



## Compatibility of Constitutional and Supreme Court Decisions on Small Island Protection

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### Abstract

*This study examines the legal consistency between Constitutional Court Decision No. 35/PUU-XXI/2023 and Supreme Court Decision No. 57P/HUM2022 regarding small island protection in Indonesia. It focuses on the judicial review of the Coastal Area and Small Islands Management Law following a mining dispute on Wawonii Island. The research employs a normative legal method with statutory and case-based approaches. Findings indicate that the Constitutional Court affirms the prohibition of mining on small islands as conditional, rather than absolute, contingent upon technical, ecological, and socio-cultural impacts. Simultaneously, the Supreme Court categorizes such activities as abnormally dangerous, reinforcing environmental safeguards. This judicial synchronization establishes a robust regulatory framework that prioritizes sustainability, tightens environmental permitting instruments, and ensures legal certainty for stakeholders. These rulings strengthen the constitutional rights of coastal communities against exploitative activities, mandating that natural resource utilization must strictly adhere to rigorous ecological standards to prevent irreversible damage to vulnerable island ecosystems.*

### Abstrak

Penelitian ini mengkaji konsistensi hukum antara Putusan Mahkamah Konstitusi Nomor 35/PUU-XXI/2023 dan Putusan Mahkamah Agung Nomor 57P/HUM2022 mengenai perlindungan pulau kecil di Indonesia. Fokusnya adalah uji materiil Undang-Undang Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil pasca sengketa pertambangan di Pulau Wawonii. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan dan kasus. Temuan menunjukkan Mahkamah Konstitusi menegaskan larangan pertambangan di pulau kecil bersifat bersyarat, bukan mutlak, bergantung pada dampak teknis, ekologis, dan sosial-budaya. Secara bersamaan, Mahkamah Agung mengategorikan aktivitas tersebut sebagai kegiatan berbahaya secara tidak wajar, memperkuat perlindungan lingkungan. Sinkronisasi yudisial ini menetapkan kerangka regulasi kuat yang memprioritaskan keberlanjutan, memperketat instrumen perizinan lingkungan, serta menjamin kepastian hukum bagi pemangku kepentingan. Putusan ini memperkuat hak konstitusional masyarakat pesisir terhadap aktivitas eksploitatif, sekaligus mengamanatkan bahwa pemanfaatan sumber daya alam harus secara mutlak dipandu standar ekologis yang sangat ketat guna mencegah kerusakan yang tidak dapat dipulihkan pada ekosistem pulau yang sangat rentan dan bersifat unik.



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## **A. INTRODUCTION**

### **1. Background**

Currently, Indonesia has regulated the limitations and definitions of small islands through the issuance of Law PWP3K. Article 1 of this law explains that a small island is an island with a maximum area of 2000 km<sup>2</sup> and its integrated ecosystem. Small islands have specific biogeophysical characteristics, according to Bengen, including (1) their small size and separation from the main island, (2) limited water resources, both surface and groundwater, with small or very limited watersheds, causing surface runoff and sediment to flow directly into the sea, and (3) high vulnerability to external influences, both from natural factors such as storms and large waves and from human activities such as land use change and pollution.<sup>1</sup>

Mining activities, for example, have been proven to damage small island ecosystems by causing deforestation, water pollution, and severe soil degradation. According to a report by the Mining Advocacy Network, there are at least 164 mining permits on 55 small islands across Indonesia, indicating a high risk to environmental sustainability. Besides environmental impacts, this exploitation also triggers social vulnerability and conflict between communities, especially when local land and resource rights are ignored.<sup>2</sup>

As the threats to small islands increase, such as the estimated sinking of around 1,500 islands by 2051 due to climate change, the need for sustainable policies and the involvement of local community members becomes increasingly urgent.<sup>3</sup> Therefore, efforts to protect small islands must be a priority in national policy to ensure the survival of ecosystems and the communities that depend on them.

Next, on Wawonii Island, located in South Sulawesi, a mining company, PT Geme Kresi Perdana (hereinafter referred to as PT GKP), entered the market. PT GKP is a mining company focused on metal minerals, with nickel as its primary commodity, operating in Konawe Kepulauan Regency, Southeast Sulawesi, Indonesia. The company obtained an official mining business permit and a concession area of approximately 958 hectares.

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<sup>1</sup> S Z Kurdi, "Pengembangan Infrastruktur Di Pulau-Pulau Kecil Berdasarkan Daya Dukung Lingkungan (Studi Kasus: Pulau Ndao, Nusa Tenggara Timur, Indonesia)," *IOP Conference Series: Earth and Environmental Science* 419 (2020), <https://doi.org/10.1088/1755-1315/419/1/012023>.

<sup>2</sup> YOESAP BUDIANTO, "Eksplorasi Pertambangan Dan Ancaman Akhir Hayat Pulau-Pulau Kecil," 2023, <https://www.kompas.id/baca/riset/2023/09/09/eksplorasi-pertambangan-dan-ancaman-akhir-hayat-pulau-pulau-kecil-di-indonesia>.

