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THE SETTLEMENT OF TWO CONTRADICT RECONSIDERATION VERDICTS IN DIFFERENT CHAMBERS (CASE STUDY OF COURT'S VERDICT NUMBER 162 PK/TUN/2015 AND 1053/PDT/2019)

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Abstract

Judicial review might be submitted by the parties as a form of objection to the judge's decision which has permanent legal force. In practice, it is possible for an object of dispute to be filed in two chambers of courts that cause two sentences with permanent legal force contradict each other as in between case Number 162 PK/TUN/2015 and 1053/PDT/2019. The two cases decide which party has the right to manage a mining business permit area, but when the two decisions are about to be executed, the two Mining Business Permit Areas between PT Pasir Prima Coal Indonesia (PT PPCI) and PT Mandiri Sejahtera Energindo Indonesia (PT MSEI) will still overlap. This paper uses a normative empirical research method with a judicial case study approach, which its normative research based on the provisions of the applicable laws and regulations is carried out in parallel by dissecting several related court decisions. The legal materials used in this study are in the form of books containing the opinions of legal practitioners and academics, legislations, and of course the court's decisions. In their considerations, the Panel of Judges in the general court room focuses on seeking material truth, and the Panel of Judges in the state administrative court looks at the administrative process in the issuance of a state administrative decision. The Chief Justice of the Supreme Court through his letter explained that the case could go through a second review where the composition of the panel of judges consisted of the chairman of the Supreme Court, the Supreme Court justices from civil chamber, and the Supreme Court justices from the state administrative law chamber, as stated in the Supreme Court Circular Number 5 of 2014 and Circular Letter of the Supreme Court Number 4 of 2016.

Keywords: Reconsideration Verdict, Sentence's Dispute Between Two Chambers, Mining Business Permit Area

A. Background

The consequence of a state of law is the role of the state in the administration of people's welfare. This then results in the state through the government having great powers and duties to ensure the achievement of such welfare. One form of people's welfare is the achievement of a sense of justice in society, which can be accessed by all citizens through the judiciary institution.

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The great burden and power possessed by the government needs to be balanced with the implementation in the field of supervision. Indonesia, which declared itself as a state of law, has adopted the concept of supervising the administration of the government through a state administrative court based on Law Number 5 of 1986 concerning the State Administrative Court as the legal basis. It is stated in the objective of the establishment of the State Administrative Court, namely to supervise the implementation of the duties and authorities of the State Administration official body.[1] In carrying out public legal actions, state administrative bodies/officials have a role as public law actors who exercise public legal power which is incarnated in the quality of authorities such as state administrative bodies and various positions that are entrusted with the authority to use public power.[2]

Apart from being a state of law, Indonesia is one of the countries that is blessed with a wealth of diverse natural resources. One of the many natural resources contained in Indonesia is the wealth of mining materials. Mining materials such as minerals and coal are natural resources that cannot be renewed, so their arrangement must be done in such a way that they can be efficient and last for a long time and in accordance with the mandate of the 1945 Constitution for the greatest prosperity of the people.

The management of mining wealth in Indonesia is carried out by the Government based on the provisions in the laws and regulations. In Indonesia itself, there are three mining concession licensing regimes based on applicable laws, namely Law Number 11 of 1967 concerning Basic Mining Provisions, Law Number 4 of 2009 concerning Mineral and Coal Mining, and Law Number 3 Year 2020 concerning Amendments to Law Number 4 Year 2009 concerning Mineral and Coal Mining.

During Law 11 of 1967, permits for entities/individuals to carry out mining businesses were known as mining authorizations,[3] where the government could appoint another party as a contractor to carry out mining management through a work agreement known as a Contract of Work and a Coal Mining Concession Work Agreement. (PKP2B).[4] The mining management permit was later changed to a Mining Business Permit (IUP)[5] in the era of the enactment of Law no. 4 of 2009 which was later amended by Law no. 3 of 2020, provided that the existing KK and PKP2B at that time were still in effect. 11 of 1967 remains in effect until

[1] Ali Abdullah, *Teori & Praktik Hukum Acara Peradilan Tata Usaha Negara Pasca-Amandemen* (Jakarta: Prenada Media Group, 2015).
[2] Y. Sri Pudyatmoko and W. Riawan Tjandra, *Peradilan Tata Usaha Negara Sebagai Salah Satu Fungsi Kontrol Pemerintah* (Yogyakarta: Universitas Atma Jaya Yogyakarta, 1996).
[3] Pasal 2 Huruf (i) Undang-Undang Nomor 11 Tahun 1967 tentang Ketentuan-Ketentuan Pokok Pertambangan.
[4] Pasal 10 Ayat (2) Undang-Undang Nomor 11 Tahun 1967 tentang Ketentuan-Ketentuan Pokok Pertambangan.
[5] Pasal 1 Angka (7) Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.

