. So that the government when sued in the District Court with the object of a civil case will be classified as an unlawful act committed by the government in its capacity to carry out civil legal actions. This means that the government is constructed with a dual nature, in one nature as a public legal entity implementing laws and regulations. But in another nature carrying out civil actions related to business.²³

The government as a public legal entity that is also a private legal entity is very likely to be categorized as a Legal entity that carries out Act against the law. This means that when the government carries out legal actions that violate the civil rights of a person or private legal entity, it is very possible to justify that the government has carried out Act against the law, so it is appropriate to be given legal sanctions.

Conceptually, Act against the law, also known as "onrechtmatige daad", tends to be carried out by the Government, on the grounds of the breadth of its authority. This is in line with Abdulkadir Muhammad's view that only legal entities with the power are most likely to carry out Act against the law. Therefore, an act can be called Act against the law if it has fulfilled the following elements: First, the act committed is contrary to the law. Second, it is preceded by an error, resulting in a loss. Third, there is causality between the act and the loss experienced by a person. The following three elements can only be carried out by the government which has various instruments of power and authority.

¹⁸ Ibid.

¹⁹ I Wayan Dedy Cahya Pratama, Anak Agung Sagung Laksmi Dewi & Luh Putu Suryani, Coercive Efforts Against Officials Who Do Not Carry Out Decisions of the Denpasar State Administrative Court, *Journal of Legal Preferences*, Vol. 1, No. 2, September 2020, p. 148.

²⁰ Ibid.

²¹ Latif Usman, Imposition of Sanctions on Government Officials Who Do Not Implement PERATUN Decisions, *Jurnal Hukum Progresif*, Vol. 9, No. 2, October 2021, p. 103.

²² A. Sakti Ramdhon Syah R., Legality of Private Legal Entities in the Implementation of Government, *Justisi Journal: Faculty of Law, Muhammadiyah University of Sorong*, Vol. 6, No. 1, January 2020, p. 5.

²³ Ibid

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The revocation of nickel mining business permit which is not carried out with the applicable legal evaluation mechanism, in fact, only harms investors. The future of the national business climate is at stake. The situation is getting worse with the lack of certainty whether the state administrative decision Decision can guarantee that the fine or dwangsom will be given to the party that won in the state administrative decision case. The impact that then emerged was that many officials did not want to pay, because there was nothing that would make an official 'deterred'.²⁴

In fact, the legal mechanism for imposing Act against the law sanctions on the Government is very important.

Realizing the importance of this, the Supreme Court issued a legal product regulating the Government's Act against the law, namely as regulated in the Supreme Court Regulation Number 2 of 2019 concerning guidelines for resolving disputes over government actions and the authority to try unlawful acts by government agencies and/or officials. Even though there is Perma Number 2 of 2019, obstacles still occur when implementing administrative sanctions in state administrative decision cases, which are factually described as follows:²⁵

- a. The level of awareness of officials to obey and implement state administrative decision decisions that have legal force is too low.
- b. Minimal active participation from government leaders (such as ministers or presidents) and supervision in encouraging the institutions they lead to comply with state administrative decision decisions.

The weakness of sanctions against officials who carry out the act of revoking nickel s, based on the author's analysis, is based on the existence of Article 116 paragraph (2) of the Republic of Indonesia Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts. Which states that: *"If after 60 (sixty) working days the court decision which has obtained permanent legal force as referred to in paragraph (1) is received, the defendant does not carry out his obligations as referred to in Article 97 paragraph (9) letter a, the disputed state administrative decision no longer has legal force."*

Various reasons that prevent the dwangsom from being submitted to the Plaintiff who has been declared the winner in a final decision. Moreover, until now the Government Regulation (PP) implementing Law Number 51 of 2009, regarding the amount of the penalty, type of administrative sanction, and procedures for implementing the payment of the penalty and/or administrative sanction, there are no government regulations yet.

In fact, it is appropriate that the state administrative decision Decision is respected and not easily denied. Because in reality, various legal implications arise from the emergence of a state administrative decision Decision that has permanent legal force. As stated by Paulus Effendi Lotulung.²⁶

- a. Cases in state administrative decision disputes are the last resort when the state administrative decision Decision has permanent legal force, so that no further legal mechanism is available.
- b. State administrative decision cases that have obtained permanent legal force immediately become binding decisions and are enforceable for all parties to comply with (*erga omnes*).
- c. Cases in state administrative decision disputes, after having permanent legal force, immediately become authentic deeds with perfect evidentiary classification.
- d. The case in the state administrative decision Decision has executive power. The decision has executive power, which means that the contents of the decision can be implemented. If necessary, with coercive efforts if the defeated party does not want to voluntarily implement the contents of the decision in question.

