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Investor Protection Against Invalidity of Administrative Acts: Perspective of Decision 650 K/TUN/2022 and Investment Law

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Abstract

The issuance of mining business licenses that conflict with environmental protection regulations often leads to cancellation by the court, which directly disrupts the legal certainty of investments. This article aims to examine the legal protection for investors resulting from the invalidity of administrative acts, focusing on the analysis of Supreme Court Decision Number 650 K/TUN/2022 concerning the cancellation of the Approval for the Upgrade to Operation Production Stage of PT Tambang Mas Sangihe (PT TMS). Employing a normative legal research method with statute and case approaches, this article unravels the problematic conflict between the principle of investment certainty and ecological preservation. The study reveals that PT TMS's license was annulled due to proven substantive defects, specifically violating the prohibition against massive mining on small islands as stipulated in Article 26A of the Law on the Management of

Coastal Areas and Small Islands (PWP3K). While this decision represents a victory for environmental conservation, the negligence of the State Administrative Official in issuing a fundamentally flawed license has undermined the guarantee of investor protection and legal certainty under the Investment Law. From the perspective of legal doctrine, the issuance of such a juridically defective license constitutes an Unlawful Act by the Government (Onrechtmatige Overheidsdaad). Therefore, to protect the legitimate expectations of good-faith investors holding a Contract of Work, repressive legal protection through a mechanism of claiming compensation against the state becomes an essential instrument. This article recommends the necessity for strict cross-sectoral licensing synchronization to prevent similar administrative failures that could detrimentally affect the national investment climate.

KEYWORDS
Administrative Defect, Investor Protection, Legal Certainty, Onrechtmatige Overheidsdaad.

Introduction

The Republic of Indonesia constitutionally carries a fundamental mandate in the management of natural resources as outlined in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that the earth, water, and the natural resources contained therein are controlled by the state for the greatest prosperity of the people. To optimize the potential of the extractive sector, such as mineral mining, the involvement of Foreign Direct Investment (FDI) and Domestic Direct Investment (DDI) becomes a necessity that requires a conducive investment climate. The philosophy of investment protection is explicitly adopted in Law Number 25 of 2007 concerning Investment (the Investment Law). In Article 3, paragraph (1), point a, and Article 14 of the Investment Law, it is emphasized that the administration of investment must be based on the principle of legal certainty, where every investor has the right to obtain certainty regarding rights, law, and protection. The legitimate expectations of investors are formed when the state, through legal instruments represented by the decisions of State Administrative Officials, grants operational permits. Such a permit is not merely an administrative sheet but a legal instrument of business certainty that gives rise to private rights of high economic value for the investor.

However, the realization of legal certainty in investment often clashes diametrically with the state's obligation to protect environmental sustainability and social entities. This paradox becomes critical when mining concessions intersect with regions of high ecological vulnerability, such as coastal areas and small islands. In this context, state administrative law is required to provide licensing instruments that are not only oriented toward the ease of doing business but also function as environmental safeguards. As analyzed by Vica J.E. Saija, the authority of the government in granting environmental permits must be interpreted as a preventive juridical instrument to prevent pollution and environmental damage, a process that requires absolute precision and compliance with higher hierarchical norms.[1] The government's failure to synchronize sectoral regulations at the licensing stage frequently produces legal products that are flawed from the outset.

The empirical facts of such regulatory disharmony and administrative failure are vividly represented in the precedent of the revocation of PT Tambang Mas Sangihe's (PT TMS) operation and production permit in the Sangihe Islands, North Sulawesi Province. The juridical chronology of PT TMS's existence is rooted in the 7th Generation Contract of Work signed between the government and the company in 1997, with a concession area reaching 42,000 hectares that dominates the landmass of Sangihe Island. The legal dynamics peaked when the Ministry of Energy and Mineral

[1] Vica J. E. Saija, "Local Government Authority in Granting Environmental Permits," Sasi 20, no. 1 (2014): 71. Accessed at: https://doi.org/10.47268/sasi.v20i1.347.

Resources (ESDM) issued Ministerial Decree Number 163.K/MB.04/DJB/2021, which granted the Approval for the Upgrade to the Operation Production Stage. The issuance of this decision triggered resistance and administrative lawsuits from the Sangihe civil society groups, with the primary argument that Sangihe Island (measuring ±736 km^2) absolutely qualifies as a "small island" that must be subject to Law Number 27 of 2007 juncto Law Number 1 of 2014 concerning the Management of Coastal Areas and Small Islands (PWP3K Law).

The core of the legal argument in this dispute lies in the applicability of Article 26A of the PWP3K Law, which limitatively and imperatively prohibits the utilization of small islands for mineral mining activities that cause environmental damage. The issuance of the permit by the Ministry of ESDM was thus considered a violation of the principle of lex specialis derogat legi generali. After undergoing a comprehensive judicial discourse, the Supreme Court of the Republic of Indonesia, through Decision Number 650 K/TUN/2022, finally granted the community's lawsuit and annulled the Ministerial Decree. This decision stands as a landmark jurisprudence affirming that the ecological protection of small islands holds a superior position compared to extractive industrial exploitation.[2]

Following the legally binding decision (inkracht van gewijsde), the government executed the court's order by definitively revoking PT Tambang Mas Sangihe's operation and production permit.[3] This executional step is a juridical affirmation that the Minister of ESDM's prior action in issuing the permit was proven to contain a juridical defect because it violated the legal

[2] BBC News Indonesia, "Sangihe Community Wins, Supreme Court Annuls Minister of ESDM Decree Regarding Gold Mine," June 2, 2022. Accessed on May 4, 2026 via https://www.bbc.com/indonesia/indonesia-61663359

[3] Betahita, "Ministry of ESDM Revokes PT Tambang Mas Sangihe Permit," September 14, 2023. Accessed on May 4, 2026, via https://betahita.id/news/detail/9216/kementerian-esdm-cabut-izin-pt-tambang-mas-sangihe.html?v=1697476685

norms protecting small islands.[4] From an ecological activism perspective, this ruling is a victory. However, from a pure investment law perspective, this event has caused massive material and immaterial losses for the investor. The company and its shareholders have invested fantastic amounts of capital over more than two decades, from the exploration stages to the preparation of feasibility studies. When a permit is annulled due to the Invalidity of an Administrative Act—specifically the state organ's error in applying environmental protection laws, rather than the investor's default—the good-faith investor is positioned as a direct victim of bureaucratic maladministration.