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the term of the agreement or contract expires[6] and is guaranteed an extension into an IUPK as a continuation of its operations.[7]

One of the problems that generally occurs in mining licensing is the problem of overlapping Mining Business Permit Areas (WIUP). In the statutory regulations in the field of mineral and coal mining, it is stated that two mining business license areas with the same commodity may not overlap each other.[8] In the event of land overlapping, one of the WIUPs must be reduced for those that partially overlap, or revoked for those that experience complete overlap by applying a *first come first served application system for area reserves*.[9]

An example of the dispute raised in this paper is the dispute over the mining permit area overlap between PT Pasir Prima Coal Indonesia (PT PPCI) and PT Mandiri Sejahtera Energindo Indonesia (PT MSEI). The two companies are the company whose posessed Mining Business Permits in the North Penajam Paser Regency area based on a decree issued by the North Penajam Paser Regent. The existence of these overlapping problems certainly causes the two IUP owners to disagree and then take the problem to a court institution for resolution. The decision of the Supreme Court of the Civil Chamber stated that PT PPCI had the right to the WIUP which was the object of the *a quo dispute* and stated that the PT MSEI decree had no legal force, while the decision of the Supreme State Administrative Court annulled and revoked the three State Administrative Decisions that were the object of a lawsuit related to PT PPCI's licensing and permit revocation of PT MSEI's license upgrade.

The process of resolving the Mining Business Permit Area Dispute in court between PT PPCI and PT MSEI began with the issuance of sentence number 278/Pid.B/2011/PN.TG dated May 8, 2012 with the defendant on behalf of Sdr.Jono who was proven guilty of forgery *(vervalsen)* regarding the authenticity or falsity of administrative documents in the form of a Production Operation mining business permit Number 545/82-IUP-OP-DISTAM/V/2013 concerning the approval of an increase in an Exploration IUP to a Production Operation IUP of PT MSEI. The sentence already has permanent legal force. After the sentence arose, PT PPCI and PT MSEI sued each other in Administrative chamber and general court chamber of Supreme Court. The matrix of the verdicts issued in the two cases is as follows:

[6] Pasal 169 Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.
[7] Pasal 169A Ayat (1) Undang-Undang Nomor 3 Tahun 2020 tentang Perubahan Atas Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.
[8] Pasal 5 Ayat (2) Peraturan Menteri Energi dan Sumber Daya Mineral Nomor 43 Tahun 2015 tentang Tata Cara Evaluasi Penerbitan Izin Usaha Pertambangan Mineral dan Batubara.
[9] Pasal 12 Peraturan Menteri Energi dan Sumber Daya Mineral Nomor 43 Tahun 2015 tentang Tata Cara Evaluasi Penerbitan Izin Usaha Pertambangan Mineral dan Batubara.

TUN	Civil
Object: a. Decree (SK) of Revocation of Exploration Mining Permit to PT Maesa Sejahtera Energndo Indonesia's Mining Business License (IUP OP) (545/02-PENCABUTAN/DISTAM/XII/2013) b. Decree of Revocation of PT PPCI Exploitation IUP Rejection (545/04-PENCABUTAN/DISTAM/XII/2013) c. Decree of to adjust exploitation Mining Authorization (KP) to IUP OP PT PPCI (545/01-PS/IUP-OP/DISTAM /I/2014)	**Object:** (relate to WIUP): Decree of to adjust exploitation Mining Authorization to IUP OP of PT PPCI (545/01-PS/IUP-OP/DISTAM /I/2014) Decree to increase Exploration IUP to IUP OP (545/82-IUP-OP/DISTAM/V/2013) of PT MSEI
Verdicts: a. **02/G/2014/PTUN-SMD** dated July 22, 2014 **Decisions:** Declaring void and ordering the Regent of North Penajam Paser to revoke the three objects as mention above b. **256/B/2014/PT.TUN.JKT** dated November 4, 2014 Strengthening the Decision of the Samarinda Administrative Court c. **136 K/TUN/2015** dated 22 April 2015 d. **162 PK/TUN/2015** dated March 3, 2016 The petition for Reconsideration has been rejected, so as to strengthen the decision of the Cassation in *conjunction with* the decision on appeal, *in conjunction with the*	**Verdicts:** a. **10/Pdt.G/2015/PN.TGT** dated January 18, 2016 **Decisions (In summary):** • Declaring that PT PPCI is entitled to the WIUP in the decree to adjust the exploitation KP to IUP OP PT PPCI (545/01-PS/IUP-OP/DISTAM/I/2014) • Declare the decree to increase the Exploration IUP to IUP OP PT MSEI (545/82-IUP-OP/DISTAM/V/2013) b. **112/PDT/2016/PT.SMR** dated 27 September 2016, upheld the decision of the Tanah Grogot District Court c. **906 K/Pdt/2017** dated 29 May 2017, upheld the decision of Samarinda High Court

