

9 September 2011

AIM: CHL

CHURCHILL MINING PLC  
("Churchill" or "the Company")

**REPORT FROM THE APPEAL TO THE ADMINISTRATIVE HIGH COURT IN JAKARTA**

Further to the announcement of 26 August 2011 Churchill Mining Plc ("Churchill" or "the Company") wishes to advise that the full written judgments (one for each licence) from the appeal to the Administrative High Court in Jakarta have now been translated and are available on the Company's website at [www.churchillmining.com](http://www.churchillmining.com).

As advised previously the Company upon receipt of the official notices of the appeal to the Administrative High Court will move immediately to file a notice of appeal to the Supreme Court of Indonesia.

The Company will provide further updates when available.

**END**

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JAKARTA STATE ADMINISTRATIVE HIGH COURT

PHOTOCOPY OF DECISION

CASE : APPEAL  
NO. : 109/B/2011/PT.TUN.JKT

between

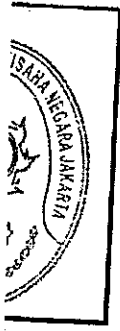
APPELLANT/ : PT. RIDLATAMA TAMBANG  
PLAINTIFF

against

APPELLEE/ : EAST KUTAI REGENT, Cs.  
DEFENDANT

DATE OF DECISION : 8 AUGUST 2011





## DECISION

No. 109/B/2011/PT.TUN.JKT

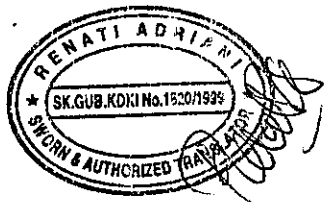
FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

Jakarta State Administrative High Court examining and deciding upon state administrative cases at the appellate level, holding a session in the Jakarta State Administrative High Court building at Jalan Cikini Raya No. 117, Central Jakarta, has passed the following decisions in a case between: -----

**PT. RIDLATAMA TAMBANG MINERAL**, represented by Ir. Anang Mujiantoro, an Indonesian citizen and Director of PT. Investmine Nusa Persada, pursuant to the Deed of the Statement of Meeting Resolutions No. 98 of PT Ridlatama Tambang Mineral, dated 30 June 2010, and Deed of the Statement of Meeting Resolutions reaffirmed as Deed No. 11, dated 4 October 2010, drawn up before Notary RUSNALDY, S.H. notary in Jakarta; having his office at Grand Bintaro No. C. 8/9, Jalan Bintaro Permai Raya 1, South Jakarta, in this matter granting power to:-----

1. ARIS AFFANDI LUBIS, S.H. -----
2. M. FATARURACHMAN, S.H. -----

Both of whom are Indonesian citizens and advocates, having their address at BASREWAN, LUBIS, REKSONEGORO & PARTNERS Law Office, The Belleza Permata Hijau Building, Office Tower No. 9, 21<sup>th</sup> Floor, Jalan Letjend. Soepono No. 34, South Jakarta, by virtue of the Special Power of Attorney No. 0107/BLR/III/2011 dated 7 March 2011, and by virtue of the



Special Power of Attorney dated 14 March 2011; and granting power to: -----

1. IRIL HISWARA, S.H. LL.M. -----
2. MIRA FADHYA, S.H. -----
3. CHALID LOUIS HEYDER, S.H. -----
4. TEGUH P. DARMAWAN, S.H. -----
5. NARENDRA ADIYASA, S.H. -----
6. SUHARSANTO RAHARJO, S.H. -----

All of whom are Indonesian citizens and advocates from Hiswara Bunjamin & Tandjung Law Office, having their address at BRI II Building, 23<sup>th</sup> Floor, Jalan Jend. Sudirman Kav. 44-46, Jakarta 10210, by virtue of the Special Power of Attorney dated 14 March 2011, hereinafter referred to as the ..... **PLAINTIFF/ APPELLANT**;

**VERSUS:**

1. **EAST KUTAI REGENT**, domiciled at Jalan Soekarno Hatta Number 1 Kawasan Perkantoran Bukit Pelangi Sangatta, East Kutai Regency, East Kalimantan Province; in this matter granting power to: -----

1. HAMZAH DAHLAN, S.H., advocate/attorney, having his office at Jalan Jend. Sudirman Komplek Bandar Balikpapan Blok F Number 10 Balikpapan; -----
2. AYU ASTRINI, S.H. advocate/attorney, having her office at Jalan Jend. Sudirman Komplek Bandar Balikpapan Blok F Number 10 Balikpapan;-----
3. H. ZAINUDDIN ASPAN, S.H., M.Si., the Head of the Legal Department of the Secretariat of East Kutai Regency; -
4. NORA RAMADANI, S.H., M.H., Staff member of the Legal Aid Division in the Legal Department of the Regional



Secretariat of East Kutai Regency;-----  
-----

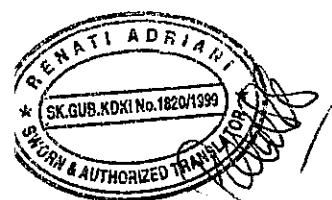
5. ARDIANSYAH, S.H., Staff member of the Legal Aid Division in the Legal Department of the Regional Secretariat of East Kutai Regency; -----  
-----

6. SYAMSUL ALAM, S.H., Staff member of the Legal Aid Division in the Legal Department of the Regional Secretariat of East Kutai Regency; -----  
-----

All of whom are Indonesian citizens, having their office at the Regent/Regional Secretariat Office of the East Kutai Regency, Jalan Soekarno Hatta No.1, Kawasan Perkantoran Bukit Pelangi Sangatta, East Kutai Regency, East Kalimantan Province, by virtue of the Special Power of Attorney No.: 180/183.5/HK/98/X/2010 dated 20 September 2010, and by virtue of the Special Power of Attorney No.: 180/A.183.5/HK/96/X/2010 dated 20 October 2010; hereinafter referred to as the ..... **DEFENDANT/ APPELLE;**

2. **PT. KALTIM NUSANTARA COAL**, represented by Sugiono, an Indonesian citizen and Director of PT Kaltim Nusantara Coal pursuant to the Notarial Deed dated 24 August 2009 No. 26, having his address at Bidakara Tower, 9<sup>th</sup> Floor, Jalan Gator Subroto Kav. 71-73, South Jakarta, in this matter granting power to: -----  
-----

1. HOTMAN PARIS HUTAPEA, S.H., M.Hum. -----
2. ANTHONY L. P. HUTAPEA, S.H., M.H. -----
3. SUBAGIO ARIDARMO, S.H. -----
4. MIEN HERMINI, S.H. -----
5. RYAN AMALBEAN, S.H. -----
6. DONALD R.O. PARDOSI, S.H. -----
7. Ir. NURBAINI JANAH, S.H. -----
8. IMMANUEL SIANIPAR, S.H. -----



9. IDA AYU TRISNAMURTI, S.H. -----  
All of whom are Indonesian citizens, advocates and legal consultants at HOTMAN PARIS & PARTNERS Advocate & Legal Consultant Office, having their address at Summitmas I Building, 18<sup>th</sup> Floor, Jalan Jenderal Sudirman Kav. 61 – 62, Jakarta, by virtue of the Special Power of Attorney dated 19 October 2010, hereinafter referred to as the .....  
**DEFENDANT II IN INTERVENTION/APPELLEE;**

The said Jakarta State Administrative High Court; -----

Having read: -----

1. Stipulation of the Chairman of Jakarta State Administrative High Court No.: 109/B/2011/PT.TUN.JKT dated 7 June 2011 concerning the Appointment of the Council of Judges examining and deciding this case; -----  
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2. Copy of the Decision of the Samarinda State Administrative Court dated 3 March 2011 No.: 31/G/2010/PTUN.SMD; -----
3. Appeal case dossier No.: 31/G/2010/PTUN.SMD, and other letters relevant to this case; ---  
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**REGARDING THE FACTS OF THE CASE**

Having taken into account and accepting the factual account of the case as set out in the decision of the Samarinda State Administrative Court dated 3 March 2011 No.: 31/G/2010/PTUN.SMD, the injunction of which reads as follows: -----

ADJUDICATING :

IN THE EXCEPTION: -----  
-----

- Rejecting the Defendant's exception; -----

IN THE PRINCIPLE ISSUE OF THE CASE: -----  
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1. Rejecting the Plaintiff's claim; -----



2. Sentencing the Plaintiff to pay costs arising from this case in the amount of Rp236,000,- (two hundred thirty-six thousand Rupiah); -----

Whereas, the said Decision was pronounced at a hearing open to the public on Thursday 3 March 2011 in the presence of the parties in dispute namely, the Attorney-at-Law of the Plaintiff/Appellant, the Attorney-at-Law of the Defendant/Appellee, and the Attorney-at-Law of the Defendant II in Intervention /Appellee; -----  
-----

Whereas, the Plaintiff/Appellant on 9 March 2011 filed a request for appeal against the Decision of the Samarinda State Administrative Court dated 3 March 2011 No.: 31/G/2010/PTUN.SMD; -----

Whereas, the Defendant/Appellee and Defendant II in Intervention/Appellee respectively were informed of the request for appeal filed by the Plaintiff/Appellant on 10 March 2011; -----

Whereas, the Plaintiff/Appellant filed a Memorandum of Appeal dated 4 May 2011 received by the Clerk's Office of the Samarinda State Administrative Court on 6 May 2010 as notified and delivered to the Defendant/Appellee and Defendant II in Intervention /Appellee respectively on 6 May 2011, which presented reasons for appeal. These were fully explained in the Memorandum of Appeal which substantially states that it objects to the legal considerations of the Council of Judges of the Court at the First Instance as set out in its decision No.: 31/G/2010/PTUN.SMD dated 3 March which, is explained briefly in the Memorandum of Appeal as follows : -----

In brief, the Memorandum of Appeal filed by the Plaintiff/ Appellant discusses the following matters: -----

- Pursuant to the Law No. 5 of 1986 regarding the State Administrative Judicature Jo. Law No. 9 of 2004 regarding the Amendment to Law No. 5 of 1986 regarding the State Administrative Judicature Jo. Law No. 51 of 2009 regarding the Second Amendments to Law No. 5 of 1986 regarding the State Administrative Judicature ("UPTUN"), the APPELLANT has a right to file a request for the postponement of the execution of the Decision of the East Kutai Regent No.: 540.1/K.443/HK/V/2010 dated 4 May 2010 regarding the revocation of the Decision of the East Kutai Regent No.: 188.4.45/118/HK/III/2009 regarding the Exploitation Mining Business Permit (IUP)



- for PT. Ridlatama Tambang Mineral in an area of 10,000 HA, located at Busang District, East Kutai Regency (“SK Bupati No.: 540.1”) in order to have a final and binding Court Decision (see explanation in point 4.1-4.7 on page 5-8). -----
- The Council of Judges of the Samarinda State Administrative Court (the “**Council of Judges of Samarinda PTUN**”) has been erroneous in granting the request for Intervention filed by PT. Kaltim Nusantara Coal (The “**APPELEE II IN INTERVENTION**” previously the Defendant II in Intervention). The APPELEE II IN INTERVENTION clearly has **NO** interest as an intervening party to this case and therefore the Council of Judges of the Jakarta State Administrative High Court (“**the Council of Judges of PT. TUN DKI Jakarta**”) should reject the request for intervention filed by the APPELEE II IN INTERVENTION (see explanation in point 5.2-5.5 on page 8-10). -----
  - East Kutai Regent (The “**APELLEE**”) made a mistake in issuing SK Bupati No.: 540.1, for the following reasons: -----
    - (i) SK Bupati No.: 540.1/K.443?HK/V/2010 annulling the Decision of the East Kutai Regent No.: 188.4.45/118/HK/III/2009 regarding the Exploitation Mining Business Permit (IUP) for PT Ridlatama Tambang Mineral in an area of 10,000 HA located in Busang District, East Kutai Regency (“**Exploitation IUP**”) is contradictory to applicable laws and regulations, namely the provisions of Article 119 of the Law No. 4 of 2009 regarding Mineral and Coal Mining (“**UU Minerba**”) (see explanation in point 5.7.1-5.7.4 on page 11-19); -----
    - (ii) SK Bupati No.: 540.1/K.443/HK/V/2010 is contradictory to applicable laws and regulations, namely the Regulation of the Ministry of Home Affairs No. 54 of 2004 regarding Official File Management within the Purview of Regional Government (“**Permendagri Nomor 54/2009**”) (see explanation in point 5.7.5-5.7.11 on page 20-21). -----
    - (iii) SK Bupati No.: 540.1/K.443/HK/V/2010 is contradictory to the General Principles of Good Governance (see explanation in point 5.8 on page 21-28). ----
  - The above mentioned explanation clearly proves that the Council of Judges of the Samarinda State Administrative Court has been erroneous and wrong in passing the Decision No.: 31/G/2010/PTUN.SMD and therefore, it is reasonable and appropriate for the Council of Judges of the Jakarta State Administrative High Court to overturn the Decision of the Samarinda State Administrative Court No.: 31/G/2010/PTUN.SMD,



and to pass a decision based on its own authority in the *a quo* case by granting the Appellant's claim; -----