In business law doctrine, shareholder protection is essential, particularly when external state actions unilaterally terminate a company's going concern.[5] The failure of the State Administrative Official to comply with Article 26A of the PWP3K Law indicates a violation of the General Principles of Good Government (AUPB), specifically the principle of duty of care (precision). This administrative invalidity, which harms a third party, constructs a transition of the liability regime from a mere administrative dispute into the realm of civil law, namely an Unlawful Act by the Government or Onrechtmatige Overheidsdaad (OOD). The concept of OOD qualifies government negligence that causes loss to private entities as an act for which compensation can be legally claimed.[6] In this context, the state cannot evade its responsibility for compensation or restitution for the

[4] Kumparan, “Reasons for Government Revoking PT Tambang Mas Sangihe's Operation and Production Permit,” September 10, 2023. Accessed on May 4, 2026, via https://kumparan.com/kumparanbisnis/alasan-pemerintah-cabut-izin-operasi-dan-produksi-pt-tambang-mas-sangihe-21AL2rr2vEU

[5] Hasanah, S, “Forms of Legal Protection for Shareholders of a Limited Liability Company,” Hukumonline, December 22, 2016. Accessed on May 9, 2025, via https://www.hukumonline.com/klinik/a/bentuk-perlindungan-hukum-terhadap-pemegang-saham-pt-cl1017/#_ftn7

[6] Sharon, G. S, “How to Claim Compensation for Unlawful Acts by the Government,” *Hukumonline*, December 10, 2024. Accessed on June 11, 2025, via https://www.hukumonline.com/klinik/a/cara-menuntut-ganti-rugi-atas-perbuatan-melawan-hukum-oleh-pemerintah-lt675868895c6de/

financial losses suffered by the investor, given that the Investment Law has promised legal certainty.

Facing this legal constellation fraught with antinomy, a comprehensive study on legal protection for investors is urgently needed. The PT TMS precedent could create a "chilling effect" on the national investment climate, where Indonesia risks being perceived as a country with fragile jurisdictional certainty. Therefore, this scientific article aims to critically analyze two main issues: first, qualifying the nature of the administrative invalidity in Supreme Court Decision Number 650 K/TUN/2022; and second, reconstructing the forms of representative and repressive legal protection for investors based on the Investment Law and the doctrine of Onrechtmatige Overheidsdaad. This normative study is expected to fill the doctrinal void regarding the resolution of investment disputes resulting from state administrative failure, while simultaneously offering recommendations for an integrated licensing system in Indonesia.

Methods

This study utilizes a normative legal research methodology, examining statutory, conceptual, and case approaches. This method focuses on the study of legal norms contained in various laws and regulations, as well as the analysis of legal doctrines and thinking developed in academic literature.[7] With this approach, the research systematically examines legal materials to comprehend the concepts, principles, and regulatory frameworks related to investor protection against administrative failures.

[7] Marzuki, P. M. (2017). *Penelitian Hukum* (Rev. ed.). Kencana. https://books.google.co.id/books?id=CKZADwAAQBAJ&printsec=copyright#v=onepage&q&f=false

This research employs several approaches to support a comprehensive analysis. First, a statutory approach is used to examine and analyze the provisions of Law Number 25 of 2007 concerning Investment and Law Number 27 of 2007 juncto Law Number 1 of 2014 concerning the Management of Coastal Areas and Small Islands (PWP3K Law)—specifically Article 26A. Second, a conceptual approach aims to examine the doctrines of legal protection, legitimate expectations[8], and the civil liability of the state based on the concept of Onrechtmatige Overheidsdaad (Unlawful Act by the Government) developing in modern administrative and private law. Third, a case approach is utilized to observe the practical and juridical implications of administrative defects, particularly drawing context from Supreme Court Decision Number 650 K/TUN/2022 concerning the cancellation of PT Tambang Mas Sangihe's operation and production permit.

Three categories of legal materials were employed in this study: primary, secondary, and tertiary legal materials. Primary legal resources consist of authoritative laws and regulations pertaining to investment and environmental protection, as well as binding jurisprudence such as the aforementioned Supreme Court decision. Secondary legal resources comprise pertinent academic literature, such as books and scientific journals discussing administrative invalidity, state liability, and investment dispute settlements. Tertiary legal materials comprise supplementary sources that help comprehend the legal terms employed, such as legal dictionaries. The research problem was then methodically explained and examined through a qualitative analysis of all legal resources utilizing descriptive-analytical techniques.

[8] Hadjon, P. M. (1987). Legal Protection for the People in Indonesia: A Study of Its Principles, Its Handling by the Courts in the General Court Environment and the Formation of State Administrative Courts. https://books.google.co.id/books/about/Perlindungan_hukum_bagi_rakyat_di_Indone.html?hl=id&id=zzjaGwAACAAJ&redir_esc=y

Result and Discussion

The dynamics of investment law in Indonesia are often characterized by a conflict of interest between the state's efforts to attract capital investment and the constitutional obligation to protect environmental sustainability. Within the modern administrative and investment law regime, every mining business permit issued by government agencies should represent a guarantee of legal certainty for good-faith investors. In practice, however, such state administrative legal products are frequently born through processes that ignore hierarchical norms or other sectoral regulations, thereby creating a juridical defect from the moment of their issuance. The inaccuracy of State Administrative Officials in examining cross-sectoral licensing prerequisites ultimately places investors in a highly vulnerable position against lawsuits for permit annulment in the future, resulting in the forced cessation of operational activities.[9]

The most recent and crucial precedent representing this failure of administrative integration is the dispute over the revocation of PT Tambang Mas Sangihe's (PT TMS) operation and production permit. This dispute originated from the issuance of the Minister of Energy and Mineral Resources (ESDM) Decree Number 163.K/MB.04/DJB/2021, which granted approval for the upgrade to the operation and production stage for PT TMS. This decree was ultimately annulled by the Supreme Court through Decision Number 650 K/TUN/2022 due to substantive

[9] Sudjati, X. Q., & Abidin, I. K. R. (2021). "Abuse of Authority by the Government in Granting Mining Business Permits (IUP) to PT Tambang Mas Sangihe (TMS) in Sangihe Islands Regency". Jurnal Kawruh Abiyasa, 1(1), 94-110. https://www.researchgate.net/publication/372184795_PENYALAHGUNAAN_WEWENANG_PEMERINTAH_DALAM_PEMBERIAN_IZIN_USAHA_PERTAMBANGAN_IUP_PADA_PERUSAHAAN_PT_TAMBANG_MAS_SANGIHE_TMS_DI_KABUPATEN_KEPULAUAN_SANGIHE

defects. The Supreme Court Chamber considered that the PT TMS concession area is located in the Sangihe Islands, which are strictly qualified as small islands; thus, any form of massive mining exploitation in that region violates the imperative provisions of the Law on the Management of Coastal Areas and Small Islands (the PWP3K Law).[10] The execution of this ruling confirms that the Minister of ESDM's action qualified as an invalidity of an administrative act.