decision of the Samarinda Administrative Court	d. **1053 PK/Pdt/2019**, dated December 16, 2016, rejected the the petition for Reconsideration, and strengthening the district, high, and supreme court's decision
Consequence: The decision of the Supreme Court to cancel and revoke the Decree for the revocation of the IUP OP of PT MSEI and the Decree for the adjustment of the KP Exploitation to become the IUP OP of PT PPCI, so that the SK for the adjustment of the exploration IUP to IUP OP of PT MSEI is alive again and the SK for the adjustment of the KP Exploitation to the IUP OP of PT PPCI is revoked	**Consequence:** 1. The regent was declared to have committed an unlawful act because he had issued a mining permit for PT MSEI, 2. SK PT MSEI has no legal force, and 3. PT PPCI is entitled to the WIUP in dispute.
Winning party: PT MSEI	**Winning party:** PT PPCI

B. Identified Problems

The existence of the two contradicting reconsideration verdict that have permanent legal force as referred above, causes the overlap between the two WIUPs still remain. Therefore, it is necessary to resolve the WIUP's dispute issues in order to achieve good mining governance as an effort to fulfill the people's mandate to manage natural resources that affect the lives of many people in order to achieve people's welfare.

Therefore, this paper will discuss what kind of consideration taken by the judges in the general court chamber and the administrative court chamber in deciding these WIUP disputes conflict with each other, and discuss how the WIUP dispute resolution between PT PPCI and PT MSEI is based on the existence of the point of contact between the two decisions of different judicial chambers which have permanent legal force.

C. Research Methods

The research method used in this paper is empirical normative research with a *judicial case study approach* because of a conflict or contradiction or dispute has been intervened by the court in its resolution or settlement. In this study, there is a combination of normative approaches based on the provisions of the applicable laws and regulations, by dissecting several related court decisions. The legal materials used in this research are of books containing the opinions of

legal practitioners and academics, legal acts and legislations, and of course, the court's verdicts from the district and state administrative court, high court, and supreme court.

D. Research Findings and Discussions

1. Consideration of the Judicial Review Judge Number 162 PK/TUN/2015

After the issuance of the criminal verdict against Defendant Jono regarding the falsification of PT MSEI's administrative licensing documents, precisely on February 3, 2014, PT MSEI sued the North Penajam Paser Regent and PT PPCI as Intervention Defendants at the Samarindas State Administrative Court, with the object of dispute as described in the table, in summary, the licensing of PT PPCI and the revocation of the increase in the IUP OP stage of PT MSEI. The lawsuit was granted by the Panel of Judges through the decision number 02/G/2014/PTUN-SMD which was upheld by the appeal decision number 256/B/2014/PT.TUN.JKT, and also confirmed by the Cassation decision number 136 K/TUN/2015, until disputed objects are declared void and must be revoked by the Regent of North Penajam Paser.

The review was submitted by PT PPCI for the issuance of the cassation decision Number 136 K/TUN/2015 with case register number 162 PK/TUN/2015. In its decision, the Panel of Judges decided to reject the application for judicial review with the main consideration that there were no legal errors applied by the *judex factie* judges and *judex juris judges*.

In its consideration, the panel of *judex juris* of reconsideration verdict repeated the considerations of the panel of judges at the first level, whose reviewed the object dispute one by one:

a. The first dispute object is the Revocation of Exploration Improvement (IUP) for Operations (IUP) of PT MSEI with number 545/02-PENCABUTAN/DISTAM/XII/2013.

Through the first-level verdicts at the Samarinda State Administrative Court to the Cassation's file, there is cross examination between the parties, where the Defendant has submitted evidence by documents of the decision of the Tanah Grogot District Court verdict number 278/Pid.B/2011/PN.TG, May 8, 2012 which already has permanent legal force, but the verdict of the criminal case only shows that the main point of the criminal trial case is Jono's actions. S. Sos as the convicted who was accused of committing a criminal act (*strafbaarfeit*) of falsifying (*vervalsen*). The Panel of Judges of the *a quo* case opinion state that the criminal verdict 278/Pid.B/2011/PN.TG does not show any test results regarding the authenticity or

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falsity of an administrative document in the form of a Production Operation Mining Business License Number: 545/82-IUP-OP-DISTAM/V/2013 concerning Approval of Exploration Mining Permit to Production Operation Mining Permit to PT. Mandiri Sejahtera Energindo Indonesia which later became the reason for issuing administrative products in the form of evidence which became the object of dispute 1.