Whereas, the Defendant/Appellee filed a Counter Memorandum of Appeal dated 19 May 2011 received by the Clerk's Office of the Samarinda State Administrative Court on such date, duly notified and delivered to the Plaintiff/Appellant and the Defendant II in Intervention/Appellee respectively on 20 May 2011, and the Defendant II in Intervention/Appellee also filed a Counter Memorandum of Appeal dated 19 May 2011 received by the Clerk's Office of the Samarinda State Administrative Court on such date and duly notified and delivered to the Plaintiff/Appellant and the Defendant/Appellee on 20 May 2011. Both substantially denied the arguments presented by the Plaintiff/Appellant in the Counter Memorandum of Appeal on the grounds that the legal considerations of the Decision No.: 31/G/2010/PTUN.SMD dated 3 March 2011 filed for examination at the appellate level were appropriate and correct, therefore we request for the legal considerations to be affirmed in this examination of appeal; -----

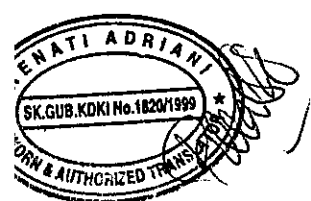
Whereas, the parties have been given the opportunity to look at and study the case dossier prior to it being submitted to the Jakarta State Administrative High Court, on 11 April 2011; -----

### **REGARDING LEGAL CONSIDERATION**

Considering, the Decision of the Samarinda State Administrative Court No.: 31/G/2010/PTUN.SMD, filed for appeal, was pronounced at a hearing open to the public on 3 March 2011 in the presence of the parties in dispute; -----

Considering, whereas the Plaintiff/Appellant through its Attorney ARIS AFFANDI LUBIS, S.H. filed an appeal against the Decision of the Samarinda State Administrative Court dated 3 March 2011 No.: 32/G/2010/PTUN.SMD on 9 March 2011

Considering, if the grace period of the Memorandum of Appeal, submitted by the Plaintiff/Appellant on 9 March 2011 against the Decision of the Samarinda State Administrative Court dated 3 March 2011 No.: 31/G/2010/PTUN.SMD, is taken into account, then the request for appeal is still within the grace period of 14 (fourteen) days as specified in Article 123 of the Law No. 51 of 2009 concerning the Second Amendment to the Law No. 5 of 1986 concerning State Administrative Judicature, therefore; the request for appeal from the



Plaintiff/Appellant is formally admissible; -----  
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Considering, after carefully studying the Decision of the Samarinda State Administrative Court dated 3 March 2011 No.: 31/G/2010/PTUN.SMD, and all case dossiers filed for the *a quo* appeal, including the Memorandum of Appeal and the Counter Memorandum of Appeal, the Council of Judges of the Court at the Appellate level unanimously pass this Decision, based on the evidence as well as the legal facts and also the judges' convictions, which in conclusion *agreed with all* the legal considerations given by the Court of First Instance, which rejected the Defendant's exception and the Plaintiff's claim with a brief conclusion as set out in the considerations of the Council of Judges of the Court of First Instance described in decision No.: 31/G/2010/PTUN.SMD dated 3 March 2011, which has been filed for appeal as follows:

Considering, based on the legal facts in relation to the evidence presented by the parties at the hearing, the Council of Judges of the Court of First Instance is of the following legal opinions:

1. Whereas, before the Plaintiff obtained the Exploitation Mining Business License (IUP), which has currently been revoked based on the object of the *a quo* case, an Exploration Mining Business License (IUP) in the name of the Plaintiff, namely the Mining Business License (IUP) No.: 37/02.188.45/HK/IV/2008, dated 9 April 2008 has been issued;
2. Whereas, the Plaintiff then upgraded its Exploration Mining Business License (IUP) to an Exploitation Mining Business License (IUP) under the Decision of the East Kutai Regent No.: 188.4.45/118/HK/III/2009 dated 27 March 2009; -----
3. Whereas, the Plaintiff's Mining Business License (IUP) in an area of 10,000 HA, is located in a forest area, therefore before conducting any of its activities, the holder of the Mining Business License (IUP) has to own a Borrow and Use License from the Minister of Forestry; -----  
-----
4. Whereas, the Plaintiff conducted exploration and or general survey activities before obtaining a Borrow and Use License from the Minister of Forestry; -----
5. Whereas, the area under the Plaintiff's Mining Business License (IUP) overlaps with the area under the Mining Business License of the



Defendant II in Intervention as set out in the results of the findings of the State Audit Board of the Republic of Indonesia dated 22 August until 24 September 2008; -----  
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6. Whereas, the Exploration Mining Business License (IUP) of PT Nusantara Group was issued earlier under the Decision of East Kutai Regent No.: 78/02.188.45/HK/III/2005 regarding the Mining Business License in Exploration Stage for PT Kaltim Nusantara Coal (*in casu* the Defendant II in Intervention) in an area of 15,560 HA, located at Busang District, Muara Wahau, East Kutai Regency issued on 10 March 2005 (*vide* evidence T.II.Intv-1) which was extended in 2008 with the Decision of the East Kutai Regent No.: 188.4.45/357/HK/VII/2008 regarding the Mining Business License (IUP) for the Extension of Exploration in First Stage for PT Kaltim Nusantara Coal (*in casu* the Defendant II in Intervention) issued on 17 July 2008 (*vide* evidence T.II.Intv-2), and based on the Decision of East Kutai Regent No.: 540.1/K.149/2010 regarding Approval to the Exploration Mining Business License (IUP) in the First State for PT Kaltim Nusantara Coal (*in casu* the Defendant II In Intervention) in an area of 14,890 HA, located at Busang District, Muara Ancalong, East Kutai Regency was issued on 17 July 2008 (*vide* Evidence T.II.Intv-2) and also based on the Decision of the East Kutai Regent No.: 540.1/K.148/2010 regarding the Approval for the Exploration Mining Business License (IUP) in the First State for PT Kaltim Nusantara Coal (*in casu* the Defendant II in Intervention) in an area of 15,560 HA, located at Busang District, Muara Wahau, the East Kutai Regency issued it on 18 February 2010 (*vide* evidence T.II.Intv-3), while the General Survey IUP of PT Ridlatama Tambang Mineral (*in casu* the Defendant) was issued on 24 May 2007 and the Exploration IUP of PT Ridlatama Tambang Mineral (the Defendant *in casu*) was issued on 9 April 2008;
7. Whereas, there has been an administrative irregularity in the Plaintiff's IUP No.: 37/02.188.45/HK/IV/2008 dated 9 April 2008 as the number did not exist in the registry and the correct number was 188.4.45/37/H/K/I/2008 dated 17 January 2008, the number indicated was for the appointment of the Secretary of the East Kutai Regency to



sign a Payment Instruction (SPM) for Regional Revenues of Public Allocation Fund from the income tax article 21, 25/29, PBB (land and building tax), right acquisition of land and building fees and other sources of regional revenues, Towards such fact the Council of Judges has found no arguments of rebuttal from the Plaintiff either in the Counter Plea or evidence presented in this case;-

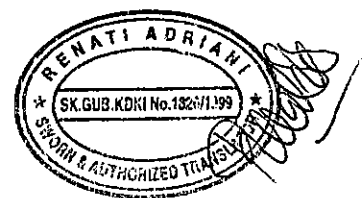
8. Whereas, the Minister of Forestry asked the East Kutai Regent (*in casu* the Defendant): -----

- to stop the exploration or general survey activities or exploitation IUP because PT Ridlatama Tambang Mineral (*in casu* the Plaintiff) did not hold a Forest Area Borrow and Use License issued by the Minister of Forestry; -----
- to investigate and prosecute alleged forgery in the name of PT Ridlatama Tambang Mineral (*in casu* the Plaintiff), and if it is truly proven, to report it to the law enforcement;-----  
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- to require the (*in casu* the Plaintiff?? – applicant) to have a Forest Area Borrow and Use License if their working area is located in a forest area, in compliance with the applicable provisions.

9. Whereas, based on the conclusion of the staff review of the Head of Mining and Energy Service Office of East Kutai Regency addressed to the East Kutai Regent (*in casu* the Defendant), it is necessary to revoke the IUP of PT Ridlatama Group (*in casu* the Plaintiff) as recommended by the Minister of Forestry; -----

10. Whereas, the staff review of the Head of Forestry Services Office of East Kutai Regency addressed to the East Kutai Regent (*in casu* the Defendant) supports the imposition of sanctions for companies not complying with the applicable procedures, provisions as well as laws and regulations in the event of forest area use and Forest Area Borrow and Use Licenses.

Considering, the explanation of Article 38 paragraph (1) of the Law No. 41 of 1999 regarding Forestry clarifies that “the interest of development outside the forestry sector which may be conducted inside protected forest areas and production forests should be determined selectively. Activities which may cause serious damage and the loss of the function of the



relevant forest should be prohibited. The interest of development outside the forestry sector includes activities conducted for inevitable strategic purposes, among others, mining activities, construction of electricity grids, telephone network and water installation, as well as for religious and security and defense interests”; -----

Considering, furthermore based on Article 38 paragraph (3) of the Law No. 41 of 1999 regarding Forestry governing that “the use of a forest area for mining interest shall be allowed through the granting of a Borrow and Use License by the Minister by taking into account the area border, the specific period and environmental sustainability; -----

Considering, based on the above mentioned provisions, the Regulation of the Ministry of Forestry No.: P.43/Menhut-II/2008 regarding the Guidelines on Forest Area Borrow and Use was issued in which Article 1 point 1 regulates that “forest area borrow and use shall be the use of a part of the forest area by other parties for a development interest outside activities in the forestry sector without changing the status, allocation and function of such area”; -----

Considering, in addition, based on the provisions of Article 2 of the Regulation of the Ministry of Forestry No.: P.43/Menhut-II/2008 concerning the Guidelines on Forest Area Borrow and Use which regulates that “**Forest Area Borrow and Use shall be based on a license from the Minister**”;-----

Considering, furthermore the provisions of Article 1 point 11 of the Regulation of the Ministry of Forestry No.: P.43/Menhut-II/2008 concerning the Guidelines on Forest Area Borrow and Use regulating that the “Minister shall be the minister assigned to and being responsible for the forestry sector”;----

Considering, it is subsequently regulated in the provisions of Article 7 paragraph (1) of the Regulation of the Ministry of Forestry No.: P.43/Menhut-II/2008 concerning the Guidelines on Forest Area Borrow and Use which sets forth that “A Forest Area Borrow and Use License may only be issued for production forest areas and protected forest areas”;-----

Considering, based on the provisions of Article 38 paragraph (1) juncto Article 1 point 15 of the Law No. 41 Year 1999 concerning Forestry juncto, Article 1 point 1, Article 1 point 11 juncto Article 2 juncto, Article 7 paragraph (1) of the Regulation of the Ministry of Forestry No.: P.43/Menhut-II/2008 concerning the Guidelines on Forest Area Borrow and Use, the Council

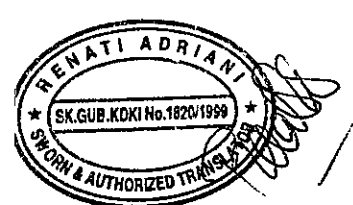


of Judges is of the legal opinion that the forest area could be used for mining activity as long as in conducting its activities, the holder of the IUP has obtained a Borrow and Use License from the Ministry of Forestry;---