On the other hand, the annulment of these administrative instruments presents an anomaly and systemic loss within the investment law regime, considering that PT TMS is a holder of a Contract of Work (KK) that has invested capital over a long period. Historically and doctrinally, the Contract of Work system positions foreign and domestic investors contractually with the state, where such agreements ought to be respected as the law between the parties (pacta sunt servanda).[11] When an operational permit—which is a manifestation of the implementation of the Contract of Work—is annulled solely due to the government's negligence in applying spatial and environmental laws, the protection of the investor's legitimate expectations is disregarded. This is essentially contrary to the philosophy of Law Number 25 of 2007 concerning Investment, which explicitly mandates that every investor is entitled to a guarantee of certainty regarding rights, law, and protection against arbitrary actions.[12]

[10] Arianti, R. S., et al. (2025). "Juridical Analysis of Judges' Considerations in Decision Number 650 K/Tun/2022 in the Dispute over the Revocation of PT. Tambang Mas Sangihe's Business Permit". *Journal of Artificial Intelligence and Digital Business (RIGGS)*, 4(4), 4107-4116. https://journal.ilmudata.co.id/index.php/RIGGS/article/view/3920

[11] Hasbi, M., Sondakh, J., & Setiabudhi, D. O. (n.d.). "Juridical Analysis of the Differences Between the Contract of Work System and the Mining Business Permit System Viewed from the Position and Authority of the State in the Mining Sector". *Lex Privatum*, pp. 1-2. https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/34716

[12] Indonesia. *Law Number 25 of 2007 concerning Investment*, State Gazette of the Republic of Indonesia of 2007 Number 67. Article 3 paragraph (1) and Article 14.

The diametrical clash between the invalidity of a public official's action and the investor's private rights necessitates a resolution through the reconstruction of the doctrine of state liability. Failure or abuse of discretion by the government in issuing permits that clearly contradict environmental laws can no longer be simplified as a mere administrative issue when it has caused material losses to a third party.[13] From a civil law perspective, such state actions constitute an Unlawful Act by the Government (Onrechtmatige Overheidsdaad). Therefore, the investment losses suffered as a result of the invalidity of the administrative act open the door for the application of state liability, whereby the investor can claim compensation for investment losses resulting from a "false start" legitimized by the state organ itself.

Based on the aforementioned conceptual and chronological exposition, this section will comprehensively dissect the problematic legal protection for investors resulting from the invalidity of administrative actions. To address the research questions in a systematic, in-depth, and structured manner, the analysis of results and discussion in this study is classified into four main clusters. These four sub-headings will examine the anatomy of the court decision, analyze the juridical implications for investment certainty, analyze the doctrine of state liability, and formulate a prescriptive model of legal protection for the investment climate in Indonesia.

1. The Construction of Invalidity of Administrative Acts in the Issuance of the PT TMS Permit: An Analysis of Supreme Court Decision Number 650 K/TUN/2022

[13] Alfaridzi, A. M., Naufal Aflah, M. H., & Rabbani, N. (2023). "Executorial Power of Administrative Court Decisions (Analysis of the Implementation of Administrative Court Decisions in the PT. TMS Mining Licensing Case)". *Jurnal Dinamika Hukum*, 24(2). https://doi.org/10.35315/dh.v24i2.9328

The Supreme Court Decision Number 650 K/TUN/2022 stands as a landmark decision in administrative law and ecological protection in Indonesia, particularly regarding the management of coastal areas. The core of this ruling is the annulment of the Minister of Energy and Mineral Resources (ESDM) Decree Number 163.K/MB.04/DJB/2021, which granted an approval for the upgrade to the operation and production stage for PT Tambang Mas Sangihe (PT TMS). The construction of the invalidity of the administrative act in this case is viewed not merely from a procedural standpoint but is emphasized through fundamental substantive defects. The Supreme Court Chamber assessed that the issuance of the permit ignored geographical and juridical facts that the mining location is situated in an area protected by a specific legal regime.[14]

The primary basis for this construction of invalidity is rooted in the violation of Law Number 27 of 2007 juncto Law Number 1 of 2014 concerning the Management of Coastal Areas and Small Islands (the PWP3K Law). Juridically, Sangihe Island has a land area of approximately 736 km², which, according to Article 1 point 3 of the PWP3K Law, is strictly categorized as a "Small Island" as it is less than or equal to 2,000 km². This classification carries legal consequences regarding land-use restrictions, where Article 26A paragraph (1) of the PWP3K Law imperatively mandates that the utilization of small islands must prioritize conservation, education, and marine cultivation interests, rather than massive mineral mining.[15]

[14] Arianti, R. S., et al. (2025). "Juridical Analysis of Judges' Considerations in Decision Number 650 K/Tun/2022 in the Dispute over the Revocation of PT. Tambang Mas Sangihe's Business Permit". *Journal of Artificial Intelligence and Digital Business (RIGGS)*, 4(4), p. 4109. https://journal.ilmudata.co.id/index.php/RIGGS/article/view/85

[15] Law of the Republic of Indonesia Number 1 of 2014 concerning the Amendment to Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands. Article 1 point 3 and Article 26A. https://peraturan.go.id/id/uu-no-1-tahun-2014

The substantive invalidity of the PT TMS permit arose due to the disregard for the principle of lex specialis derogat legi generali. Although the Minister of ESDM holds authority based on the Mineral and Coal Mining Law (the Mining Law), such authority may not be exercised freely (freies ermessen) to the point of violating specific regulations regarding the protection of small islands. Gold mining exploitation on Sangihe Island is considered contrary to the objectives of sustainable environmental protection. Therefore, the action of the State Administrative Official in proceeding to issue a permit on an ecologically vulnerable island constitutes a disregard for higher and more specific legal norms.[16]

Furthermore, the analysis of this decision indicates an element of abuse of authority (abuse of discretion). The administrative official was deemed to have exceeded their authority by issuing a decision whose object is prohibited by other laws and regulations. Based on literature analysis, the granting of this permit demonstrates the government's lack of precision in performing horizontal synchronization between sectoral regulations. The government should have realized that the "Contract of Work" status held by PT TMS since 1997 must be subject to the evolution of environmental and spatial planning regulations currently in force, including the limitations set forth in the PWP3K Law.