In the context of revocation of nickel mining business permit, to prove the existence of Act against the law elements, Law Number 25 of 2009 concerning Public Services can also be used, when the revocation of nickel IUP is carried out without notification to mining business permit holders in the region, for example. The types of administrative sanctions stated in Article 54 of Law Number 25 of 2009 concerning Public Services consist of:²⁷

- a. Imposition of sanctions in the form of a written warning;
- b. Imposition of sanctions in the form of dismissal from office;
- c. Imposition of sanctions in the form of a salary reduction of one gradual salary increase with a maximum increase duration of one year;

²⁴ Farida Azzahra, Implementation of Administrative Sanctions: A Form of Coercive Effort to Increase Official Compliance with the Implementation of State Administrative Court Decisions (Theory of Legal Effectiveness), *Binamulia Law Journal*, Vol. 9, No. 2, December 2020, p. 130.

²⁵ Ladju Kusmawardi, Suteki & Aprista Ristyawati, Application of Administrative Sanctions in Decisions on State Administrative Cases at the Semarang State Administrative Court, *Jurnal Law Reform*, Vol. 14, No. 1, March 2018, p. 110.

²⁶ Untoro, Self-Respect and Legal Awareness of State Administrative Officials Towards Justice, *Pandecta Journal*, Vol. 13, No. 1, June 2018, p. 39.

²⁷ Dola Riza, Maladministration in the Implementation of State Administrative Court Decisions in the Perspective of the Public Service Law, *Normative Journal*, Vol. 11, No. 1, April 2023, pp. 52-53.

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- d. Imposing sanctions in the form of demotion by lowering the rank one level lower for a maximum duration of one year;
- e. Imposing sanctions in the form of honorable dismissal of one's own free will;
- f. Imposing sanctions without respect;

Although the legal instruments owned are sufficient for the state administrative decision to impose sanctions on the government that arbitrarily revokes the nickel mining business permit. However, the government seems to be stronger in execution, on the grounds that there are administrative sanctions that can be imposed on licensing violations. This is proven by the existence of several types of government authority, namely as follows: First, government coercion (*bestuurdwang*) in the form of withdrawing a favorable decision. Second, the imposition of forced money by the government (*dwangsom*). Third, the imposition of administrative fines (*administratif boete*). *fourth*, The determination of administrative sanctions for violations in the licensing sector takes various forms, which are generally definitively stated in the laws and regulations which form the basis.²⁸

In the event of a violation of the permit and a government coercive sanction (*bestuurdwang*) will be imposed, then the government organ must examine the facts of the legal violation, which in this case can be divided into two types, namely non-substantial violations and substantial violations. The imposition of sanctions for substantial violations and non-substantial violations can be different. For non-substantial violations, the government organ can still legalize. For substantial violations, the government can directly apply government coercion (*bestuurdwang*).²⁹

In order for a Court Decision to be executed with coercive money, the following conditions are required:³⁰

- a. The imposition of a monetary penalty must be stated in the court decision granting the lawsuit;
- b. Compulsory money is determined by the judge because of his position;
- c. Compulsory payment may be imposed on a defendant who is unwilling to carry out a court decision in the form of an obligation, if the court decision has permanent legal force.

In the realm of public law or private law (civil) it will always be associated with certain sanctions. For example, in administrative law norms it is associated with administrative sanctions, in civil law norms it is associated with compensation sanctions, cancellation of an agreement and so on.³⁵

According to Harifin A. Tumpa in his book, he explains that forced money is money that is determined in a court, which is stated in the court's decision if the convict does not carry out the main punishment that has been determined and its implementation is in the form of money which can then be given directly or indirectly or within a certain period of time every time the convict commits a violation.³⁶

Subekti and Tjitrosoedibio also stated that coercive money is an indirect means of execution in civil disputes which can be applied if the convict or the losing party has not or does not carry out the decision made by the court that tried the case.³¹