Considering, based on the foregoing legal facts, the Council of Judges is of the legal opinion that as the Plaintiff, in conducting its mining activities has no legal basis for not obtaining a Borrow and Use License from the Minister of Forestry, then the Plaintiff is considered to have failed to meet the obligation as stipulated in the consideration section, adjudicating, point two letter F of the Decision of East Kutai Regent No.: 188.4.45/118/HK/III/2009, concerning the Exploitation Mining Business License (IUP) for PT. Ridlatama Tambang Mineral, in an area of 10,000 HA, located at Busang and Telen Districts, East Kutai Regency and the Plaintiff has also violated the provisions of Article 50 paragraph (3) letter G of the Law No. 41 Year 1999 concerning Forestry regulating that "Everyone shall be prohibited from conducting general survey activity or exploration or exploitation of mining materials inside a forest area, without a license from the Minister";-----

Considering, based on the above considerations, the Council of Judges is of the legal opinion that the Defendant's action of issuing the object of the *a quo* dispute, namely the Defendant Decision No.: 540.1/K.443/HK/V/2010 dated 4 May 2010, concerning the Revocation of the Decision of the East Kutai Regent No.: 188.4.45/118/HK/III/2009, concerning the Exploitation Mining Business License (IUP) for PT Ridlatama Tambang Mineral, in an area of 10,000 HA, located in Busang and Telen Districts, East Kutai Regency (vide evidence P-5 = T-7) has complied with the applicable laws and regulations and also met with the general principles of good governance;-----

Considering, based on a series of descriptions of the legal considerations above, because the Council of Judges has duly deemed that the Defendant's action of issuing the object of the *a quo* dispute, namely the Defendant Decision No.: 540.1/K.443/HK/V/2010 dated 4 May 2010, concerning the Revocation of the Decision of the East Kutai Regent No.: 188.4.45/118/HK/III/2009, concerning the Exploitation Mining Business License (IUP) for PT Ridlatama Tambang Mineral, in an area of 10,000 HA, located at Busang and Telen Districts, East Kutai Regency (vide evidence P-5 = T-7), has complied with the authoritative, procedural and substantial material aspects of the applicable laws and regulations and also met with the general principles of good governance. Therefore, Article 53 paragraph (2) letters A and B of the



Law No. 9 Year 2004 concerning the Amendment to Law No. 5 Year 1986 concerning the State Administration Judicature was not complied with, thus the Council of Judges is of the opinion that based on the evidence submitted by the parties in the hearing, the Plaintiff's arguments are not proven and therefore the claim must be rejected in its entirety;

Considering, based on the description of the legal considerations above the Council of Judges of the Court at the Appellate level is of the opinion that the legal considerations of the Decision of the Samarinda State Administrative Court dated 3 March 2011 No.: 31/G/2010/PTUN.SMD have complied with the law and furthermore in response to the Memorandum of Appeal and the Counter Memorandum of Appeal filed by the Appellant or the Appellee, it turns out that there are no new matters which could deny the legal considerations of the Decision filed for appeal, hence the Decision of the Court of First Instance filed for appeal must be affirmed;-----

Considering, whereas based on Article 110 of Law No. 51 Year 2009 concerning the Second Amendment to Law No. 5 Year 1986 concerning State Administrative Judicature, the losing party to this case shall be ordered to pay all costs arising at both levels of judicature, which at the appellate level the amount is specified in this decision;-----  
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In view of the Law No. 51 Year 2009 concerning the Second Amendment to Law No. 5 Year 1986 concerning the State Administrative Judicature and other provisions in respect of and related to this case;

### ADJUDICATING

- Accepting the request for appeal from the Plaintiff/Appellant;-----
- Affirming the Decision of the Samarinda State Administrative Court dated 3 March 2011 No. 31/G/2010/PTUN.SMD filed for appeal; -----
- Ordering the Plaintiff/Appellant to pay case fees at both judicature levels which at the appellate level is determined to be in the amount of Rp250,000,- (two hundred and fifty thousand rupiah); -----



Hence this case is decided at the meeting of the Council of Judges of the Jakarta State Administrative Court on Monday dated 8 August 2011 by us: H.M. Arif Nurdu'a S.H., M.H. as the head of the Council of Judges, Hj. ASINONG KANTORO, S.H., M.H. and Dr. Santer Sitorus S.H., M.H. each as Member Judge, the decision of which was pronounced at the hearing open to the public on the abovementioned date, by the Head of the Council accompanied by the Member Judges and also assisted by Hj. Ratna Soejoto, S.H. as the Substitute Clerk, without the presence of the parties to the case or their Attorneys-At-Law.

MEMBER JUDGES

HEAD OF COUNCIL

Signed

Signed

1. Hj. ASINONG KANTORO, S.H., M.H.

H.M. ARIF NURDU'A, S.H., M.H.

Signed

2. Dr. Santer Sitorus, S.H., M.Hum.

SUBSTITUTE CLERK

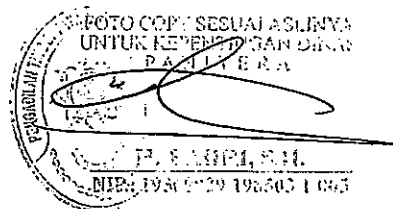
Signed

Hj. Ratna Soejoto, S.H.

Detail of Process Fees

1. Notice	Rp 22.000,-
2. Editorial fee	Rp 5.000,-
3. Stamp duty	Rp 6.000,-
4. Administrative fee	Rp 5.000,-
5. Appeal process fee	<u>Rp 212.000,- +</u>
Total	Rp 250.000,-

In words: two hundred and fifty thousand rupiah;

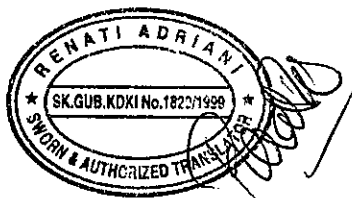


Note:

- Copy of this Decision is submitted for official purpose, in compliance with the provisions of Article 51 A paragraph (2) of the Law No. 51 of 2009 concerning the Second Amendment to the Law No. 5 of 1986 concerning the State Administrative Judicature.
- Grace period for remedies submission is counted as of the date of notice of the decision, which will be notified by the filling court to the parties.

This document is translated from Indonesian into English by **Renati Adriani**

(Authorized/Sworn Translator by the Greater Jakarta Governor's Certificate of Appointment SK.GUB.KDKI No. 1820/1999)





JAKARTA STATE ADMINISTRATIVE HIGH COURT

PHOTOCOPY OF DECISION

CASE : APPEAL  
NO. : 110/B/2011/PT.TUN.JKT

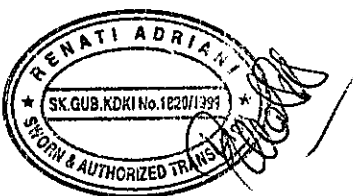
between

APPELLANT/ : PT. RIDLATAMA TRADE POWERINDO  
PLAINTIFF

against

APPELLEE/ : EAST KUTAI REGENT, Cs.  
DEFENDANT

DATE OF DECISION : 8 AUGUST 2011





**DECISION**

**No.: 110/B/2011/PT.TUN.JKT**

**FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD**

Jakarta State Administrative High Court examining and deciding upon state administrative cases at the appellate level, holding a session in the Jakarta State Administrative High Court building at Jalan Cikini Raya No. 117, Central Jakarta, has passed the following Decisions in a case between: -----

**PT. RIDLATAMA TRADE POWERINDO**, represented by Ir. ANANG MUJIANTORO, an Indonesian citizen and Director of PT. RIDLATAMA TRADE POWERINDO, pursuant to the Deed of the Statement of Meeting Resolutions 98 of PT RIDLATAMA TRADE POWERINDO, dated 30 June 2010, and the Deed of the Statement of Meeting Resolutions reaffirmed as the Deed No. 12, dated 4 October 2010, drawn up before Notary RUSNALDY, S.H. notary in Jakarta; having his office at Grand Bintaro No. C. 8/9, Jalan Bintaro Permai Raya 1, South Jakarta, in this matter granting power to:-----

1. ARIS AFFANDI LUBIS, S.H. -----  
-----
2. M. FATARURACHMAN, S.H. -----  
-----

Both of whom are Indonesian citizens and advocates, having their address at Basrewan Lubis, Reksonegoro & Partners Law Office, The Belleza Permata Hijau Building, Office Tower No. 9,



21<sup>th</sup>Floor, Jalan Letjend. Soepono No. 34, South Jakarta, by virtue of the Special Power of Attorney dated 24 August 2010, and the Special Power of Attorney to Appeal dated 7 March 2011 No. 0108/BLR/III/2011; and granting power to: -----

1. IRIL HISWARA, S.H. LL.M. -----  
-----
2. MIRA FADHYA, S.H. -----  
-----
3. CHALID LOUIS HEYDER, S.H. -----  
-----
4. TEGUH P. DARMAWAN, S.H. -----  
-----
5. NARENDRA ADIYASA, S.H. -----  
-----
6. SUHARSANTO RAHARJO, S.H. -----  
-----

All of whom are Indonesian citizens and advocates from Hiswara Bunjamin & Tandjung Law Office, having their address at BRI II Building, 23<sup>rd</sup> Floor, Jalan Jend. Sudirman Kav. 44-46, Jakarta 10210, by virtue of the Special Power of Attorney dated 14 March 2011, hereinafter referred to as the ..... **PLAINTIFF/ APPELLANT;**

**VERSUS:**

**1. EAST KUTAI REGENT**, domiciled at Jalan Soekarno Hatta No. 1 Kawasan Perkantoran Bukit Pelangi Sangatta, East Kutai Regency, East Kalimantan Province; in this matter granting power to: -----

1. HAMZAH DAHLAN, S.H., advocate/attorney under No. : A.02.11927, having his office at Jalan Jend. Sudirman Komplek Bandar Balikpapan Blok F No. 10 Balikpapan; -----  
-----

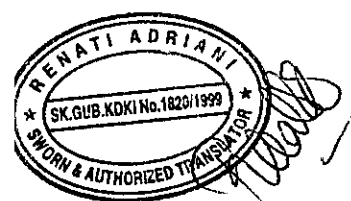


2. AYU ASTRINI, S.H. advocate/attorney under No.: 4660/KEP-ADV/DPP-KAI/V/2010, having her office at Jalan Jend. Sudirman Komplek Bandar Balikpapan Blok F No. 10 Balikpapan;
3. H. ZAINUDDIN ASPAN, S.H., M.Si., the Head of the Legal Department of the Secretariat of East Kutai Regency; -  
-----
4. NORA RAMADANI, S.H., M.H., Staff member of the Legal Aid Division in the Legal Department of the Regional Secretariat of East Kutai Regency;-----
5. ARDIANSYAH, S.H., Staff member of the Legal Aid Division in the Legal Department of the Regional Secretariat of East Kutai Regency; -----
6. SYAMSUL ALAM, S.H., Staff member of the Legal Aid Division in the Legal Department of the Regional Secretariat of East Kutai Regency; -----

by virtue of the Special Power of Attorney dated 20 September 2010 No.: 180/183.5/HK/97/IX/2010 and the Special Power of Attorney dated 20 October 2010 No.: 180/A.183.5/HK/97/X/2010; hereinafter referred to as the  
..... **DEFENDANT/ APPELLE**;

2. **PT. NUSANTARA WAHAU COAL**, represented by **SUGIONO**, an Indonesian citizen, and Director of **PT NUSANTARA WAHAU COAL**, by virtue of the Notary Deed dated 24 August 2009 Number 26, having its address at Bidakara Tower, 9<sup>th</sup> Floor, Jalan Gator Subroto Kav. 71-73, South Jakarta, in this matter granting power to: -----  
-----

1. **HOTMAN PARIS HUTAPEA**, S.H., M.Hum. -----  
-----
2. **ANTHONY L. P. HUTAPEA**, S.H., M.H. -----  
-----



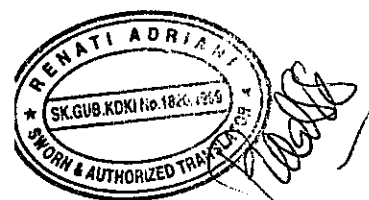
3. SUBAGIO ARIDARMO, S.H. -----  
-----
4. MIEN HERMINI, S.H. -----  
-----
5. RYAN AMALBEAN, S.H. -----  
-----
6. DONALD R.O. PARDOSI, S.H. -----  
-----
7. Ir. NURBAINI JANAHA, S.H. -----  
-----
8. IMMANUEL SIANIPAR, S.H. -----  
-----
9. IDA AYU TRISNAMURTI, S.H. -----  
-----