In addition to substantive defects, there are indications of invalidity related to the General Principles of Good Government (AUPB), specifically the principle of duty of care (precision). The Minister of ESDM was considered negligent in considering the environmental carrying capacity

[16] Sudjati, X. Q., & Abidin, I. K. R. (2021). "Abuse of Authority by the Government in Granting Mining Business Permits (IUP) to PT Tambang Mas Sangihe (TMS) in Sangihe Islands Regency". *Jurnal Kawruh Abiyasa*, 1(1), p. 98. https://www.researchgate.net/publication/372184795_PENYALAHGUNAAN_WEWENANG_PEMERINTAH_DALAM_PEMBERIAN_IZIN_USAHA_PERTAMBANGAN_IUP_PADA_PERUSAHAAN_PT_TAMBANG_MAS_SANGIHE_TMS_DI_KABUPATEN_KEPULAUAN_SANGIHE

and threshold of Sangihe Island before upgrading PT TMS's permit status. This lack of care resulted in the birth of a decision that was legally flawed from the outset (void ab initio). In administrative law, a decision issued by disregarding crucial environmental facts and the aspirations of local community rejection is a form of manifest maladministration.[17]

The sociological aspect also forms part of this construction of invalidity. The resistance of the Sangihe community through legal channels affirms that the right to a good and healthy environment is a human right that must not be defeated by extractive investment interests. In its consideration, the Supreme Court acknowledged that the existence of a gold mine on such a small island threatens the living space of the community and local food sovereignty. Thus, the annulment of the permit is an effort by the court to restore the function of administrative law as an instrument of protection for citizens against arbitrary actions of the authorities.[18]

From a contract law perspective, although PT TMS holds a 7th Generation Contract of Work, the state's position as a party to the contract does not automatically eliminate its function as a regulator. The state possesses public authority to cancel or amend policies if violations of public interest and environmental sustainability are found. Decision 650 K/TUN/2022 affirms that a mining business permit (IUP), which is a follow-up to a Contract of Work, must still comply with all national environmental licensing procedures without exception.[19]

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[17] BBC News Indonesia. (2022). "Sangihe community wins, Supreme Court annuls Minister of ESDM Decree regarding gold mine". Accessed from https://www.bbc.com/indonesia/indonesia-61663359

[18] Supreme Court of the Republic of Indonesia Decision Number 650 K/TUN/2022, pp. 12-14. https://putusan3.mahkamahagung.go.id/direktori/putusan/zaed376b328731b68143303335353530.html

[19] Hasbi, M., Sondakh, J., & Setiabudhi, D. O. "Juridical Analysis of the Differences Between the Contract of Work System and the Mining Business Permit System Viewed from the Position and

This failure of administrative integration is also evident from the lack of synchronization between the mining permit and the regional spatial plan (RTRW) of the regency and province, which should accommodate the small island status. When a permit is issued in an area not designated for mining based on the PWP3K Law, the decision loses its basis of legal legitimacy. This spatial planning inconsistency is one of the strongest indicators for declaring a mining business permit as a legal product containing juridical defects.[20]

The execution of this Supreme Court ruling, as analyzed in several case studies, demonstrates the heavy burden borne by the government to restore the legal state. Although the government eventually revoked PT TMS's permit, this process leaves behind debates regarding legal certainty for investors. However, the legal construction in this ruling provides an important lesson that legal certainty must not stand upon the violation of imperative ecological norms. This invalidity is final because it touches upon the most fundamental aspect of governance: compliance with the law.[21]

The construction of invalidity in the issuance of the PT TMS permit according to Decision 650 K/TUN/2022 covers three main dimensions: (1) the dimension of competence, where the official violated management area boundaries; (2) the dimension of substance, related to the violation of Article 26A of the PWP3K Law; and (3) the moral-juridical dimension,

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Authority of the State in the Mining Sector". *Lex Privatum*, p. 5. https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/35451

[20] Alfaridzi, A. M., et al. (2023). "Executorial Power of Administrative Court Decisions (Analysis of the Implementation of Administrative Court Decisions in the PT. TMS Mining Licensing Case)". *Jurnal Dinamika Hukum*, 24(2), p. 15. https://doi.org/10.35315/dh.v24i2.9328

[21] Hukumonline. (2022). "MA Annuls PT TMS Mining Permit, This is the Government's Response". Accessed from https://www.hukumonline.com/klinik/a/cara-menuntut-ganti-rugi-atas-perbuatan-melawan-hukum-oleh-pemerintah-lt675868895c6de/

related to the violation of the principle of duty of care within the AUPB. These three dimensions cumulatively form a solid argument for the court to annul the permit in order to safeguard the integrity of small island ecosystems in Indonesia from the threat of permanent damage due to extractive activities.

2. Juridical Implications of Permit Annulment on Legitimate Expectations Based on the Investment Law

In The annulment of PT Tambang Mas Sangihe's (PT TMS) operation and production permit through Supreme Court Decision Number 650 K/TUN/2022 does not only impact ecological aspects but also creates a juridical shock to the doctrine of legitimate expectations within the investment law regime. Doctrinally, legitimate expectations arise when an investor performs a legal act or invests capital based on promises, representations, or policies issued by state authorities. In this case, the issuance of the permit by the Minister of Energy and Mineral Resources (ESDM) constituted a form of state representation that legitimized PT TMS to commence its operational activities, subsequently creating an expectation that such investment would be protected by law.[22]

The fundamental basis for protecting these expectations in Indonesia is enshrined in Law Number 25 of 2007 concerning Investment (the Investment Law). Article 3 paragraph (1) point a explicitly states that one of the principles of investment is legal certainty. This principle requires the

[22] Abdini, A. N., & Arianti, R. S. (2025). "Impact of Mining Permit Revocation on Contracts of Work and Legal Protection for Investors: A Case Study of PT Tambang Mas Sangihe". *Private & Commercial Law Community (PCLC)*, pp. 5-7.

state to maintain consistency between prevailing regulations and administrative actions taken by public officials. When the state grants a permit, it automatically assumes the responsibility to ensure that the permit has undergone a correct verification process so that it is not easily annulled in the future due to the government's own administrative negligence.[23]

The first juridical implication of this permit annulment is the degradation of investor rights guaranteed under Article 14 of the Investment Law. This article mandates that every investor is entitled to certainty of rights, law, and protection. The annulment of a permit caused by the government's lack of precision in synchronizing with the PWP3K Law indicates a failure of the state to provide the intended "protection." The investor, in this case PT TMS, is trapped in a condition where they have fulfilled their financial and technical obligations, yet their operational rights are lost due to a juridical defect committed by a state organ.

Furthermore, PT TMS's status as a holder of a Contract of Work (KK) provides a more complex dimension of protection compared to a standard mining business permit (IUP). Historically, the Contract of Work is viewed as a sui generis agreement that positions the state and the investor contractually. Based on the principle of pacta sunt servanda, the agreements within such contracts prevail as law for the parties. When the state issues an operational permit as a follow-up to the KK but subsequently annuls it due to the state's own procedural errors, this can be interpreted as a breach of the state's contractual commitments that harms the investor's long-term expectations.[24]

[23] Law of the Republic of Indonesia Number 25 of 2007 concerning Investment. Article 3 paragraph (1). https://peraturan.go.id/id/uu-no-25-tahun-2007

[24] Hasbi, M., Sondakh, J., & Setiabudhi, D. O. "Juridical Analysis of the Differences Between the Contract of Work System and the Mining Business Permit System Viewed from the Position and

In the perspective of international law often ratified in Bilateral Investment Treaties (BITs), the protection of legitimate expectations is an integral part of the Fair and Equitable Treatment (FET) standard. Although this case was decided by a domestic court (Administrative Court), the FET principle remains relevant as a benchmark for government professionalism in treating investors. The abrupt annulment of a permit due to an invalidity of administrative act creates a negative image of Indonesia's investment climate, where investors are perceived to bear the risk of the bureaucracy's inability to interpret sectoral laws in an integrated manner.