According to the Panel of Judges at the Administrative Court, the examination of a criminal act (*strafbaarfeit)* allegedly committed by someone related to the issuance of administrative products does not automaticly relate (*mutatis mutandis)* affects the validity of a public legal act. In the administrative law paradigm, testing of government actions (*bestuursrechandeling*) includes testing on the basis of validity (*rechtmatigheidstotsing*) and on the authority possessed by the Government in carrying out binding actions in general (*rechtmatigheid van bestuur*) so that in the *a quo case*, there is a criminal verdict against Jono did not *mutatis mutandis* cancel the issuance of the admininstrative decree on the object of the *a quo dispute.*

The criminal verdict does not show the results of testing the validity of the administrative documents owned by PT. Mandiri Sejahtera Energindo Indonesia, however, the *a quo* criminal judgment imposes that the documents are still attached as part of the case file so that in substance the administrative documents are still valid as long as they have not been canceled by the administrative court or the issuing party.

b. Regarding the object of dispute 2, a Decree on the Revocation of the Rejection of the Exploitation IUP of PT PPCI (545/04-PENCABUTAN/DISTAM/XII/2013), the panel of judges considered that the administrative requirements that must be fulfilled by PT. Pasir Prima Coal Indonesia as stated in the legal considerations of the Administrative Court Decision Number 16/G/2011/PTUN.SMD *jo* 328 K/TUN/2012[10] has a limited time provision as regulated in Government Regulation Number 23 of 2010[11] at least five of them, including:

[10] Putusan 16/G/2011/PTUN.SMD *jo* 30/B/2012/PT.TUN.JKT *jo* 328 K/TUN/2012

[11] The Panel of Judges is of the opinion that PT PPCI as the owner of the IUP has not fulfilled the administrative requirements after the decision 328 K/TUN/2012 has permanent legal force. Moreover, with the adjustment of the Exploitation Mining Authorization permit to become PT PPCI Production Operation IUP (as the object of the third *a quo case)*, PT PPCI is required to fulfill the requirements as stated in Article 23 and Article 24 of Government Regulation Number 23 of 2010 concerning the Implementation of Mining Business Activities. Minerals and Coal.

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1. Payment of fixed fees and guarantees of seriousness;
2. The reclamation guarantee, in this case based on the letter from the Regional Secretariat of North Penajam Paser Regency Number 545/389/Tu-Pimp/330-Eko dated August 21, 2009 regarding the third warning for Depositing Contributions and Licensing Obligations for Mining Authorization;
3. Quarterly and Annual Report;
4. Implementation of reclamation of former mining areas that have been exploited by PT PPCI;
5. Social problems with society.

This causes a condition that if PT PPCI does not fulfiled the administrative requirements, PT PPCI has no longer legal right to apply for a Production Operation IUP.

This situation is supported by the absence of evidence from the Regent of North Penajam Paser and PT PPCI which shows the fulfillment of the obligations and administrative provisions that must be carried out by PT PPCI during the trial.

c. The third object of the dispute is the Decree on the adjustment of the exploitation KP to IUP OP PT PPCI (545/01-PS/IUP-OP/DISTAM/I/2014). This third disputed object is examined derivatively by testing the previous disputed objects (first and second dispute objects) because they are interrelated, and thoroughly examine and describe the interrelationships of each dispute object. During the civil service response process during the trial[12], it was discovering that there was an overlap between PT MSEI's WIUP and PT PPCI's WIUP. With the cancellation of the Revocation of Exploration Improvement (IUP) to PT MSEI Operation (IUP) (as the first dispute object on the *a quo* case), the Approval for Adjustment of Mining Authorization (KP) for Exploitation into Mining Business Permit (IUP) Production Operation of PT PPCI is also the object of dispute III in the *a quo* case. must be declared void because one mining business permit area may only be owned by one company.

Based on the above considerations as well as the evidence and statements of witnesses at the trial, the Panel of Judges considers that the actions of the North Penajam Paser Regent in issuing the third object of dispute have violated the provisions of the applicable laws and regulations, namely:

[12] Putusan 02/G/2014/PTUN-SMD, P. 68.