All of whom are Indonesian citizens and advocates and legal consultants at HOTMAN PARIS & PARTNERS Advocate & Legal Consultant Office, having their address at Summitmas I Building, 18<sup>th</sup> Floor, Jalan Jenderal Sudirman Kav. 61 – 62, Jakarta, by virtue of the Special Power of Attorney dated 19 October 2010, hereinafter referred to as the .....  
**DEFENDANT II IN INTERVENTION/APPELLEE;**

The said Jakarta State Administrative High Court; -----  
-----

Having read: -----  
-----

1. Stipulation of the Chairman of the Jakarta State Administrative High Court No.: 110/B/2011/PT.TUN.JKT dated 7 June 2011 concerning the Appointment of Council of Judges examining and deciding this case; -----  
-----
2. Copy of the Decision of the Samarinda State Administrative Court dated 3 March 2011 No.: 32/G/2010/PTUN.SMD; -----
3. Appeal case dossier No.: 32/G/2010/PTUN.SMD, and other letters relevant to this case; ---  
-----



REGARDING THE FACTS OF THE CASE

Having taking into account and accepting the situations regarding the facts of the case as set out in the Decision of the Samarinda State Administrative Court dated 3 March 2011 No.: 32/G/210/PTUN.SMD, the injunction of which reads as follows : -----  
-----

ADJUDICATING:

In the Exception: -----

- Rejecting the Defendant's exception; -----

In the Principle Issue of the Case: -----  
-----

- Rejecting the Plaintiff's claim; -----  
--
- Sentencing the Plaintiff to pay costs arising from this case in the amount of Rp236,000,- (two hundred thirty-six thousand Rupiah); -----

Whereas, the said Decision was pronounced at a hearing open to the public on Thursday 3 March 2011 in the presence of the parties in dispute namely, the Attorney-at-Law of the Plaintiff/Appellant, the Attorney-at-Law of the Defendant/Appellee, and the Attorney-at-Law of the Defendant II in Intervention /Appellee; -----

Whereas, on 9 March 2011, the Plaintiff/Appellant filed a request for appeal against the Decision of the Samarinda State Administrative Court dated 3 March 2011 No.: 32/G/2010/PTUN.SMD; -----

Whereas, the Defendant/Appellee and Defendant II in Intervention/Appellee respectively were informed of the request for appeal filed by the Plaintiff/Appellant, respectively on 10 March 2011; -----

Whereas, the Plaintiff/Appellant filed a Memorandum of Appeal dated 4 May 2011, received by the Clerk's Office of the Samarinda State Administrative Court on 6 May 2010 as notified and delivered to the Defendant/Appellee and the Defendant II in Intervention/Appellee respectively on 6 May 2011. As fully explained in the Memorandum of Appeal, it substantially states that it objects to the legal considerations of the Council of Judges



of Court at the First Instance as set out in its Decision No.: 31/G/2010/PTUN.SMD dated 3 March, the of which is explained briefly in the Memorandum of Appeal as follows: -----

The Memorandum of Appeal filed by the Plaintiff/Appellant briefly discusses the following matters:

- Pursuant to the Law No. 5 of 1986 regarding the State Administrative Judicature Jo. Law No. 9 of 2004 regarding the Amendment to Law No. 5 of 1986 regarding the State Administrative Judicature Jo. Law No. 51 of 2009 regarding the Second Amendments to the Law No, 5 of 1986 regarding the State Administrative Judicature (“UUPTUN”), the Appellant has a right to file a request for the postponement of the execution of the Decision of the East Kutai Regent No.: 540.1/K.444/HK/V/2010 dated 4 May 2010 regarding the revocation of the Decision of the East Kutai Regent No.: 188.4.45/119/HK/III/2009 regarding the Exploitation Mining Business Permit (IUP) for PT. Ridlatama Trade Powerindo in an area of 5,386 HA, located at Busang District, East Kutai Regency (“SK Bupati No. 540.1”) in order to have a final and binding Court Decision (see explanation in point 4.1-4.7 on page 5-8). -----
- The Council of Judges of the Samarinda State Administrative Court (the “**Council of Judges of Samarinda PTUN**”) has been erroneous in granting the request for Intervention filed by PT. Ridlatama Trade Powerindo (The “**APPELEE II IN INTERVENTION**” previously the Defendant II in Intervention). The APPELEE II IN INTERVENTION clearly has **NO** interest as an intervening party to this case and therefore the Council of Judges of the Jakarta State Administrative High Court (“**the Council of Judges of PT. TUN DKI Jakarta**”) should reject the request for intervention filed by the APPELEE II IN INTERVENTION (see explanation in point 5.2-5.5 on page 8-10). -----
- East Kutai Regent (the “**APELLEE**”) made a mistake in issuing SK Bupati No.540.1, for the following reasons:
  - (i) SK Bupati No.: 540.1 annulling the Decision of the East Kutai Regent No.: 188.4.45/119/HK/III/2009 regarding the Exploitation Mining Business Permit (IUP) for PT Ridlatama Trade Powerindo in an area of 5,386 HA, located in Busang District, East Kutai Regency (“Exploitation IUP”) is contradictory to the applicable laws and regulations, as it violates the provisions of Article 119 of the



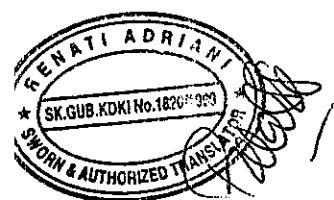
Law No. 4 of 2009 regarding Mineral and Coal Mining (“UU Minerba”) (see explanation in point 5.7.1-5.7.4 on page 10-20); -----  
-----

(ii) SK Bupati No.: 540.1/K.444/HK/V/2010 is contradictory to applicable laws and regulations, namely the Regulation of the Ministry of Home Affairs No. 54 of 2009 regarding Official File Management within the Purview of Regional Government (“Permendagri Nomor 54/2009”) (see explanation in point 5.8 on page 20-21). -----

(iii) SK Bupati No.: 540.1/K.444/HK/V/2010 is contradictory to the General Principles of Good Governance (see explanation in point 5.8 on page 21-28). ----  
-----

The above mentioned explanation clearly proves that the Council of Judges of the Samarinda State Administrative Court has been erroneous and wrong in passing the Decision No.: 32/G/2010/PTUN.SMD and therefore, it is reasonable and appropriate for the Council of Judges of the Jakarta State Administrative High Court to overturn the Decision of the Samarinda State Administrative Court No.: 32/G/2010/PTUN.SMD dated 3 March 2011 and to pass a decision on the *a quo* case based on its own authority by granting the Appellant’s CLAIM; -----  
-----

Whereas, the Defendant/Appellee has filed a Counter Memorandum of Appeal dated 19 May 2011 received by the Clerk’s Office of the Samarinda State Administrative Court on such date, duly notified and delivered to the Plaintiff/Appellant and the Defendant II in Intervention on 20 May 2011, and the Defendant II in Intervention/Appellee has also filed a Counter Memorandum of Appeal dated 19 May 2011 received by the Clerk’s Office of the Samarinda State Administrative Court on such date and duly notified and delivered to the to the Plaintiff/Appellant and the Defendant/Appellee on 20 May 2011. Both substantially denied the arguments presented by the Plaintiff/Appellant in the Counter Memorandum of Appeal which are used as the grounds for examination at the appellate level because the legal considerations of the Decision No.: 32/G/2010/PTUN.SMD dated 3 March 2011 filed for appeal were appropriate and correct, therefore requested for the legal considerations to be affirmed in this examination of appeal ; -----



Whereas the parties have been given the opportunity to look at and study the case dossier prior to it being submitted to the Jakarta State Administrative High Court, respectively on 11 April 2011; -----  
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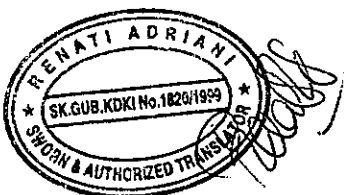
**REGARDING LEGAL CONSIDERATION**

Considering, the Decision of the Samarinda State Administrative Court No.: 32/G/2010/PTUN.SMD, filed for appeal , was pronounced at a hearing open to the public on 3 March 2011 in the presence of the parties in dispute; -----

Considering, whereas the Plaintiff/Appellant through its Attorney ARIS AFFANDI LUBIS, S.H. has filed an appeal against the Decision of the Samarinda State Administrative Court dated 3 March 2011 No.: 32/G/2010/PTUN.SMD on 9 March 2011; -----  
-----

Considering, if the grace period of the Memorandum of Appeal, submitted by the Plaintiff/Appellant on 9 March 2011 against the Decision of Samarinda State Administrative Court dated 3 March 2011 No. 32/G/2010/PTUN.SMD is taken into account, then the request for appeal is still within the grace period of 14 (fourteen) days as specified in Article 123 of the Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Judicature, therefore; the request for appeal from the Plaintiff/Appellant is formally admissible; -----  
-----

Considering, after carefully studying the Decision of the Samarinda State Administrative Court dated 3 March 2011 No.: 32/G/2010/PTUN.SMD, and all case dossiers filed for the *a quo* appeal, including the Memorandum of Appeal and the Counter Memorandum of Appeal, the Council of Judges of the Court at the Appellate level unanimously pass this Decision based on the evidence as well as the legal facts and also the judge's conviction which in conclusion ***agreed with all*** legal considerations given by the Court of First Instance, which rejected the Defendant's exception and the Plaintiff's claim with a brief conclusion as set out in the considerations of the Council of Judges of the Court of First Instance, described in Decision No.: 31/G/2010/PTUN.SMD dated 3 March 2011 which has been filed for appeal as follows:



Considering, based on the legal facts in relation to the evidence presented by the parties at the hearing, the Council of Judges of the Court of First Instance is of the following legal opinions:

1. Whereas, before the Plaintiff obtained the Exploitation Mining Business Permit (IUP) which has currently been revoked based on the object of the *a quo* case, an Exploration Mining Business Permit (IUP) on behalf of the Plaintiff, namely the Mining Business Permit (IUP) No.: 36/02.188.45/HK/IV/2008, dated 9 April 2008 had been issued;
2. Whereas, the Plaintiff then upgraded its Exploration Mining Business Permit (IUP) to an Exploitation Mining Business Permit (IUP) (*vide* evidence P-4);
3. Whereas, the Plaintiff's Mining Business License (IUP) in an area of 5,386 HA, is located in a forest area, therefore before conducting any of its activities, the holder of Mining Business License (IUP) has to own a Borrow and Use License from the Minister of Forestry;
4. Whereas, the Plaintiff conducted exploration and or general survey activities before obtaining a Borrow and Use License from the Minister of Forestry; -----  
-----
5. Whereas, the area under the Plaintiff's Mining Business License (IUP) overlaps with the area under the Mining Business License of the Defendant II in Intervention as set out in the results of the findings of the State Audit Board of the Republic of Indonesia dated 22 August until 24 September 2008; -----
6. 6. Whereas, the Exploration Mining Business License (IUP) of PT Nusantara Group was issued earlier under the Decision of the East Kutai Regent No.: 80/02.188.45/HK/III/2005 regarding the Mining Business License in Exploration Stage for PT Nusantara Wahau Coal (*in casu* the Defendant II in Intervention) in an area of 14,890 HA, located in Busang District, Muara Ancalong, East Kutai Regency issued on 10 March 2005 (*vide* evidence T.II.Intv-1) and extended in 2008 with the Decision of East Kutai Regent No.: 188.4.45/358/HK/VII/2008 regarding the Mining Business License (IUP) for the Extension of Exploration in First Stage for PT Nusantara Wahau Coal (*in casu* the Defendant II in Intervention) in an area of 14,890 HA, located in Busang District, Muara Ancalong, East Kutai Regency which was issued on 17 July 2008 (*vide* evidence T.II.Intv-2) and based on the Decision of East Kutai Regent No.: 540.1/K.149/2010 regarding Approval to the Exploration Mining Business License (IUP) in First Stage for PT Nusantara Wahau Coal (*in casu* the Defendant II In Intervention) in an area of 14,890 HA, located at Busang District, Muara Ancalong, East Kutai Regency issued on 18 February 2010 (*vide* evidence T.II.Intv-



3), while the General Survey IUP of PT Ridlatama Tambang Mineral (*in casu* the Defendant) was issued on 24 May 2007 and the Exploration IUP of PT Ridlatama Tambang Mineral (*in casu* the Defendant) was issued on 9 April 2008;

7. Whereas there has been an administrative irregularity in the Plaintiff's IUP No.: 36/02.188.45/HK/IV/2008 dated 9 April 2008 as the number did not exist in the registry and the correct number was 188.4.45/37/H/K/I/2008 dated 17 January 2008. The number in the registry indicated a palm plantation permit for land and natural resources development area in koperasi tunas harapan mitra and PT. Sawitino Plantation. Based on this legal fact, the Council of Judges has found no arguments of rebuttal from the Plaintiff either in the Counter Plea or evidence presented in this case;-

8. Whereas the Minister of Forestry recommended the East Kutai Regent (*in casu* the Defendant): -----

- to stop the exploration or general survey activities or exploitation IUP because PT Ridlatama Trade Powerindo (*in casu* the Plaintiff) did not hold a Forest Area Borrow and Use License issued by the Minister of Forestry; -----
- to revoke licenses issued under the five Regent decisions regarding the Exploration and or the General Survey IUP in the name of PT. Ridlatama Trade Powerindo;
- to investigate and prosecute alleged forgery in the name of PT Ridlatama Trade Powerindu (*in casu* the Plaintiff), and if it is truly proven, to report it to the law enforcement;-----  
-----
- to require the (*in casu* the Plaintiff – applicant) to have a Forest Area Borrow and Use License if the working area is located in a forest area in compliance with the applicable provisions.