The annulment also carries implications of significant material and immaterial losses. The investor has allocated capital for infrastructure, exploration, and community development programs based on a permit considered valid at the time of issuance. Juridically, these losses arise from a "legal trap," where the investor begins a venture with the state's blessing only to be forcibly halted—not because of violations committed by the investor, but due to administrative errors by public officials. This sets a precedent that an investor's compliance with technical requirements is no longer a guarantee of business security in Indonesia.[25]

this permit annulment triggers a shift in the burden of risk. In healthy investment practices, business risks should rest with the investor, while legal risks regarding the validity of policy products should rest with the government. However, following Decision 650 K/TUN/2022, this risk burden has shifted entirely to the investor. The investor is forced to absorb

Authority of the State in the Mining Sector". *Lex Privatum*, p. 8. https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/35451

[25] Alfaridzi, A. M., et al. (2023). "Executorial Power of Administrative Court Decisions (Analysis of the Implementation of Administrative Court Decisions in the PT. TMS Mining Licensing Case)". *Jurnal Dinamika Hukum*, 24(2), p. https://doi.org/10.35315/dh.v24i2.9328

investment losses without any automatic compensation mechanism from the authority that committed the administrative error. This contradicts the philosophy of the Investment Law, which seeks to provide protection against arbitrary actions or negligence by the authorities.[26]

The lack of synchronization between mining regulations and small island management regulations in this case demonstrates weak preventive protection for investors. The government should have exercised administrative due diligence before issuing the permit. If, from the outset, Sangihe Island was not intended for mining based on the PWP3K Law, then the state should not have provided hope through an operation and production upgrade permit. Granting a permit that is subsequently annulled is a form of inconsistency in the state's stance that violates the principle of good faith in the relationship between the authority and legal subjects.[27]

Another juridical impact is the emergence of uncertainty for other mining permit holders located in small island regions across Indonesia. This ruling creates a "domino effect" where every existing permit becomes vulnerable to lawsuits on the same legal grounds. For investors, this means their legitimate expectations are now in a fragile position. Without strong guarantees of legal protection from the central government, Indonesia's attractiveness as an investment destination in the natural resources sector

[26] Arianti, R. S., et al. (2025). "Juridical Analysis of Judges' Considerations in Decision Number 650 K/Tun/2022 in the Dispute over the Revocation of PT. Tambang Mas Sangihe's Business Permit". *Journal of Artificial Intelligence and Digital Business (RIGGS)*, 4(4), p. 4112. https://journal.ilmudata.co.id/index.php/RIGGS/article/view/3920

[27] Sudjati, X. Q., & Abidin, I. K. R. (2021). "Abuse of Authority by the Government in Granting Mining Business Permits (IUP) to PT Tambang Mas Sangihe (TMS) in Sangihe Islands Regency". *Jurnal Kawruh Abiyasa*, 1(1), p. 104. https://www.researchgate.net/publication/372184795_PENYALAHGUNAAN_WEWENANG_PEMERINTAH_DALAM_PEMBERIAN_IZIN_USAHA_PERTAMBANGAN_IUP_PADA_PERUSAHAAN_PT_TAMBANG_MAS_SANGIHE_TMS_DI_KABUPATEN_KEPULAUAN_SANGIHE

will significantly decline due to high legal costs and regulatory uncertainty.[28]

Theoretically, legal protection for investors should include a repressive aspect, namely the room to claim damages when legitimate expectations are violated. However, in Indonesia's administrative law system, the execution of damages through the courts often faces long bureaucratic hurdles. Investors who fall victim to state administrative defects must pursue exhausting additional legal channels to restore their private rights. This indicates that the Indonesian legal system has not yet fully provided an effective solution for investors aggrieved by permit annulments resulting from government negligence.[29]

The balance between environmental protection and investment protection is a central point in these implications. While the Supreme Court acted correctly in protecting the Sangihe ecosystem, the implications for investor rights must not be ignored. The state must not use environmental protection instruments as an excuse to absolve itself of responsibility for its own administrative errors. Investors have a constitutional right not to be harmed by the actions of imprecise public officials, in accordance with the principle of a rule-of-law state that upholds justice for all parties.[30]

Therefore, these juridical implications require a reconstruction of a more integrated licensing policy. The PT TMS case serves as a reminder that

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[28] Hukumonline. (2022). "Dilemma of Investment Legal Certainty behind Mining Permit Annulment". Accessed from https://www.hukumonline.com/klinik/a/cara-menuntut-ganti-rugi-atas-perbuatan-melawan-hukum-oleh-pemerintah-lt675868895c6de/

[29] Alfaridzi, A. M., et al. (2023). "Executorial Power of Administrative Court Decisions (Analysis of the Implementation of Administrative Court Decisions in the PT. TMS Mining Licensing Case)". *Jurnal Dinamika Hukum*, 24(2), p. 12. https://doi.org/10.35315/dh.v24i2.9328

[30] Supreme Court of the Republic of Indonesia Decision Number 650 K/TUN/2022. https://putusan3.mahkamahagung.go.id/

legal certainty for investors heavily depends on the quality of administrative legal products issued by the government. If the government fails to guarantee the validity of the permits it issues, then the entire investment law structure designed through the Investment Law will lose its foundation of legitimacy in the eyes of both international and domestic investors.[31]

the annulment of PT TMS's operation permit affirms that investors' legitimate expectations in Indonesia remain highly vulnerable to failures in the integration of sectoral regulations. These juridical implications demand a more responsive and fair state liability mechanism so that losses suffered by investors due to government negligence do not become a deadweight that hinders national economic growth. Balanced legal protection between public interests and investors' private rights is the key to a sustainable investment climate in the future.[32]

3. *Onrechtmatige Overheidsdaad* (OOD) as the Basis for State Liability for Licensing Administrative Defects

The conception of Onrechtmatige Overheidsdaad (OOD), or an Unlawful Act by the Authority, is a fundamental instrument in administrative and civil law for demanding state accountability. In the modern doctrine of the rule of law, the state and its apparatus do not possess

[31] Sudjati, X. Q., & Abidin, I. K. R. (2021). Penyalahgunaan Wewenang Pemerintah dalam Pemberian Izin Usaha Pertambangan (IUP) pada Perusahaan PT Tambang Mas Sangihe (TMS) di Kabupaten Kepulauan Sangihe. Jurnal Kawruh Abiyasa, 1(1), 94–110 https://www.researchgate.net/publication/372184795_PENYALAHGUNAAN_WEWENANG_PEMERINTAH_DALAM_PEMBERIAN_IZIN_USAHA_PERTAMBANGAN_IUP_PADA_PERUSAHAAN_PT_TAMBANG_MAS_SANGIHE_TMS_DI_KABUPATEN_KEPULAUAN_SANGIHE .