However, in this case, it is not explained about how the guidelines or procedures used by the judge to determine the amount of the compulsion money or there are no implementing regulations so what form the compulsion money takes. Then will it be retried or what, because the compulsion money is given if the defendant does not implement the court decision. Then who should pay the compulsion money, is it the Official as the defendant or is it charged to the State because if the court decision is not implemented, the administrative sanction will refer to the State Administrative Official individually. While the Official is the State Administrative Official, and what if the amount of the compulsion money determined by the judge is not comparable to the value of the main claim of the lawsuit filed. In addition, the main claim is replaced, namely the demand that the State Administrative Decision issued by the defendant is invalid or the demand that the State Administrative Decision requested by the plaintiff be granted by the defendant, with a certain amount of compulsion money.³²

The absence of clear rules governing the imposition and amount of coercive money on state administrative decision officials who do not voluntarily carry out state administrative decision Court decisions is a legal obstacle that arises in the practice of state administrative decision Courts in relation to the execution of state administrative decision Court decisions. Efforts through coercive money are also not related to the substance of the disputed problem because basically the ultimate goal of the dispute submitted to

²⁸ Yonnawati, Law Enforcement of Administrative Sanctions Against Licensing Violations, JHM Journal, Vol. 3, No. 1, April 2022, p. 100

²⁹ Ibid.

³⁰ Ary Wahyudi, Execution of PTUN Decisions as a Judicial Institution, Politea: Journal of Islamic Politics, Vol. 4, No. 1, January-June 2021, p. 136 ³⁵Ahmad Mathar, Sanctions in Legislation, 'Aainul Haw: Journal of Islamic Family Law, Vol. 3, Issue II, December 2023, p. 46. ³⁶ Seftia Azrianti, Tuti Herningtyas, Agus Riyanto & Indra Sakti, Procedures for the Implementation of Decisions of the State Administrative Court in Indonesia, Pelita Journal, Vol. 3, No. 2, December 2021, p. 4276.

³¹ Ibid.

³² Nur Indra Socawibawa & Arif Wibowo, Effectiveness of State Administrative Court Execution in Indonesia, JPM: Multidisciplinary Research Journal, Vol. 2, No. 1, February 2023, p. 47.

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the TUN Court is a change in the policy issued by state administrative decision officials that is considered detrimental to individuals or other communities, not as compensation as in civil disputes in general.³³

So the Law related to state administrative decision must be evaluated. Because a regulation must be evaluated critically in the context of legal protection according to several criteria, such as whether it is in conflict with other laws and whether it is in the common interest. Many people consider cancellation as something that happens spontaneously, upon the order of an authorized body to do so, without following formal legal procedures, and in accordance with local rules and regulations.³⁴

CONCLUSIONS

Based on the discussion description, it can be concluded that first, unlawful acts are a legal concept that exists in civil law but are related to State Administrative Decisions, when the State Administrative Decision is detrimental to a person or legal entity in civil matters. Currently often used as an argument for plaintiffs in the State Administrative Court (state administrative decision).

Second, the Act against the law carried out by the government in revoking nickel mining business permits in fact occurred in the revocation of nickel mining business permits in several companies, precisely in 2022. The author's claim concludes that the government has carried out Act against the law, namely based on two reasons, first, conceptually concerns arbitrary actions carried out by violating a person's civil rights. Second, in fact, the state administrative decision Decision on the Decree of the Minister of Investment/Head of the Republic of Indonesia Investment Coordinating Board concerning the Improvement of Mining Business Permits (IUP) Exploration to Mining Business Permits (mining business permit) Metal Production Operations against PT. Mandiri Jaya Nickel, PT Dewi Rinjani and PT Shenniu Mining.

The author then provides suggestions as an alternative form of settlement for Act against the law in the revocation of nickel mining business permit by the Government, then the following steps are needed: First, the Government needs to obey the state administrative decision Decision including paying dwangsom or forced money as a form of obedience to the judicial institution. Second, & the president as the formulators of Law Number 51 of 2009 concerning State Administrative Courts, by including the state administrative decision Decision execution institution, within the state administrative decision institution which is authorized to carry out civil executions. Third, for the community or companies engaged in the nickel business sector, if they want to take legal action to sue the Act against the law issue against the government regarding the revocation of nickel IUP, they should bring the matter to the District Court, until a revision is made to Law Number 51 of 2009 concerning State Administrative Courts. The reason is that the District Court Decision has a stronger execution nature than the state administrative decision.

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³³ Ismail Rumadan, *Problems of Execution of State Administrative Court Decisions*, *Journal of Law and Justice*, Vol. 1, No. 3, November 2012, pp. 438-439.

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