9. Whereas, based on the conclusion of the staff review of the Head of Mining and Energy Service Office of East Kutai Regency addressed to the East Kutai Regent (*in casu* the Defendant), it is necessary to revoke the IUP of PT Ridlatama Group (*in casu* the Plaintiff) as recommended by the Minister of Forestry; -----

10. Whereas, the staff review of the Head of Forestry Services Office of East Kutai Regency addressed to the East Kutai Regent (*in casu* the Defendant) supports the imposition of sanctions



for companies not complying with the applicable procedures, provisions as well as laws and regulations in the event of forest area use and Forest Area Borrow and Use Licenses.

Considering, the explanation of Article 38 paragraph (1) of Law No. 41 of 1999 regarding Forestry clarifies that “the interest of development outside the forestry sector which may be conducted inside protected forest areas and production forests should be determined selectively. Activities which may cause serious damage and loss of the function of the relevant forest should be prohibited. The interest of development outside the forestry sector includes activities conducted for inevitable strategic purposes, among others, mining activities, construction of electricity grids, telephone network and water installation, as well as for religious and security and defense interests”; -----

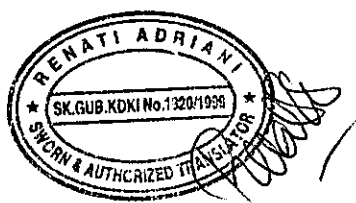
Considering, furthermore Article 38 paragraph (3) of Law No. 41 of 1999 regarding Forestry governs that “the use of a forest area for mining interests shall be allowed **through the granting of a Borrow and Use License by the Minister by taking into account the area border, the specific period and environmental sustainability**”;-----

Considering, the provisions above leads to the establishment of the Regulation of the Minister of Forestry No.: P.43/Menhut-II/2008 concerning Guidelines on Forest Area Borrow and Use as set forth in Article 1 point 1 which states “Forest Area Borrow and Use shall be the use of a part of the forest area by other parties for a development interest outside activities in the forestry sector without changing the status, allocation and function of such area”;-----  
-----

Considering, furthermore the provisions of Article 2 of the Regulation of the Minister of No.: P.43/Menhut-II/2008 concerning the Guidelines on the Borrow and Use of Forest Areas regulates that “**the Borrow and Use of forest area shall be based on a license from the Minister**”;--

Considering, subsequently, the provisions of Article 1 point 11 of the Regulation of the Minister of Forestry No.: P.43/Menhut-II/2008 concerning the Guidelines on the Borrow and Use of Forest Area regulating that the “Minister shall be the Minister assigned to and responsible for the forestry sector”;-----

Considering, it is regulated further in the provisions of Article 7 paragraph (1) of the Regulation of the Ministry of Forestry No.: P.43/Menhut-II/2008 concerning the Guidelines on the Borrow and Use of Forest Areas which sets forth that “Borrow and Use of Forest Area



License shall only be issued for production forest areas and protected forest areas”;-----  
-----

Considering, based on the provisions of Article 38 paragraph (1) juncto paragraph (3) juncto, Article 1 point 15 of the Law No. 41 Year 1999 concerning Forestry juncto Article 1 point 1, Article 1 point 11 juncto, Article 2 juncto, Article 7 paragraph (1) of the Regulation of the Ministry of Forestry No.: P.43/Menhut-II/2008 concerning the Guidelines on the Borrow and Use of Forest Area, the Council of Judges is of the legal opinion that the forest area may be used for mining activity as long as in conducting its mining activities, the holder of the IUP has obtained a Borrow and Use License from the Ministry of Forestry;-----  
-----

Considering, furthermore based on the above mentioned provisions in relation to evidence T-3, namely the Official Letter of the Mining and Energy Service Office of the Government of East Kutai to the Regional Secretary of the East Kutai Regency regarding Staff Review on the Revocation of Mining Business License (IUP) of PT. Ridlatama Group dated 27 April 2010, the Council of Judges found it to be a legal fact as stated in the consideration section Basis point 8, that there has been a Letter from the Minister of Forestry No.: S.140/Menhut-VII/2010, dated 31 March 2010 regarding **the Rejection of the Borrow and Use of Forest Area License for Exploration activity of PT. Ridlatama Trade Powerindo (in casu the Plaintiff)**;-----

Considering, based on the foregoing legal facts, the Council of Judges is of legal opinion that as the Plaintiff, in conducting its mining activities has no legal basis for not obtaining a Borrow and Use License from the Minister of Forestry, then the Plaintiff is considered to have failed to meet the obligations as stipulated in the consideration section, adjudicating, point two letter F of the Decision of East Kutai Regent No.: 188.4.45/118/HK/III/2009, concerning the Exploitation Mining Business License (IUP) for PT. Ridlatama Trade Powerindo, in an area of 5,386 HA, located at Busang District, East Kutai Regency (vide evidence P-4) as included in the abovementioned legal facts and the Plaintiff has also violated the provisions of Article 50 paragraph (3) letter G of the Law No. 41 Year 1999 concerning Forestry regulating that “Everyone shall be prohibited from conducting general survey activity or exploration or exploitation of mining materials inside a forest area, without a license from the Minister”;-----  
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Considering, whereas based on the above considerations, the Council of Judges is of the legal opinion that the Defendant’s action of issuing the object of the *a quo* dispute, namely the

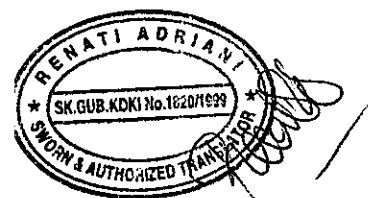


Defendant Decision No.: 540.1/K.443/HK/V/2010 dated 4 May 2010, concerning on the Revocation of the Decision of the East Kutai Regent No.: 188.4.45/118/HK/III/2009, concerning the Exploitation Mining Business License (IUP) for PT Ridlatama Trade Powerindo, in an area of 5,386 HA, located in Busang District, East Kutai Regency (vide evidence P-5 = T-7) **has complied with the applicable laws and regulations and also met with the general principles of good governance;**-----

Considering, based on a series of descriptions of the legal considerations above, the Council of Judges legally concludes that the Defendant's action of issuing the object of the *a quo* dispute, namely the Defendant Decision No.: 540.1/K.444/HK/V/2010 dated 4 May 2010, concerning on the Revocation of the Decision of the East Kutai Regent No.: 188.4.45/118/HK/III/2009, concerning the Exploitation Mining Business License (IUP) for PT Ridlatama Trade Powerindo, in an area of 5,386 HA, located in Busang District, East Kutai Regency (vide evidence P-5 = T-7) has complied with the applicable laws and regulations and also met with the general principles of good governance, therefore Article 53 paragraph (2) letters A and B of the Law No. 9 Year 2004 concerning the Amendment to the Law No. 5 Year 1986 concerning the State Administration Judicature is not complied with, thus the Council of Judges concludes that the Plaintiff's arguments are not proven and therefore the claim **must be rejected;**

Considering, based on the descriptions of the legal considerations above the Council of Judges of the Court at the Appellate level is of the opinion that the legal consideration of the Decision of Samarinda State Administrative Court dated 3 March 2011 No.: 32/G/2010/PTUN.SMD has complied with the law and furthermore as a response to the Counter Memorandum of Appeal filed by the Appellant or the Appellee and the Defendant II in Intervention/the Appellee, it turns out that there are no new matters which could deny the legal considerations of the Decision filed for appeal, hence the Decision of the Court of First Instance, filed for appeal, must be affirmed;-----

Considering, whereas based on Article 110 of the Law No. 51 Year 2009 concerning the Second Amendment to the Law No. 5 Year 1986 concerning the State Administrative Judicature, the loosing party to this case shall be ordered to pay all costs arising in both levels of judicature, which at the appellate level the amount is specified in this Decision;-----  
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In view of the Law No. 51 Year 2009 concerning the Second Amendment to the Law No. 5 Year 1986 concerning the State Administrative Judicature and other provisions in respect of and related to this case;

;-----

### ADJUDICATING

- Accepting the request for appeal from the Plaintiff/Appellant;-----
- Affirming the Decision of the Samarinda State Administrative Court dated 3 March 2011 No.: 32/G/2010/PTUN.SMD filed for appeal; -----
- Ordering the Plaintiff/Appellant to pay case fees at both judicature levels which at the appellate level is determined to be in the amount of Rp250,000,- (two hundred and fifty thousand rupiah); -----

Hence this case is decided at the meeting of the Council of Judges of the Jakarta State Administrative Court on Monday dated 8 August 2011 by us: H.M. ARIF NURDU'A S.H., M.H. as the Head of the Council of Judges, Hj. ASINONG KANTORO, S.H., M.H. and Dr. SANTER SITORUS S.H., M.Hum. each as Member Judge, the Decision of which was pronounced at the hearing open to the public on the abovementioned date, by the Head of the Council accompanied by the Member Judges and also assisted by DIAH YULIDAR, S.H., M.H. as the Substitute Clerk, without the presence of the parties to the case or their Attorneys-At-Law.

MEMBER JUDGES

HEAD OF COUNCIL

Signed

Signed

1. Hj. ASINONG KANTORO, S.H., M.H.

H.M. ARIF NURDU'A, S.H., M.H.



Signed

2. Dr. Santer Sitorus, S.H., M.Hum.

SUBSTITUTE CLERK

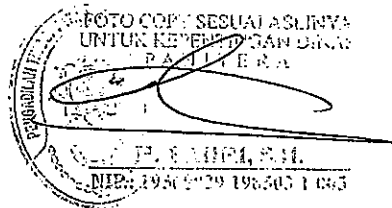
Signed

DIAH YULIDAR, S.H., M.H.

Detail of Process Fees

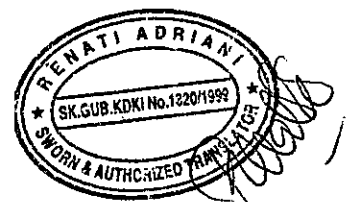
1. Notice	Rp 22.000,-
2. Editorial fee	Rp 5.000,-
3. Stamp duty	Rp 6.000,-
4. Administrative fees	Rp 5.000,-
5. Appeal process fee	<u>Rp 212.000,- +</u>
Total	Rp 250.000,-

In words: two hundred and fifty thousand rupiah;



Note:

- Copy of this Decision is submitted for official purpose, in compliance with the provisions of Article 51 A paragraph (2) of the Law No. 51 of 2009 concerning the Second Amendment to the Law No. 5 of 1986 concerning the State Administrative Judicature.



- Grace period for remedies submission is counted as of the date of notice of the Decision, which will be notified by the filling court to the parties.