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1. Article 46 paragraph (1), Article 119, and Article 151 paragraph (2) of Law Number 4 of 2009 concerning Mineral and Coal; *Jo*
2. Article 112 of Government Regulation Government Regulation Number 23 of 2010 concerning Implementation of Mineral and Coal Mining Business Activities;
3. Article 61 and Article 62 of the Regulation of the Minister of Energy and Mineral Resources Number 32 of 2013 concerning Procedures for Granting Special Permits in the Mineral and Coal Mining Sector;
4. General principles of good governance.

Based on the considerations above, the panel of judges of the State Administration Chamber in examining the *a quo case* decided to reject the exceptions of the North Penajam Paser Regent as the Defendant and PT PPCI as the Intervention Defendant and declared the three objects of disputed *a quo* cases void and ordered the North Penajam Paser Regent to revoke those objects of dispute.

As result of the verdict to the second and third object of this case, the mining business license area at the coordinates which initially overlapped because there were two permits, became the mining business permit area of PT MSEI itself. besides, even if the Defendant in case Nort Penajam Paser Regent, does not revoke the State Administrative Decree which is the object of the *a quo case* as ordered in the verdict when this verdict already has permanent legal force, then after sixty days after the permanent legal force itself, the objects of *a quo* dispute will no longer have legal force.[13]

2. Council of Judges Considerations for Reconsideration Verdict at General Court Chamber Number 1053 PK/Pdt/2019

As previously described, in the course of the examination process in the general court, the Panel of Judges from the District Court to the Supreme Court of the Civil Chamber declared PT PPCI as the wining party that has the right to manage the mining business permit area which became the core object in the dispute between PT PPCI and PT MSEI, and declared the PT MSEI and Jono has committed an unlawful act in the process of issuing PT MSEI's permits. Based on this decision, the Regent of North Penajam Paser filed a judicial review of the Supreme Court's decision Number 906 K/Pdt/2017. On his memory of appeal to the Supreme Court, the Regent of North Penajam Paser submitted two arguments:

1. Based on the error on *Judex Factie* application of law, and;
2. New evidence (*novum*), as the of Decision Number 162/PK/TUN2015 which issued on March 3, 2016.

[13] Pasal 112 Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara.

However, the panel of judges for the Judicial Review rejected the novum on the base that the decision was not included as the Novum category as referred to in Article 67 b of the Law on the Supreme Court. Article 67 b requires that a novum is evidence found that is decisive in nature which cannot be found at the time the case is examined.[14] Evidence in the form of Decision Number 162/PK/TUN2015 dated March 3, 2016 has been postulated in the cassation memorandum of this case, even the previous decision at the first level up to the cassation has been used as evidence at the *judex factie examination*.

Other reasons related to the judge's negligence or obvious errors also cannot be accepted by the panel of judges for the Review. This is because in the memory of the review PT MSEI as the applicant cannot prove the mistake or error. The panel of judicial review judges considered that the *judex factie* and *judex juris judges* had correctly determined that PT PPCI was the one entitled to the Mining Business Permit Area based on the Decree of the North Penajam Paser Regent Number 545/01-PS/IUP-OP/DISTAM/I/2014 concerning Approval Adjustment of Exploitation Mining Authorization (KP) into Production Operation Mining Business Permit (IUP) to PT Pasir Prima Coal Indonesia on January 3, 2014. The assessment was based on the existence of unlawful acts of Mr. Jono in the criminal case of forging PT MSEI's Mining Power of Attorney, thus making PT MSEI's Mining Authorization permit has no legal force, which automaticly affects the permits issued based on the mining authorization.

At the *judex factie* level, PT MSEI and the other defendants have filed an exception regarding the absolute competence of the court, because the Defendants argue that the issue of the Mining Business License Area is not only about unlawful acts, but also involves the process of issuing a State Administrative Decree. In this case, concerns the Mining Business Permit Area which is also listed in the KTUN which is the object of the decision 162 PK/TUN/2015 in *conjunction with* 02/G/2014/PTUN-SMD. The Defendants have also made the decision of the State Administrative Court as one of the evidences in the *a quo case.* Based on this opinion, the Defendants considered that the examination of the case should be the authority of the State Administrative Court, not the general court.

On the exception of absolute competences, the panel of judges in the general court chamber pointing on the purpose of seeking material truth. This is stated in their considerations in decision number 02/G/2014 /PTUN-SMD page 165 where the panel of judges considered whether it was true that the Regent of North Penajam Paser and PT MSEI had committed an unlawful act in obtaining a Mining Authorization. With these considerations and evidence of the decision of the Grogot Land Court

[14] Pasal 67 Huruf (b) Undang-Undang Nomor 14 Tahun 1985 tentang Mahkamah Agung.