[32] Farhan, A., & Rasji, R. (2024). Perlindungan Hukum Bagi Investor Terhadap Pencabutan Izin Usaha Pertambangan Mineral Dan Batubara. Kertha Semaya: Journal Ilmu Hukum, doi:10.24843/KS.2024.v12.i11.p21

absolute immunity (sovereign immunity) when their actions or decisions clearly cause harm to third parties. The OOD doctrine bridges the realms of public and private law, where administrative negligence resulting in measurable financial loss can be qualified as an unlawful act for which compensation can be sought before a court.[33]

Historically and normatively, the legal basis for OOD in Indonesia stems from the expanded interpretation of Article 1365 of the Burgerlijk Wetboek (Indonesian Civil Code). Through classical doctrine and jurisprudence, an authority can be sued not only when violating formal laws but also when their actions contravene the propriety and thoroughness expected within society. In the contemporary legal order, Law Number 30 of 2014 concerning Government Administration strengthens this foundation by requiring every state official to always act based on the principle of legality and the General Principles of Good Governance (AUPB).[34] A violation of these administrative obligations automatically triggers a shift of liability to the state.

The licensing dispute of PT Tambang Mas Sangihe (PT TMS) serves as a concrete precedent for how administrative defects lead directly to the construction of an OOD. The issuance of the Decree of the Minister of Energy and Mineral Resources Number 163.K/MB.04/DJB/2021, which was subsequently annulled by Supreme Court Decision Number 650 K/TUN/2022, was a product of a fundamentally flawed state administrative act. The cassation ruling explicitly stated that PT TMS's production operation permit violated the imperative prohibition of massive mineral

[33] Sharon, G. S. (2024). "How to claim compensation for unlawful acts by the government." *Hukumonline*. https://www.hukumonline.com/klinik/a/cara-menuntut-ganti-rugi-atas-perbuatan-melawan-hukum-oleh-pemerintah-lt675868895c6de/

[34] Article 1365 of the Civil Code (BW) juncto Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration. https://peraturan.bpk.go.id/Details/38695/uu-no-30-tahun-2014

mining activities on small islands as regulated under Article 26A of the Law on the Management of Coastal Zones and Small Islands (UU PWP3K).[35]

The actions of the Minister of Energy and Mineral Resources in issuing the permit, when studied jurisprudentially, qualify as an ultra vires act or an abuse of authority. Although the Ministry has full attribution of authority in the mining sector based on the Mining Law, this authority is not absolute and does not permit the disregard of other sectoral regulations that hold equal standing or act as an exception (lex specialis). This cross-sectoral overreach is a manifestation of a juridical defect that cannot be justified solely by arguments regarding the ease of investment.

Furthermore, the failure of government authorities to align the mining law regime with the protection of small island ecosystems demonstrates a fatal violation of the General Principles of Good Governance (AUPB), specifically the principle of the duty of care (accuracy). The government was factually proven to have failed in conducting comprehensive due diligence or legal audits regarding the vulnerability of Sangihe Island's spatial conditions before granting the investor the right to operate. This lack of diligence in synchronizing spatial data across ministries resulted in a permit that was void from the outset (void ab initio).[36]

[35] Arianti, R. S., et al. (2025). "Juridical Analysis of Judges' Considerations in Decision Number 650 K/Tun/2022 in the Dispute over the Revocation of PT. Tambang Mas Sangihe's Business Permit". *Journal of Artificial Intelligence and Digital Business (RIGGS)*, 4(4), pp. 4109-4112. https://journal.ilmudata.co.id/index.php/RIGGS/article/view/3920

[36] Sudjati, X. Q., & Abidin, I. K. R. (2021). "Abuse of Authority by the Government in Granting Mining Business Permits (IUP) to PT Tambang Mas Sangihe (TMS) in Sangihe Islands Regency". *Jurnal Kawruh Abiyasa*, 1(1), 94-110. https://www.researchgate.net/publication/372184795_PENYALAHGUNAAN_WEWENANG_PEMERINTAH_DALAM_PEMBERIAN_IZIN_USAHA_PERTAMBANGAN_IUP_PADA_PERUSAHAAN_PT_TAMBANG_MAS_SANGIHE_TMS_DI_KABUPATEN_KEPULAUAN_SANGIHE

It is the violation of this principle of accuracy that constructs the fulfillment of the "unlawful" element in the OOD doctrine regarding the PT TMS dispute. This inaccuracy can no longer be reduced to a mere matter of maladministration; rather, it has metamorphosed into an unlawful act by the authority that triggers a real loss of economic potential for the permit holder. In this constellation, an investor who from the beginning acted in good faith by complying with all procedural requirements requested by the state instead becomes a victim of the state apparatus's own lack of thoroughness and incompetence.

The logical implication of this OOD construction then gives rise to an absolute obligation related to the doctrine of state liability. When a business licensing instrument must be fully revoked purely due to errors by a state organ—not because of legal default, fraud, or criminal acts of illegal exploitation by the company—then the full burden of loss should not be passed on to the business entity. The state bears the moral and legal burden for investment losses arising from a "false start" that was previously officially legitimized by state institutions through the issuance of a State Administrative Decree.[37]

Within the framework of national investment law, this obligation of protection is explicitly mandated in Law Number 25 of 2007 concerning Investment. Specifically, in Article 14, the law underscores the guarantee of certainty of rights, law, and full protection for every investor. If the state, through the extension of its technical ministries, produces legal products that clash with environmental protection laws, this action can be interpreted

[37] Alfaridzi, A. M., Naufal Aflah, M. H., & Rabbani, N. (2023). "Executorial Power of Administrative Court Decisions (Analysis of the Implementation of Administrative Court Decisions in the PT. TMS Mining Licensing Case)". *Jurnal Dinamika Hukum*, 24(2), 45-52. https://doi.org/10.35315/dh.v24i2.9328

as a denial of the state's public commitment.[38] This denial collapses the structure of legitimate expectations held by investors who placed their trust in the credibility of Indonesian law.