This document is translated from Indonesian into English by **Renati Adriani**

(Authorized/Sworn Translator by the Greater Jakarta Governor's Certificate of Appointment SK.GUB.KDKI No. 1820/1999)





JAKARTA STATE ADMINISTRATIVE HIGH COURT

PHOTOCOPY OF DECISION

CASE : APPEAL  
NO. : 111/B/2011/PT.TUN.JKT

between

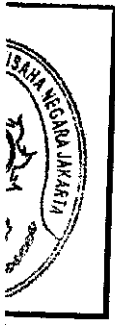
APPELLANT/ : PT. INVESTMINE NUSA PERSADA  
PLAINTIFF

against

APPELLEE/ : EAST KUTAI REGENT, Cs.  
DEFENDANT

DATE OF DECISION : 8 AUGUST 2011





**No: 111/B/2011/PT.TUN.JKT**  
**FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD**  
**DECISION**

Jakarta State Administrative High Court examining and deciding upon state administrative case at the appeal level, holding a session in the Jakarta State Administrative High Court building at Jalan Cikini Raya No. 117, Central Jakarta, has passed the following decisions in a case between: -----

**PT. INVESTMINE NUSA PERSADA**, represented by Ir. ANANG MUJANTORO, Indonesian citizen, Director of PT. Investmine Nusa Persada, pursuant to the Deed of Meeting Resolutions of PT Investmine Nusa Persada No.: 96, dated 30 June 2010, and Deed of the Statement of Meeting Resolutions of PT. Investmine Nusa Persada No.: 10, dated 4 October 2010, drawn up before Notary Rusnaldy, S.H. notary in Jakarta; having his office at Grand Bintaro No. C. 8/9, Jalan Bintaro Permai Raya 1, South Jakarta, in this matter granting power to:-----

1. ARIS AFFANDI LUBIS, S.H. -----
2. M. FATARURACHMAN, S.H. -----

Both of whom are Indonesian citizens and advocates, having their address at Basrewan Lubis, Reksonegoro & Partners Law Office, Belleza Permata Hijau Building, Office Tower No. 9, 21<sup>th</sup> Floor, Jalan Letjend. Soepono No. 34, South Jakarta, by virtue of Special Power of Attorney dated 24 August 2010, and Special Power of



Attorney to Appeal dated 7 March 2011 No. 0110/BLR/III /2011; and granting power to: -----

1. IRIL HISWARA, S.H. LL.M. -----
2. MIRA FADHYA, S.H. -----
3. CHALID LOUIS HEYDER, S.H. -----
4. TEGUH P. DARMAWAN, S.H. -----
5. NARENDRA ADIYASA, S.H. -----
6. SUHARSANTO RAHARJO, S.H. -----

All of whom are Indonesian citizens and advocates from Hiswara Bunjamin & Tandjung Law Office, having their address at BRI II Building, 23<sup>th</sup> Floor, Jalan Jend. Sudirman Kav. 44-46, Jakarta 10210, by virtue of Special Power of Attorney dated 14 March 2011, hereinafter referred to as the ..... **PLAINTIFF/ APPELLANT**;

**VERSUS:**

**EAST KUTAI REGENT**, domiciled at Jalan Soekarno Hatta No. 1 Kawasan Perkantoran Bukit Pelangi Sangatta, East Kutai Regency, East Kalimantan Province; in this matter granting power to: -----

1. HAMZAH DAHLAN, S.H., advocate/attorney under No. : A.02.11927, having his office at Jalan Jend. Sudirman Komplek Bandar Balikpapan Blok F No. 10 Balikpapan; ----
2. AYU ASTRINI, S.H. advocate/attorney under No. : 4660/KEP-ADV/DPP-KAI/V/2010, having her office at Jalan Jend. Sudirman Komplek Bandar Balikpapan Blok F No. 10 Balikpapan;-----
3. H. ZAINUDDIN ASPAN, S.H., M.Si., the Head of Legal Department of the Secretariat of East Kutai Regency; -----
4. NORA RAMADANI, S.H., M.H., Staff of Legal Aid Division in the Legal Department of the Regional Secretariat of East Kutai Regency;-----
5. ARDIANSYAH, S.H., Staff of Legal Aid Division in Legal Department of the Regional Secretariat of East Kutai Regency; -----



6. SYAMSUL ALAM, S.H., Staff of Legal Aid Division in  
Legal Department of the Regional Secretariat of East Kutai  
Regency; -----

All of whom are Indonesian citizens, having their office at the  
Regent/Regional Secretariat Office of East Kutai Regency, Jalan  
Soekarno Hatta No.1, Kawasan Perkantoran Bukit Pelangi  
Sangatta, East Kutai Regency, East Kalimantan Province, by  
virtue of Special Power of Attorney dated 20 September 2010  
No. : 180/183.5/HK/98/X/2010; hereinafter referred to as the  
..... **DEFENDANT/ APPELLE**;

**A N D**

**PT. NUSANTARA WAHAU COAL**, represented by **SUGIONO**, an Indonesian citizen and  
Director of PT Nusantara Wahau Coal pursuant to Notarial deed  
of Minutes of the General Meeting of Shareholders of PT  
Nusantara Wahau Coal No. 26, dated 24 August 2009, having his  
address at Bidakara Tower, 9<sup>th</sup> Floor, Jalan Gator Subroto Kav.  
71-73, South Jakarta, in this matter granting power to: -----

1. HOTMAN PARIS HUTAPEA, S.H., M.Hum. -----
2. ANTHONY L. P. HUTAPEA, S.H., M.H. -----
3. SUBAGIO ARIDARMO, S.H. -----
4. MIEN HERMINI, S.H. -----
5. RYAN AMALBEAN, S.H. -----
6. DONALD R.O. PARDOSI, S.H. -----
7. Ir. NURBAINI JANAHA, S.H. -----
8. IMMANUEL SIANIPAR, S.H. -----
9. IDA AYU TRISNAMURTI, S.H. -----

All of whom are Indonesian citizens, advocates and legal  
consultants at HOTMAN PARIS & PARTNERS Advocate &  
Legal Consultant Office, having their address at Sumitmas I  
Building, 18<sup>th</sup> Floor, Jalan Jenderal Sudirman Kav. 61 - 62, Jakarta,  
by virtue of Special Power of Attorney dated 19 October 2010,



hereinafter referred to as ..... **DEFENDANT II IN INTERVENTION/APPELLEE;**

The said Jakarta State Administrative High Court; -----

Having read: -----

1. Stipulation of the Chairman of the Jakarta State Administrative High Court No.: 111/B/2011/PT.TUN.JKT dated 7 June 2011 concerning the Appointment of Council of Judges examining and deciding this case; -----
2. Copy of the Decision of the Samarinda State Administrative Court dated 3 March 2011 Number : 33/G/210/PTUN.SMD; -----
3. Appeal case dossier Number: 33/G/210/PTUN.SMD, and other letters relevant to this case;

**REGARDING THE FACTS OF THE CASE**

Having taken into account and accepting the factual account of the case as set out in the decision of the Samarinda State Administrative Court dated 3 March 2011 Number : 33/G/210/PTUN.SMD, the injunction of which reads as follows : -----

**ADJUDICATING:**

In the Exception: -----

- Rejecting the Defendant's exception; -----

In the Principle Issue of the Case: -----

- Rejecting the Plaintiff's claim; -----
- Sentencing the Plaintiff to pay costs arising from this case in the amount of Rp242,000,- (two hundred forty-two thousand Rupiah); -----

Whereas the said Decision was pronounced at a hearing open to the public on Thursday dated 3 March 2011 in the presence of the parties in dispute namely, the Attorney-at-Law of the Plaintiff/Appellant, the Attorney-at-Law of the Defendant/Appellee, the Attorney-at-Law of the Defendant II in Intervention /Appellee; -----

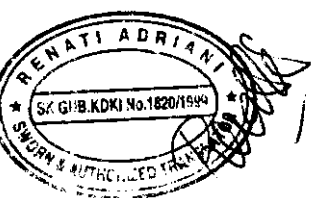
Whereas the Plaintiff/Appellant on 9 March 2011 filed a request for appeal against the Decision of the Samarinda State Administrative Court dated 3 March 2011 Number: 33/G/210/PTUN.SMD pursuant to Deed of Request for Appeal dated 9 March 2001 Number: 33/G/2010//PTUN-SMD; -----



Whereas the Defendant/Appellee and Defendant II in Intervention/Appellee have both been informed of the request for appeal filed by the Plaintiff/Appellant with Notice of the Statement of Appeal dated 10 March 2011 Number: 33/G2010/PTUN-SMD; -----

Whereas the Plaintiff/Appellant has filed a Memorandum of Appeal dated 4 May 2011 received by Clerk's Office of the Samarinda State Administrative Court on 6 May 2010 as notified and delivered to the Defendant/Appellee and Defendant II in Intervention /Appellee respectively with the Notice and Delivery of Memorandum of Appeal dated 6 May 2011 Number: 33/G/2010/PTUN.SMD, presenting reasons for appeal substantially as follows: -----

- Pursuant to Law Number 51 of 2009 regarding the Second Amendment to Law Number 5 of 1986 regarding the State Administrative Judicature ("UUPTUN"), the Appellant has a right to file a request for the postponement of the execution of the Decision of East Kutai Regent Number: 540.1/K.442/HK/V/2010 dated 4 May 2010 regarding the revocation of the Decision of East Kutai Regent Number: 188.4.45/117/HK/III/2009 regarding Exploitation Mining Business Permit (IUP) for PT. Investmine Nusa Persada in an area of 10.000 HA located at Busang District, East Kutai Regency ("SK Bupati No. 540.1") in order to have a final and binding Court Decision (see explanation in point 4.1-4.7 on page 5-8). -----
- The Council of Judges of the Samarinda State Administrative Court (the "Council of Judges of Samarinda PTUN") has been erroneous in granting the request for Intervention filed by PT. Nusantara Wahau Coal ("APPELEE II IN INTERVENTION" previously Defendant II in Intervention). The APPELEE II IN INTERVENTION clearly has no interest as an intervening party to this case and therefore the Council of Judges of the Jakarta State Administrative High Court ("the Council of Judges of PT. TUN DKI Jakarta") should reject the request for intervention filed by the APPELEE II IN INTERVENTION (see explanation in point 5.2-5.5 on page 8-10). -----
- East Kutai Regent (The "APELLEE") has made a mistake in issuing SK Bupati No.540.1, for the following reasons:
  - (i) SK Bupati Number: 540.1 annulling the Decision of East Kutai Number: 188.4.45/117/HK/III/2009 regarding Exploitation Mining Business Permit (IUP) for PT Investmine Nusa Persada in an area of 10.000 HA located in Busang District, East Kutai Regency ("Exploitation IUP") is contradictory to applicable laws and regulations, namely the provisions of Article 119 of Law

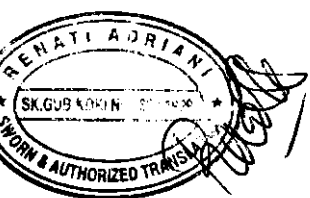


- Number 4 of 2009 regarding Mineral and Coal Mining (“UU Minerba”) (see explanation in point 5.7.1-5.7.4 on page 11-20); -----
- (ii) SK Bupati Number: 540.1 is contradictory to applicable laws and regulations, namely the Regulation of the Ministry of Home Affairs Number 54 of 2004 regarding Official File Management within the Purview of Regional Government (“Permendagri Nomor 54/2009”) (see explanation in point 5.8 on page 21-26). --
  - (iii) SK Bupati Number: 540.1 is contradictory to the General Principles of Good Governance (see explanation in point 5.8 on page 21-28). -----

The above mentioned explanation clearly proves that the Council of Judges of the Samarinda State Administrative Court has been erroneous and wrong in passing the Decision Number: 33/G/2010/PTUN.SMD and therefore, it is reasonable and appropriate for the Council of Judges of the Jakarta State Administrative High Court to overturn the Decision of the Samarinda State Administrative Court Number: 33/G/2010/PTUN.SMD dated 3 March 2011 filed for appeal, and to pass a decision based on its own authority by granting the Plaintiff/Appellant’s claim in its entirety; -----

Whereas the Defendant/Appellee has filed a Counter Memorandum of Appeal dated 19 May 2011 received by the Clerk’s Office of the Samarinda State Administrative Court on such date and duly notified and delivered to the Plaintiff/Appellant and Defendant II in Intervention on 20 May 2011, and the Defendant II in Intervention/Appellee has also filed a Counter Memorandum of Appeal dated 19 May 2011 received by the Clerk’s Office of the Samarinda State Administrative Court on such date and duly notified and delivered to the Plaintiff/Appellant and the Defendant/Appellee on 20 May 2011, which substantially denied the arguments presented by the Plaintiff/Appellant in the Counter Memorandum of Appeal on the grounds that the legal considerations of the Decision Number: 33/G/2010/PTUN.SMD dated 3 March 2011 filed for appeal, were appropriate and correct, and requesting for affirmation in this examination of appeal; -----

Whereas the parties have been given the opportunity to look at and study the case dossier prior to it being submitted to the Jakarta State Administrative High Court, respectively on 11 April 2011; -----