Criminal Decision Number 278/Pid.B/2011 dated May 8, 2012 concerning the sentencing of Br. Jono regarding the counterfeiting of PT MSEI's Mining Authorization, the *judex factie* and *judex juris* civil chamber judges decided that the right to manage the Mining Business Area which is the object of the *a quo case* is PT PPCI.

3. Settlement of the Tangent Point of Two Contradicting Verdicts from Two Different Chambers of Court

Based on the explanation regarding what is the basis for the consideration of the judges of the two judicial chambers, it can be concluded that the panel of judges decides the case in order to obtain the truth, both administratively and materially. Of course, in terms of examining *a quo case*, it cannot be separated from the authority to adjudicate or the competence of the court in examining cases, both absolute and relative.

The Law on Judicial Power act states that there are four judicial environments under the auspices of the Supreme Court:[15]

a. General court, which has the authority to adjudicate criminal cases, both general and specific crimes, as well as civil cases, both general and commercial.[16]
b. Religious courts have the authority to adjudicate cases for Indonesian citizens who embrace Islam related to marriage, inheritance (including wills and grants based on Islamic law), waqf, shadaqah, and Sharia economics.[17]
c. Military courts, adjudicate criminal cases in which the defendants consist of Indonesian National Armed Forces Soldiers based on certain ranks.[18]
d. The state administrative court has limited authority to adjudicate state administrative disputes.

According to Yahya Harahap,[19] the division of jurisdiction to adjudicate is based on the division contained in Article 10 paragraph (1) of Law No. 14 of 1970 which is still relevant:

a. Based on the environment of authority;
b. Each environment has certain adjudicating authority or jurisdictional diversity;
c. This particular authority creates absolute authority or absolute jurisdiction in each environment in accordance with the subject matter of jurisdiction;

[15] Pasal 18 Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.
[16] Pasal 50-51 Undang-Undang Nomor 2 Tahun 1986 tentang Peradilan Umum.
[17] Pasal 49 Undang-Undang Nomor 47 Tahun 1989 tentang Peradilan Agama.
[18] Pasal 40 Undang-Undang Nomor 31 Tahun 1997 tentang Peradilan Militer.
[19] Yahya Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*, Second Ed (Jakarta: Sinar Grafika, 2017).

d. Therefore, each environment is only authorized to adjudicate a limited number of cases assigned to it.

Soemaryono and Anna stated that in civil procedural law, the object of a lawsuit includes acts against the law and breach of contract, while in the procedural law of state administrative courts, the object of the lawsuit is *beschikking*.[20] From this definiton, it is clear that if the object of the lawsuit is a State Administrative Decree, then the case should be examinate in State Administrative Court.[21]

Abdullah[22] explained that the authority of the State Administrative Court is only limited to examining, deciding and resolving State Administrative disputes concerning the invalidity or invalidity of decisions/stipulations issued by the State Administration Agency or Official. The conclusion is obtained from the mention and elaboration in the provisions of laws and regulations such as Article 1 point 10 in the Second Amendment to the Law on State Administrative Courts:

> "The State Administrative Court is tasked with examining state administrative disputes that arise in the field of state administration between persons or civil legal entities and state administrative bodies or officials, both at the center and in the regions, as a result of the issuance of state administrative decisions, including employment disputes based on statutory regulations. valid invitation."

And Article 53 of Law Number 9 of 2004:

> “State administrative dispute is a dispute that arises between a person or a civil legal entity and a State Administration agency or official submitted through the State Administrative Court concerning the invalidity or invalidity of a decision or/stipulation issued by the State Administration Agency or Official.”

However, many parties then filed lawsuits for the losses suffered as a result of the issuance of the state administrative decisions in civil courts. This cannot be declared completely wrong, because the existence of a civil court also aims to resolve disputes that arise between members of the community, including the abuse of authority by the authorities that harms certain parties[23] as the basis for filing a civil lawsuit relating to a mining

[20] Soemaryono and Anna Erliyana, *Tuntunan Praktik Beracara Di Peradilan Tata Usaha Negara* (Jakarta: Primamedia Pustaka, 1999).
[21] Pasal 1 Angka (10) Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara.
[22] Abdullah, *Teori & Praktik Hukum Acara Peradilan Tata Usaha Negara Pasca-Amandemen.*
[23] Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan.*

business permit as in the case 10/Pdt.G/2015/PN.TGT in *conjunction with* 1053 PK/Pdt/2019.