The application of the doctrine of state liability due to OOD essentially opens a corridor of justice through repressive efforts by PT TMS to file for civil compensation. Through the mechanism of a lawsuit for damages based on an Unlawful Act by the Authority, the investor has a strong juridical footing to request the state to restore the financial losses incurred. This compensation includes investment costs already spent (sunk costs) during the long licensing and technical exploration stages, which ultimately became futile due to the legal negligence of the relevant ministry.[39]

Consistent recognition of the OOD instrument as a basis for compensation claims holds crucial significance for maintaining the stability of the investment climate on a macro level. If the state is allowed to simply hide behind the excuse of executing an administrative court's annulment decision without providing an instrument or scheme for compensation for its errors, Indonesia risks being classified as a country with a very high level of jurisdictional risk. Global capital market players will perceive that no level of administrative and financial compliance can serve as a guarantor of security for the continuity of their business in Indonesia.[40]

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[38] Law of the Republic of Indonesia Number 25 of 2007 concerning Investment. Article 14. https://peraturan.go.id/id/uu-no-25-tahun-2007

[39] Hasbi, M., Sondakh, J., & Setiabudhi, D. O. "Juridical Analysis of the Differences Between the Contract of Work System and the Mining Business Permit System Viewed from the Position and Authority of the State in the Mining Sector". *Lex Privatum*, p. 8. https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/34716

[40] Abdini, A. N., & Arianti, R. S. (2025). "Impact of Mining Permit Revocation on Contracts of Work and Legal Protection for Investors: A Case Study of PT Tambang Mas Sangihe". *Private & Commercial Law Community (PCLC)*, p. 14.

Therefore, the consistent enforcement of state liability through the OOD mechanism becomes an essential instrument in maintaining the balance between ecological preservation and economic justice. Although the ruling of Supreme Court Decision 650 K/TUN/2022 successfully played a vital role in protecting the vulnerable ecosystem of the Sangihe Islands, a comprehensive resolution still requires follow-up in the form of compensation for administrative defects purely committed by state officials. Such an approach will affirm that progressive environmental protection can go hand in hand with the state's posture as an institution that is fair, proportional, and always responsible for every legal product it issues.

4. Reconstructing Preventive and Repressive Legal Protection for Investors in the Extractive Sector

In The reconstruction of legal protection in the extractive sector has become an urgent necessity following the emergence of disputes that pit investment interests against ecological sustainability, as reflected in the case of PT Tambang Mas Sangihe (PT TMS). From the perspective of investment law, legal protection must not be narrowly interpreted merely as a shield for capital; rather, it must be understood as a mechanism of fair balance between the rights of investors and the state's obligations in maintaining environmental sustainability. This reconstruction effort needs to be directed at two main pillars: preventive protection focusing on the quality of administrative legal products, and repressive protection ensuring the restoration of rights in the event of systemic failure by government authorities.[41]

[41] Abdini, A. N., & Arianti, R. S. (2025). "Impact of Mining Permit Revocation on Contracts of Work and Legal Protection for Investors: A Case Study of PT Tambang Mas Sangihe". *Private & Commercial Law Community (PCLC)*, pp. 1-3.

Preventive legal protection must commence at the pre-licensing stage through the absolute synchronization of sectoral regulations. The lack of synchronization between the Mining Law regime and the Law on the Management of Coastal Areas and Small Islands (the PWP3K Law) in the Sangihe case serves as clear evidence that current preventive protection remains highly fragile. The state, as the licensing authority, holds the primary responsibility to ensure that every legal instrument issued does not collide with other specific legal norms (lex specialis).[42] Without the synchronization of spatial data and integrated regulations, investors will continue to be trapped in uncertainty born from the ambiguity of the state's own policies.

One of the main instruments in the reconstruction of preventive protection is the implementation of comprehensive legal due diligence by government agencies before issuing state administrative decisions. The government must not merely act as a passive administrative facilitator but must become an active verifier, ensuring a "clear and clean" status not only from technical mining aspects but also concerning ecological and sociological suitability. The failure in this initial verification process constitutes a disregard for the General Principles of Good Governance (AUPB), particularly the principle of duty of care, which will ultimately harm the credibility of national investments internationally.[43]

[42] Sudjati, X. Q., & Abidin, I. K. R. (2021). "Abuse of Authority by the Government in Granting Mining Business Permits (IUP) to PT Tambang Mas Sangihe (TMS) in Sangihe Islands Regency". *Jurnal Kawruh Abiyasa*, 1(1), p. 104. https://www.researchgate.net/publication/372184795_PENYALAHGUNAAN_WEWENANG_PEMERINTAH_DALAM_PEMBERIAN_IZIN_USAHA_PERTAMBANGAN_IUP_PADA_PERUSAHAAN_PT_TAMBANG_MAS_SANGIHE_TMS_DI_KABUPATEN_KEPULAUAN_SANGIHE

[43] Arianti, R. S., et al. (2025). "Juridical Analysis of Judges' Considerations in Decision Number 650 K/Tun/2022 in the Dispute over the Revocation of PT. Tambang Mas Sangihe's Business Permit". *Journal of Artificial Intelligence and Digital Business (RIGGS)*, 4(4), p. 4112. https://journal.ilmudata.co.id/index.php/RIGGS/article/view/3920

The philosophical basis for this preventive protection is rooted in Article 3 paragraph (1) of Law Number 25 of 2007 concerning Investment, which establishes legal certainty as the primary principle in the administration of investments. Legal certainty demands consistency between what is promised by statutory regulations and the actual actions taken by public officials. When the state grants an operation and production permit, it implicitly provides a guarantee that all legal requirements have been met. Therefore, reconstructing preventive protection must mandate a guarantee of administrative validity as a form of early protection for investors against potential third-party lawsuits in the future.[44]

Furthermore, strengthening preventive protection also requires redefining the role of the community in the licensing process in ecologically vulnerable areas such as small islands. Community participation is not merely an administrative formality in Environmental Impact Assessment (Amdal) documents but rather a risk mitigation instrument for investors.[45] By substantively involving the community from the outset, the potential for legal conflicts leading to permit annulment in court can be minimized. Transparency in the licensing process in coastal areas and small islands is key to creating a more stable investment ecosystem with minimal juridical resistance.

Turning to the second pillar, the reconstruction of repressive legal protection becomes crucial when preventive mechanisms fail to avert administrative defects. The current repressive protection, which relies solely on permit annulment by the Administrative Court without an

[44] Law of the Republic of Indonesia Number 25 of 2007 concerning Investment. Article 3 paragraph (1). https://peraturan.go.id/id/uu-no-25-tahun-2007

[45] Marasi, W., Frederik, W. A. P. G., & Pinasang, R. (2023). "Legal Protection for the Rights of Communities in Coastal Areas and Small Islands against Mining Activities in North Sulawesi". *Jurnal Tana Mana*, 4(2), p. 12. https://ojs.staialfurqan.ac.id/jtm/

automatic compensation scheme, is deemed inadequate for capital-intensive extractive investors. In a fair legal constellation, an investor whose operational rights are lost due to the state's procedural errors must be provided with an effective legal avenue to recover their financial losses. Repressive protection must ensure that a permit annulment resulting from government negligence does not become a burden of loss borne entirely by the company.[46]

The issue of the executorial power of administrative court decisions is often a weak point in repressive protection in Indonesia. Many rulings that annul permits are not accompanied by clear steps for restoring the private rights of the affected investors. This condition creates a protection vacuum where investors are left in a "hanging" position without a clear legal status after their permits are annulled by the court. Consequently, the reconstruction of repressive law must encompass the integration of administrative annulment decisions with a faster and more responsive civil investment dispute resolution mechanism.[47]