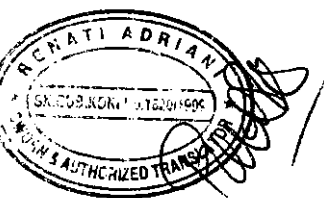
## REGARDING LEGAL CONSIDERATIONS

Considering, whereas the Decision of the Samarinda State Administrative Court Number: 33/G/2010/PTUN.SMD, filed for appeal, was pronounced at a hearing open to the public on 3 March 2011 in the presence of the parties in dispute respectively; -----

Considering, whereas the Plaintiff/Appellant has filed an appeal against the Decision of the Samarinda State Administrative Court dated 3 March 2011 Number: 33/G/2010/PTUN.SMD on 9 March 2011; -----

Considering, whereas if the grace period of the statement of appeal submitted by the Plaintiff/Appellant on 9 March 2011 against the Decision of the Samarinda State Administrative Court dated 3 March 2011 No. 33/G/2010/PTUN.SMD is taken into account, then the request for appeal is still within the grace period of 14 (fourteen) days as specified in Article 123 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Judicature, therefore the request for appeal from the Plaintiff/Appellant is formally admissible; -----

Considering, after carefully studying the Decision of the Samarinda State Administrative Court dated 3 March 2011 Number: 33/G/2010/PTUN.SMD, and all case dossiers filed for the *a quo* appeal, including the Memorandum of Appeal and the Counter Memorandum of Appeal, the Council of Judges in Court at the Appellate level have discussed and decided unanimously based on evidence as well as legal facts and also the judge's conviction, to **agree** with all legal considerations of the court of first instance which rejected the Defendant's exception and the Plaintiff's claim. The East Kutai Regent (the Defendant) was authorized by applicable laws and regulations to revoke the decisions on the Granting of Mining Business License (IUP) in his region, and exploitation Mining Business License (IUP) of PT. Investmine Nusa Persada (the Plaintiff) as referred to in the Decision of the East Kutai Regent No. 188.4.45/117/HK/II/2009, dated 27 March 2009 (vide evidence P-4), which is a continuation of, or an upgrade from a general survey and exploration Mining Business License (IUP), because a part of its region was proven to be located in the forest area.. PT Investmine Nusa Persada (the Plaintiff) was also proven to have not received (owned) a Forest Area Borrow and Use License from the Minister of Forestry. As a result, from the authority, procedural/formal and substantial/material aspects, the decision of the object of dispute (evidence P-5 = T-7), is not contrary and/or is in compliance with the provisions of applicable laws and regulations and does not violate the



Principles of Good Governance, therefore the Council of Judges has legal ground to reject the Plaintiff's claim; -----

Considering, whereas to avoid repeating the legal considerations of the Samarinda State Administrative Court, in brief, the decision of the Samarinda State Administrative Court is deemed *mutatis mutandis* reinstated and used as the basis of considerations in deciding upon the *a quo* appeal case; -----

Considering, whereas with due observance of the provisions of Article 107 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986, the evidence presented by the parties has been carefully examined, but to adjudicate and decide the case, only the relevant evidence shall be used. As for the remaining evidence, it will remain attached to and become an integral part of the case dossier; -----

Considering, whereas based on the description above, it is legally reasonable to affirm the Decision of the Samarinda State Administrative Court dated 3 March 2011 Number: 33/G/2010/PTUN.SMD filed for appeal; -----

Considering, whereas based on Article 110 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Judicature, the losing party in this case (the Plaintiff/Appellant) is required to pay all costs arising in the two levels of judicature, which for the appellate level shall be determined as set out in the injunction of this decision; -----

In view of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Judicature, as well as other relevant laws and regulations; -----

### **TO ADJUDICATE**

- Accepting the request for appeal from the Plaintiff/Appellant;-----
- Affirming the Decision of the Samarinda State Administrative Court dated 3 March 2011 No. 33/G/2010/PTUN.SMD filed for appeal; -----



- Requiring the Plaintiff/Appellant to pay the case fees at both judicature levels which at the appellate level is determined to be in the amount of Rp250,000,- (two hundred and fifty thousand rupiah); -----

Hence this case is decided at the closed meeting of the Council of Judges of the Jakarta State Administrative Court on Monday dated 8 August 2011, by us: H. BAMBANG EDY SUTANTO SOEDEWO, S.H., as the Head of the Council, Hj. ASINONG KANTORO, S.H., M.H. and H.M. ARIF NURDU'A, S.H., M.H. each as Member Judge. The decision was pronounced at a hearing open to the public, on Monday 8 August 2011 by the Head of the Council accompanied by the Member Judges and also assisted by H. BAHRI, S.H. as the Clerk, without the presence of the parties to the case or their attorneys-in-fact. -----

MEMBER JUDGES

HEAD OF COUNCIL

Signed

Signed

1. Hj. ASINONG KANTORO, S.H., M.H.      H. BAMBANG EDY SUTANTO S., S.H.

Signed

2. H.M. ARIF NURDU'A, S.H., M.H.

CLERK

Signed

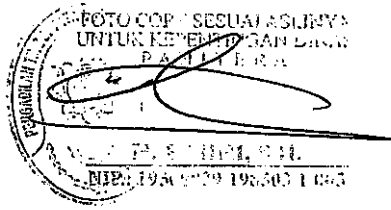
H. BAHRI, S.H.

Detail of Process Fees

1. Notice	Rp 22.000,-
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3. Stamp duty	Rp 6.000,-
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5. Appeal process fee	<u>Rp 212.000,- +</u>
Total	<b>Rp 250.000,-</b>

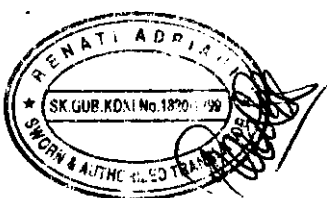
In words: two hundred and fifty thousand rupiah;

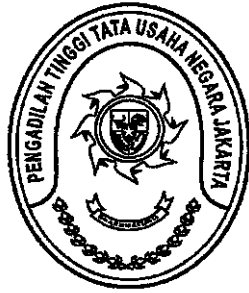




Note:

- Copy of this decision is submitted for official interest, in compliance with the provisions of Article 51 A paragraph (2) of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Judicature.
- Grace period for remedies submission is counted as of the date of notice of the decision, which will be notified by the filing court to the parties.





JAKARTA STATE ADMINISTRATIVE HIGH COURT

PHOTOCOPY OF DECISION

CASE : APPEAL  
NO. : 112/B/2011/PT.TUN.JKT

between

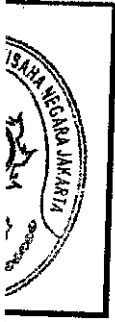
APPELLANT/ : PT. INVESTAMA RESOURCES  
PLAINTIFF

against

APPELLEE/ : EAST KUTAI REGENT, Cs.  
DEFENDANT

DATE OF DECISION : 8 AUGUST 2011





No: 112/B/2011/PT.TUN.JKT

**FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD  
DECISION**

Jakarta State Administrative High Court examining and deciding upon state administrative case at the appeal level, holding a session in Jakarta State Administrative High Court building at Jalan Cikini Raya No. 117, Central Jakarta, has passed the following decisions in a case between: -----

**PT. INVESTAMA RESOURCES**, represented by Ir. ANANG MUJLIANTORO, Indonesian citizen, Director of PT. Investama Resources, pursuant to the Deed of Meeting Resolutions of PT Investama Resources No.: 95, dated 30 June 2010, and Deed of the Statement of Meeting Resolutions Reaffirmation the Deed No. 9, dated 4 October 2010, drawn up before Notary Rusnaldy, S.H. notary in Jakarta; having his office at Grand Bintaro No. C. 8/9, Jalan Bintaro Permai Raya 1, South Jakarta, in this matter granting power to:-----

1. ARIS AFFANDI LUBIS, S.H. -----
2. M. FATARURACHMAN, S.H. -----

Both of whom are Indonesian citizens and advocates, having their address at Basrewan Lubis, Reksonegoro & Partners Law Office, The Belleza Permata Hijau Building, Office Tower No. 9, 21<sup>th</sup> Floor, Jalan Letjend. Soepono No. 34, South Jakarta, by virtue of Special Power of Attorney dated 24 August 2010, and Special



Power of Attorney to Appeal dated 7 March 2011 No. 0111/BLR/III/2011; and granting power to: -----

1. IRIL HISWARA, S.H. LL.M. -----
2. MIRA FADHYA, S.H. -----
3. CHALID LOUIS HEYDER, S.H. -----
4. TEGUH P. DARMAWAN, S.H. -----
5. NARENDRA ADIYASA, S.H. -----
6. SUHARSANTO RAHARJO, S.H. -----

All of whom are Indonesian citizens and advocates from Hiswara Bunjamin & Tandjung Law Office, having their address at BRI II Building, 23<sup>th</sup> Floor, Jalan Jend. Sudirman Kav. 44-46, Jakarta 10210, by virtue of Special Power of Attorney dated 14 March 2011, hereinafter referred to as the ..... **PLAINTIFF/ APPELLANT;**

**VERSUS:**

**EAST KUTAI REGENT,** domiciled at Jalan Soekarno Hatta No. 1 Kawasan Perkantoran Bukit Pelangi Sangatta, East Kutai Regency, East Kalimantan Province; in this matter granting power to: -----

1. HAMZAH DAHLAN, S.H., advocate/attorney under No. : A.02.11927, having his office at Jalan Jend. Sudirman Komplek Bandar Balikpapan Blok F No. 10 Balikpapan; ----
2. AYU ASTRINI, S.H. advocate/attorney under No. : 4660/KEP-ADV/DPP-KAI/V/2010, having her office at Jalan Jend. Sudirman Komplek Bandar Balikpapan Blok F No. 10 Balikpapan;-----
3. H. ZAINUDDIN ASPAN, S.H., M.Si., the Head of Legal Department of the Secretariat of East Kutai Regency; -----
4. NORA RAMADANI, S.H., M.H., Staff of Legal Aid Division in the Legal Department of the Regional Secretariat of East Kutai Regency;-----
5. ARDIANSYAH, S.H., Staff of Legal Aid Division in Legal Department of the Regional Secretariat of East Kutai Regency; -----



6. SYAMSUL ALAM, S.H., Staff of Legal Aid Division in  
Legal Department of the Regional Secretariat of East Kutai  
Regency; -----

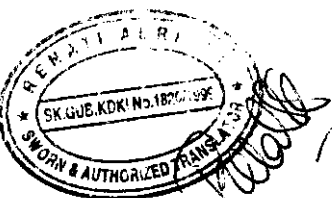
All of whom are Indonesian citizens, having their office at the  
Regent/Regional Secretariat Office of East Kutai Regency, Jalan  
Soekarno Hatta No.1, Kawasan Perkantoran Bukit Pelangi  
Sangatta, East Kutai Regency, East Kalimantan Province, by  
virtue of Special Power of Attorney dated 20 September 2010 No.  
: 180/183.5/HK/99/IX/2010 and Special Power of Attorney  
dated 20 October 2010 No. : 180/A.183.5/HK/99/X/2010;  
hereinafter referred to as the ..... **DEFENDANT/  
APPELLE;**

**A N D**

**PT. BATUBARA NUSANTARA KALTIM**, represented by **SUGIONO**, an Indonesian  
citizen and Director of PT Batubara Nusantara Kaltim, having his  
address at Bidakara Tower, 9<sup>th</sup> Floor, Jalan Gator Subroto Kav.  
71-73, South Jakarta, in this matter granting power to: -----

1. HOTMAN PARIS HUTAPEA, S.H., M.Hum. -----
2. ANTHONY L. P. HUTAPEA, S.H., M.H. -----
3. SUBAGIO ARIDARMO, S.H. -----
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7. Ir. NURBAINI JANAH, S.H. -----
8. IMMANUEL SIANIPAR, S.H. -----
9. IDA AYU TRISNAMURTI, S.H. -----

All of whom are Indonesian citizens, advocates and legal  
consultants at HOTMAN PARIS & PARTNERS Advocate &  
Legal Consultant Office, having their address at Sumitmas I  
Building, 18<sup>th</sup> Floor, Jalan Jenderal Sudirman Kav. 61 - 62,  
Jakarta, by virtue of Special Power of Attorney dated 19 October



2010, hereinafter referred to as ..... **DEFENDANT II**  
**IN INTERVENTION/APPELLEE;**