Zakir A in the Technical Working Meeting of the Supreme Court of the Republic of Indonesia said that the problem of the point of contact between the administrative apparatus and the general judiciary often occurs, and is a problem that must be resolved first before the judge examines the case.[24] One of the differentiators that sometimes becomes a point of contact between the two courts is the object of dispute in the lawsuit. As in the case of land where the object of dispute is in the form of property rights. If a lawsuit regarding land is submitted to the General Court and the state administrative court at the same time, then what is the authority of the State Administrative Court is the certificate, regarding the issuance procedure whether it is in accordance with the applicable laws and regulations or not. Meanwhile, if the dispute is related to the ownership of the land, it becomes the authority of the General Court.

In the case of cases 162 PK/TUN/2015 and 1053 PK/PDT/2019, the main object is the mining business permit area, where the WIUP is listed in the decision letter from the permit issuer in the form of an IUP. In contrast to land rights where there is an element of ownership in it, IUP is not the property or boedel of property. For example, land rights can be guaranteed in the form of mortgage rights that can be used to pay off certain debts.[25] Mining business permits and special mining business permits (IUPK) cannot be guaranteed to other parties, including their mining commodities[26] and cannot be transferred to other parties without the approval of the Minister.[27] The restrictions on the nature of the IUP are in line with the characteristics of *beschikking* according to Asmuni:[28]

a. Is a government legal action;
b. Such actions are in the domain of public law;
c. Such action is unilateral;
d. Based on special or special authority;
e. Determine rights and obligations.

It has been stated by Soemaryono and Anna, if the object of the lawsuit is *beschikking*, then it is the object of a lawsuit in the State Administrative Court, while acts against the law (tort) and default are

[24] Ibid, P. 230-231.
[25] Pasal 1 Angka (1) Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda yang Berkaitan Dengan Tanah.
[26] Pasal 93C Undang-Undang Nomor 3 Tahun 2020 tentang Perubahan Atas Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.
[27] Pasal 93 Undang-Undang Nomor 3 Tahun 2020 tentang Perubahan Atas Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.
[28] Asmuni, *Konsep Pelaksanaan Keputusan Tata Usaha Negara: Penundaan Pelaksanaan Keputusan Tata Usaha Negara Oleh Pengadilan Tata Usaha Negara* (Malang: Setara Press, 2017).

objects in a civil lawsuit. In case number 162 PK/TUN/2015, PT MSEI sued the Regent of North Penajam Paser to revoke PT PPCI's license, while in case 1053 PK/PDT/2019 PT PPCI sued the Regent of North Penajam Paser for committing an unlawful act because it had issued a permit for PT MSEI even though there has been a criminal decision with permanent legal force on behalf of the convicted Jono in falsifying *(vervalsen)* the authenticity of administrative documents in the form of increasing the Exploration IUP to Production Operation IUP to PT MSEI.

The two judicial review decisions, both case number 162 PK/TUN/2015 and 1053 PK/PDT/2019 PT PPCI have a basis for a lawsuit in accordance with the competence of each court. However, because of the two verdicts already has legal force, the two WIUP PT MSEI and PI PPCI again overlap with the same commodity.

In this regard, the Deputy Chief Justice of the Supreme Court of the Republic of Indonesia for the Judicial Sector[29] referred to two circulars of the Supreme Court, which are stated in the Compilation of Formulations of the results of the Plenary Meeting of the Supreme Court of the Republic of Indonesia:[30]

1. Circular Letter of the Supreme Court Number 5 of 2014 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber of the Year 2014 as a Guide to the Implementation of Duties for the Court. In the plenary meeting which was held on 9-11 October 2014, the Supreme Court Justices at the State Administrative Chamber agreed that:[31]

> "In the event that a case contains a point of contact between the judicial environment, it is examined and decided by a different judicial environment even to the point of a reconsideration decision, while the decision between the judicial circles is different from one another, the party or parties to the litigation may submit the second review which is examined by the Joint Inter-Chamber of Chambers of Commerce, whose chairman of the assembly is from the leadership element of the Supreme Court."

[29] Pendapat Hukum Mahkamah Agung Nomor 09/WKMA.Y/III2019.
[30] Asmuni, *Konsep Pelaksanaan Keputusan Tata Usaha Negara: Penundaan Pelaksanaan Keputusan Tata Usaha Negara Oleh Pengadilan Tata Usaha Negara*.
[31] Angka (5) Surat Edaran Mahkamah Agung Nomor 5 Tahun 2014 tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2014 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan.