The instrument of Onrechtmatige Overheidsdaad (OOD) must be promoted as the basis for state liability in mining licensing disputes. Through the doctrine of OOD, the state is positioned as a legal subject fully responsible for the destruction of investors' "legitimate expectations" caused by juridically flawed decisions. This recovery covers not only material losses in the form of exploration costs already expended (sunk costs) but also the restoration of the investor's reputation in the global

[46] Sharon, G. S. (2024). "How to claim compensation for unlawful acts by the government." *Hukumonline*. https://www.hukumonline.com/klinik/a/cara-menuntut-ganti-rugi-atas-perbuatan-melawan-hukum-oleh-pemerintah-lt675868895c6de/

[47] Alfaridzi, A. M., Naufal Aflah, M. H., & Rabbani, N. (2023). "Executorial Power of Administrative Court Decisions (Analysis of the Implementation of Administrative Court Decisions in the PT. TMS Mining Licensing Case)". *Jurnal Dinamika Hukum*, 24(2), p. 48. https://doi.org/10.35315/dh.v24i2.9328

market. This approach aligns with the core principles of protecting foreign and domestic investments, demanding fair and equitable treatment for business actors facing unilateral state administrative errors.[48]

Differences in legal protection between the Contract of Work (KK) and Mining Business Permit (IUP) systems also need to be harmonized within this reconstruction framework. Although the state's position in the IUP system is more dominant as the licensing authority, it does not mean the state can act arbitrarily without considering the detrimental impacts on permit holders. Investor rights guaranteed in Article 14 of the Investment Law, such as the certainty of rights and law, must apply universally to all mining investment models.[49] The state must not use the shift in the licensing regime as a pretext to evade its fundamental legal protection obligations.

The reconstruction of repressive protection must also touch upon the aspect of guaranteeing investment security on small islands, which possess specific legal characteristics. Supreme Court Decision Number 650 K/TUN/2022 has provided a new direction indicating that environmental interests are the top priority; however, this must be accompanied by a clear exit strategy policy for investors. The government must provide specific mitigation or compensation schemes for investments halted due to changes in legal interpretation or the discovery of new ecological facts midway. Without a definitive guarantee of recovery, the extractive sector in

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[48] Abdini, A. N., & Arianti, R. S. (2025). "Impact of Mining Permit Revocation on Contracts of Work and Legal Protection for Investors: A Case Study of PT Tambang Mas Sangihe". *Private & Commercial Law Community (PCLC)*, p. 11.

[49] Hasbi, M., Sondakh, J., & Setiabudhi, D. O. "Juridical Analysis of the Differences Between the Contract of Work System and the Mining Business Permit System Viewed from the Position and Authority of the State in the Mining Sector". *Lex Privatum*, p. 10. https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/35451

archipelagic regions will lose its attractiveness due to overly fluctuating legal risks.[50]

The integration of the risk-based licensing system (OSS-RBA) must also be accompanied by the strengthening of legal risk insurance systems or government guarantee funds for cases of permit annulment caused by administrative errors. This will provide investors with a sense of security that their capital is protected from bureaucratic malpractice. Such reconstruction demands courage from legislators to explicitly acknowledge the state's financial liability in every administrative failure that has broad impacts. Bureaucratic professionalism can only be elevated if every administrative error carries tangible legal and financial consequences for the institution involved.[51]

Ultimately, building an ideal legal protection system in the extractive sector requires harmony between economic interests and ecological sustainability. The state must be able to stand firm as both a meticulous regulator and a responsible protector of investments.[52] By strengthening the preventive foundation through regulatory synchronization and fortifying the repressive pillars through effective state liability mechanisms, Indonesia can cultivate an investment climate that is not only financially competitive but also juridically authoritative.[53] This balance is the key to ensuring that

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[50] Supreme Court of the Republic of Indonesia Decision Number 650 K/TUN/2022. https://putusan3.mahkamahagung.go.id/

[51] Abdini, A. N., & Arianti, R. S. (2025). "Impact of Mining Permit Revocation on Contracts of Work and Legal Protection for Investors: A Case Study of PT Tambang Mas Sangihe". *Private & Commercial Law Community (PCLC)*, p. 14.

[52] Farhan, A., & Rasji, R. (2024). Legal Protection for Investors Against Revocation of Mineral and Coal Mining Business Licenses. Kertha Semaya: Journal of Legal Science, doi:10.24843/KS.2024.v12.i11.p21 12(11), 3009-3019.

[53] Arianti, R. S., et al. (2025). "Juridical Analysis of Judges' Considerations in Decision Number 650 K/Tun/2022 in the Dispute over the Revocation of PT. Tambang Mas Sangihe's Business Permit". *Journal of Artificial Intelligence and Digital Business (RIGGS)*, 4(4), p. 4115. https://journal.ilmudata.co.id/index.php/RIGGS/article/view/3920

natural wealth is managed equitably, sustainably, and with certainty for all stakeholders involved.

Conclusion

The The analysis of Supreme Court Decision Number 650 K/TUN/2022 underscores the critical intersection between investment certainty and ecological sustainability in Indonesia. The annulment of PT Tambang Mas Sangihe's (PT TMS) operation and production permit reveals that the invalidity of the administrative act was rooted in a fundamental substantive defect. By disregarding the imperative prohibition of massive mining on small islands as stipulated in the PWP3K Law, the government failed to synchronize sectoral regulations. This administrative negligence not only rendered the permit void from the outset but also critically undermined the legal certainty and legitimate expectations that are expressly guaranteed to the investor under the Investment Law.

Furthermore, this study concludes that the issuance of a juridically defective permit by the state apparatus constitutes an Unlawful Act by the Government (Onrechtmatige Overheidsdaad). When an investor acts in good faith and complies with all stipulated procedures, the financial and reputational losses resulting from the state's administrative lack of precision should not be borne solely by the business entity. The state is obligated to assume absolute liability for its regulatory errors. Utilizing the Onrechtmatige Overheidsdaad doctrine provides a solid legal foundation for aggrieved investors to pursue civil compensation, ensuring that the state is held accountable for the "false start" it officially legitimized and preventing the state from using environmental protection as an excuse to evade its contractual and administrative responsibilities.

To effectively harmonize environmental preservation with a conducive investment climate, it is imperative to reconstruct both preventive and repressive legal protections in the extractive sector. Preventively, the government must mandate comprehensive legal due diligence, public transparency, and absolute cross-sectoral synchronization before issuing any state administrative decision, thereby preventing the creation of legal traps. Repressively, the legal system must integrate administrative annulments with swift and responsive civil compensation mechanisms. By implementing these reconstructions, Indonesia can uphold its constitutional duty to protect vulnerable archipelagic ecosystems while simultaneously ensuring fair, equitable, and legally certain treatment for all investors.

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