The said Jakarta State Administrative High Court; -----

Having read: -----

1. Stipulation of the Chairman of the Jakarta State Administrative High Court No.: 112/B/2011/PT.TUN.JKT dated 7 June 2011 concerning the Appointment of Council of Judges examining and deciding this case; -----
2. Copy of the Decision of the Samarinda State Administrative Court dated 3 March 2011 Number : 34/G/2010/PTUN.SMD; -----
3. Appeal case dossier Number: 34/G/2010/PTUN.SMD, and other letters relevant to this case; -----

**REGARDING THE FACTS OF THE CASE**

Having taken into account and accepting the factual account of the case as set out in the decision of the Samarinda State Administrative Court dated dated 3 March 2011 Number : 34/G/210/PTUN.SMD, the injunction of which reads as follows : -----

**ADJUDICATING:**

In the Exception: -----

- Rejecting the Defendant's exception; -----

In the Principle Issue of the Case: -----

- Rejecting the Plaintiff's claim; -----
- Sentencing the Plaintiff to pay costs arising from this case in the amount of Rp272,000,- (two hundred seventy-two thousand Rupiah); -----

Whereas the said Decision was pronounced at a hearing open to the public on Thursday dated 3 March 2011 in the presence of the parties in dispute namely, the Attorney-at-Law of the Plaintiff/Appellant, the Attorney-at-Law of the Defendant/Appellee, the Attorney-at-Law of the Defendant II in Intervention /Appellee; -----

Whereas the Plaintiff/Appellant on 9 March 2011 filed a request for appeal against the Decision of the Samarinda State Administrative Court dated 3 March 2011 Number:



34/G/2010/PTUN.SMD pursuant to Deed of Request for Appeal dated 9 March 2001  
Number: 34/G/2010//PTUN-SMD; -----

Whereas the Defendant/Appellee and Defendant II in Intervention/Appellee have both  
been informed of the request for appeal filed by the Plaintiff/Appellant with Notice on the  
Statement of Appeal dated 10 March 2011 Number: 34/G/2010/PTUN-SMD; -----

Whereas the Plaintiff/Appellant has filed a Memorandum of Appeal dated 4 May 2011  
received by Clerk's Office of the Samarinda State Administrative Court on 6 May 2010 as  
notified and delivered to the Defendant/Appellee and Defendant II in Intervention /Appellee  
respectively with the Notice and Delivery of Memorandum of Appeal dated 6 May 2011  
Number: 34/G/2010/PTUN.SMD, presenting reasons for appeal substantially as follows: -----

- Pursuant to Law Number 51 of 2009 regarding the Second Amendment to Law Number 5 of 1986 regarding the State Administrative Judicature ("UUPTUN"), the Appellant has a right to file request for the postponement of the execution of the Decision of East Kutai Regent Number: 540.1/K.441/HK/V/2010 dated 4 May 2010 regarding the revocation of the Decision of East Kutai Regent Number: 188.4.45/116/HK/III/2009 regarding Exploitation Mining Business Permit (IUP) for PT. Investama Resources in an area of 10.000 HA located at Busang District, East Kutai Regency ("SK Bupati No. 540.1") in order to have a final and binding Court Decision (see explanation in point 4.1-4.7 on page 5-8). -----
- The Council of Judges of the Samarinda State Administrative Court (the "Council of Judges of Samarinda PTUN") has been erroneous in granting the request for Intervention filed by PT. Batubara Nusantara Kaltim ("APPELEE II IN INTERVENTION" previously Defendant II in Intervention). The APPELEE II IN INTERVENTION clearly has no interest as an intervening party to this case and therefore the Council of Judges of the Jakarta State Administrative High Court ("the Council of Judges of PT. TUN DKI Jakarta") should reject the request for intervention filed by the APPELEE II IN INTERVENTION (see explanation in point 5.2-5.5 on page 8-10). -----
- East Kutai Regent (The "APELLEE") has made a mistake in issuing SK Bupati No.540.1, for the following reasons:-----
  - (i) SK Bupati Number: 540.1 annulling the Decision of East Kutai Number: 188.4.45/116/HK/III/2009 regarding Exploitation Mining Business Permit (IUP) for PT Investama Resources in an area of 10.000 HA located in Busang



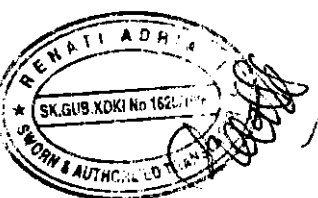
District, East Kutai Regency (“Exploitation IUP”) is contradictory to applicable laws and regulations, namely the provisions of Article 119 of Law Number 4 of 2009 regarding Mineral and Coal Mining (“UU Minerba”) (see explanation in point 5.7.1-5.7.4 on page 11-20); -----

- (ii) SK Bupati Number: 540.1 is contradictory to applicable laws and regulations, namely the Regulation of the Ministry of Home Affairs Number 54 of 2009 regarding Official File Management within the Purview of Regional Government (“Permendagri Nomor 54/2009”) (see explanation in point 5.8 on page 21-26). --
- (iii) SK Bupati Number: 540.1 is contradictory to the General Principles of Good Governance (see explanation in point 5.8 on page 21-28). -----

The above mentioned explanation clearly proves that the Council of Judges of the Samarinda State Administrative Court has been erroneous and wrong in passing the Decision Number: 34/G/2010/PTUN.SMD and therefore, it is reasonable and appropriate for the Council of Judges of the Jakarta State Administrative High Court to overturn the Decision of the Samarinda State Administrative Court Number: 34/G/2010/PTUN.SMD dated 3 March 2011 filed for appeal, and to pass decision based its own authority by granting the Plaintiff /Appellant’s claim in its entirety; -----

Whereas the Defendant/Appellee has filed a Counter Memorandum of Appeal dated 19 May 2011 received by the Clerk’s Office of the Samarinda State Administrative Court on such date and duly notified and delivered to the Plaintiff/Appellant and Defendant II in Intervention on 20 May 2011, and the Defendant II in Intervention/Appellee has also filed a Counter Memorandum of Appeal dated 19 May 2011 received by the Clerk’s Office of the Samarinda State Administrative Court on such date and duly notified and delivered to the Plaintiff /Appellant and the Defendant/Appellee on 20 May 2011 which substantially denied the arguments presented by the Plaintiff/Appellant in the Counter Memorandum of Appeal on the grounds that the legal considerations of the Decision Number: 34/G/2010/PTUN.SMD dated 3 March 2011 filed for appeal, were appropriate and correct, and requesting for affirmation in this examination of appeal; -----

Whereas the parties have been given the opportunity to look at and study the case dossier prior to it being submitted to the Jakarta State Administrative High Court, respectively on 11 April 2011; -----



**REGARDING LEGAL CONSIDERATION**

Considering, whereas the Decision of the Samarinda State Administrative Court Number: 34/G/2010/PTUN.SMD, filed for appeal, was pronounced at a hearing open to the public on 3 March 2011 in the presence of the parties in dispute respectively; -----

Considering, whereas the Plaintiff/Appellant has filed an appeal against the Decision of the Samarinda State Administrative Court dated 3 March 2011 Number: 34/G/2010/PTUN.SMD on 9 March 2011; -----

Considering, whereas if the grace period of the statement of appeal submitted by the Plaintiff/Appellant on 9 March 2011 against the Decision of the Samarinda State Administrative Court dated 3 March 2011 No. 34/G/2010/PTUN.SMD is taken into account, then the request for appeal is still within the grace period of 14 (fourteen) days as specified in Article 123 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Judicature, therefore the request for appeal from the Plaintiff/Appellant is formally admissible; -----

Considering, after carefully studying the Decision of the Samarinda State Administrative Court dated 3 March 2011 Number: 34/G/2010/PTUN.SMD, and all case dossiers filed for the *a quo* appeal, including the Memorandum of Appeal and the Counter Memorandum of Appeal, the Council of Judges in Court at the Appellate level have discussed and decided unanimously based on evidence as well as legal facts and also the judge's conviction to *agreed* with all legal considerations of the court of first instance which rejected the Defendant's exception and the Plaintiff's claim. The East Kutai Regent (the Defendant) was authorized by applicable laws and regulations to revoke the decisions on the Granting of Mining Business License (IUP) in his region, and exploitation Mining Business License (IUP) of PT. Investama Resources (the Plaintiff) as referred to in the Decision of the East Kutai Regent No. 188.4.45/116/HK/III/2009, dated 27 March 2009 (vide evidence P-4), which is a continuation of or an upgrade from a general survey and exploration Mining Business License (IUP) because a part of its regions was proven to be located in the forest area, and PT Investama Resources (the Plaintiff) was also proven to have not received (owned) a Forest Area Borrow and Use License from the Minister of Forestry. As a result from the authority, procedural/formal and substantial/material aspects, the decision of the object of dispute (evidence P-5 = T-7), is not contrary and/or is in compliance with the provisions of applicable laws and regulations and does



not violate the Principles of Good Governance, therefore the Council of Judges has legal ground to reject the Plaintiff's claim; -----

Considering, whereas to avoid repeating the legal considerations of the Samarinda State Administrative Court, in brief, the decision of the Samarinda State Administrative Court, is deemed *mutatis mutandis* reinstated and used as the basis of considerations in deciding upon the *a quo* appeal case; -----

Considering, whereas with due observance of the provisions of Article 107 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986, the evidence presented by the parties has been carefully examined, but to adjudicate and decide upon the case, only the relevant evidence shall be used. As for the remaining evidence, it will remain attached to and become an integral part of the case dossier; -----

Considering, whereas based on the description above, it is legally reasonable to affirm the Decision of Samarinda State Administrative Court dated 3 March 2011 Number: 34/G/2010/PTUN.SMD filed for appeal; -----

Considering, whereas based on Article 110 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Judicature, then the losing party in this case (the Plaintiff/Appellant) is required to pay all costs arising in the two levels of judicature, which for the appellate level shall be determined as set out in the injunction of this decision; -----

In view of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Judicature, as well as other relevant laws and regulations; -----

### **TO ADJUDICATE**

- Accepting the request for appeal from the Plaintiff/Appellant;-----
- Affirming the Decision of the Samarinda State Administrative Court dated 3 March 2011 No. 34/G/2010/PTUN.SMD filed for appeal; -----



- Requiring the Plaintiff/Appellant to pay the case fees at both judicature levels which at the appellate level is determined to be in the amount of Rp250,000,- (two hundred and fifty thousand rupiah); -----

Hence this case is decided at the closed meeting of the Council of Judges of the Jakarta State Administrative Court on Monday dated 8 August 2011 by us: H. BAMBANG EDY SUTANTO SOEDEWO, S.H., as the Head of the Council, DR. SANTER SITORUS, S.H., M.Hum. and H.M. ARIF NURDU'A, S.H., M.H. each as Member Judge, The decision of which was pronounced at the hearing open for public on **Monday**, dated 8 August 2011 by the Head of the Council accompanied by the Member Judges and also assisted by JARWO LIYANTO, S.H., as the Substitute Clerk, without the presence of the parties to the case or their attorneys-in-fact. -----

MEMBER JUDGES

HEAD OF COUNCIL

Signed

Signed

1. DR. SANTER SITORUS, S.H., M.Hum .

H. BAMBANG EDY SUTANTO

Signed

2. H.M. ARIF NURDU'A, S.H., M.H.

SUBSTITUTE CLERK

Signed

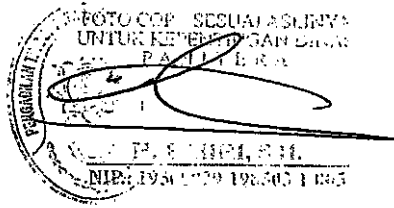
JARWO LIYANTO, S.H.

Detail of Process Fees

1. Notice	Rp 22.000,-
2. Editorial fee	Rp 5.000,-
3. Stamp duty	Rp 6.000,-
4. Administrative fees	Rp 5.000,-
5. Appeal process fee	<u>Rp 212.000,- +</u>
Total	Rp 250.000,-

In words: two hundred and fifty thousand rupiah;





Note:

- Copy of this decision is submitted for official interest, in compliance with the provisions of Article 51 A paragraph (2) of Law No. 51 of 2009 concerning Second Amendment to Law No. 5 of 1986 concerning State Administrative Judicature.
- Grace period for remedies submission is counted as of the date of notice of the decision, which will be notified by the filing court to the parties.