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2. Circular Letter of the Supreme Court Number 4 of 2016 concerning the Implementation of the Formulas of the Results of the Plenary Meeting of the Supreme Court Chamber of 2016 as a Guide to the Implementation of Duties for the Court. The Plenary Meeting was held on 23-25 October 2016, the Supreme Court Justices of the Civil Chamber, agreed to:[32]

> "For the sake of justice, a second request for judicial review of two decisions with permanent legal force, which contradict each other and one of them is a judicial review decision, can be accepted formally even though the two decisions are at different levels of justice, including criminal decisions, religion, and state administration."

This provision is in addition to item 2 of the Supreme Court Circular Letter No. 10 of 2009 dated June 12, 2009 concerning the Application for Judicial Review.[33]

From the two regulations in the Supreme Court Circular, the disputing parties, in this case PT PPCI and PT MSEI, can take a second judicial review which will be examined by the Joint Chambers of Chambers and its assembly chaired by the leadership of the Supreme Court.

E. Conclusion

In its decision on the dispute over the Mining Business Permit Area between PT PPCI and PT MSEI, each chamber, both the State Administration and the Civil Chamber, has its considerations. The panel of judges of the State Administrative Chamber considered the administrative correctness in the issuance of the three case objects in the form of a PT PPCI permit and a PT MSEI permit:

a. Object of the first dispute is the Revocation of Exploration Improvement (IUP) for Operations (IUP) of PT MSEI with number 545/02-PENCABUTAN/DISTAM/XII/2013. The Panel of Judges in the *a quo case is of the* opinion that the criminal verdict 278/Pid.B/2011/PN.TG does not show any test results regarding the authenticity or falsity of an administrative document in the form of a Production Operation Mining Business License Number: 545/82-IUP-OP- DISTAM/V/2013 concerning Approval of Exploration Mining Permit to Production Operation Mining Permit to PT.

[32] Angka (2) Surat Edaran Mahkamah Agung Nomor 10 Tahun 2009 tentang Pengajuan Peninjauan Kembali.
[33] Ibid.

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Mandiri Sejahtera Energindo Indonesia which later became the reason for issuing administrative products in the form of evidence that became the object of dispute 1. Examination of criminal acts (*strafbaarfeit*) allegedly committed by someone related to the issuance of administrative products does not *mutatis mutandis* affect the validity of a public legal act. So that the revocation of the increase in the Exploration IUP to IUP OP PT MSEI through dispute object 1 is not appropriate. Therefore, the Panel of Judges is of the opinion that the object of dispute 1 must be revoked and declared null and void.

b. Regarding the object of dispute 2 in the form of a Decree on the Revocation of the Rejection of the Exploitation IUP of PT PPCI (545/04-PENCABUTAN/DISTAM/XII/2013) , the panel of judges considered that the administrative requirements contained in PP 23 of 2010 increasing the exploration stage to exploitation could not be fulfilled and evidenced in the trial by the Regent of Penajam Paser Utara as the Defendant and PT PPCI as the Intervention Defendant. So, it is appropriate that the Decree on the Rejection of the Exploitation IUP of PT PPCI as object 2 must be revoked and declared null and void.

c. The third object of the dispute is the Decree on the adjustment of the exploitation KP to IUP OP PT PPCI (545/01-PS/IUP-OP/DISTAM/I/2014). The third object is checked derivatively. So, because the objects of the first and second cases were declared null and void, the third object was declared void and revoked.

The civil chamber judges considered that formally, the novum in the form of the cassation decision number 162/PK/TUN2015 cannot be categorized as a novum based on Article 67 of Law Number 14 of 1985 concerning the Supreme Court because the cassation decision was issued after the cassation in the civil chamber was issued. In the *judex factie* level, the panel of judges in the general court chamber has considered the exception to absolute competence argued by the Defendants. In its consideration, the Panel of Judges considered that the main purpose of examination in court was to seek material truth, moreover there had been a criminal decision issued regarding the forgery of permits belonging to PT MSEI which significantly overlapped its WIUP with PT PPCI's WIUP. In the main case, the Panel of Judges of the Civil Chamber also based the criminal verdict on the *verification* carried out by the convict Jono in the issuance of the PT MSEI license, so that in its decision, the Panel of Judges considered that PT PPCI was entitled to the Mining Business Permit Area referred to in the object of the dispute.

For the two decisions which gave contradictory legal consequences, the Supreme Court gave a fatwa to the parties through a letter from the Deputy Chairperson of the Supreme Court of the Republic of Indonesia for Judicial

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Affairs to submit a Second Judicial Review which was examined by a joint Inter-Chamber Joint Assembly, whose chairman of the assembly was from the leadership element of the Court. great. The fatwa is based on the results of the 2014 Plenary Meeting of the Supreme Court of the State Administrative Chamber and the 2016 Plenary Meeting of the Supreme Court of the Civil Chamber.

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