<sup>3</sup> Harkins Hendro Prabowo and Muhammad Salahudin, "Potensi Tenggelamnya Pulau-Pulau Kecil Terluar Wilayah NKRI," *Jurnal Geologi Kelautan* 14, no. 2 (March 2, 2017): 116, <https://doi.org/10.32693/jgk.14.2.2016.356>.

President Director Meris Wiryadi leads PT GKP, a company in the natural resources sector that focuses on nickel exploration and production activities. Besides its operations, PT GKP is also known for several controversies related to its mining activities in the Wawonii Island region.<sup>4</sup>

The case of PT Gema Kreasi Perdana on Wawonii Island, Southeast Sulawesi, reflects the conflict between the interests of the mining company and the rights of the local community, as well as environmental law enforcement. The conflict between PT GKP and the local community has gone through the first instance court, the second instance court, and the cassation court. Then, on October 7, 2024, the Supreme Court granted the cassation filed by local residents, revoking the Forest Area Borrow and Use Permit (IPPKH) that had been granted to PT GKP. This decision affirmed that the Minister of Forestry's choice to grant the company permission to mine nickel in the forest area was illegal and must be revoked. Nevertheless, PT GKP continued its mining activities, citing that it had not yet received an official copy of the decision, which sparked public anger.

The people of Wawonii Island have repeatedly reported land grabbing by the company, which has resulted in economic and social losses for them. Mining activities threaten the environment and damage agricultural land, which is the source of livelihood for local residents. Local residents, through the Coastal and Small Islands Rescue Advocacy Team (TAPaK), are fighting to stop the company's activities, which are considered illegal and unconstitutional.

PT GKP asserts their adherence to applicable standards and respect for the legal process. However, many parties believe that the continuation of their activities after the Supreme Court's decision demonstrates defiance of the law and the constitution. This case highlights the challenges in law enforcement in Indonesia, particularly concerning the extractive industries in ecologically and socially sensitive areas. PT GKP on April 26, 2023 submitted a legal application to the Constitutional Court (MK) for a material test of the PWP3K law, especially in Article 23 paragraph (2) and Article 35 letter k, according to PT GKP, the article is contrary to Article 28D paragraph (1) and Article 28i paragraph (2) of the 1945 Constitution.

After undergoing a trial examination process, the Constitutional Court issued

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<sup>4</sup> Zakia Syarika Zulkifli Valleda Dien Maghfira and others, "Tinjauan Yuridis Atas Konflik Sengketa Tanah Antara PT. Gema Kreasi Perdana Dan Warga Roko-Roko Raya," *Jurnal Sains Student Research* 2, no. 6 (2024): 440, <https://doi.org/https://doi.org/10.61722/jssr.v2i6.2985>.

Decision Number 35/PUU-XXI/2023, which was read on March 21, 2024, rejecting the application filed by PT GKP regarding the material testing of Law PWP3K. In the application, PT GKP claimed that the norms in Article 23 paragraph (2) and Article 35 letter k of Law PWP3K were detrimental to its constitutional rights, as they were considered not to provide a fair and non-discriminatory guaranty of legal certainty for the applicant who had a permit to conduct mining activities on small islands, particularly Wawonii Island.

The Constitutional Court (MK) believes that the norm in question does not contradict the 1945 Constitution, emphasizing that the prohibition of mining activities on small islands is an important step to protect the environment. The MK categorizes mining activities on small islands as ecologically dangerous activities, in line with Supreme Court Decision No. 57 P/HUM/2022, which states that mining on small islands falls under the category of "abnormally dangerous activity." Thus, the Constitutional Court rejected all of PT GKP's petitions, affirming that the norms of Article 23 paragraph (2) and Article 35 letter k of the PWP3K Law, which prohibit unconditional mining activities, are valid and do not violate the constitution.

Several previous studies have examined aspects of small island protection and mining in coastal areas, but none have comprehensively analyzed the consistency between the Constitutional Court's Decision and the Supreme Court's Decision in the context of small island protection after the issuance of Constitutional Court Decision Number 35/PUU-XXI/2023. The novelty of this research lies in the in-depth analysis of the Constitutional Court judges' legal considerations in interpreting the conditional ban on mining, as well as the study of the impact of this decision on mining governance in coastal areas and small islands.

## **2. Research Questions**

- a. What is the form of the judge's legal considerations in Constitutional Court Decision Number 35/PUU-XXI/2023?
- b. What is the impact of Constitutional Court Decision Number 35/PUU-XXI/2023 on the regulation of mining in coastal areas and small islands?

## **3. Research Methods**

This research uses a normative legal method to examine the protection of small islands in Indonesia, focusing on the study of relevant legal norms in the form of legislation and court decisions. Research data was collected through document studies

and literature reviews. Primary data sources include Constitutional Court Decision 35/PUU-XXI/2023, Supreme Court Decision 57/P/HUM/2022, and related laws, while secondary data sources include legal books, scientific journals, and articles. The analytical technique used is descriptive-qualitative, with a content analysis of the decision.

## **B. DISCUSSION**

### **1. Legal Considerations of the Judge in Constitutional Court Decision Number 35/PUU-XXI/2023**

Rasnus Pasaribu, who represents PT GKP as President Director, qualifies as an applicant because he has fulfilled the legal standing requirements based on the provisions of Article 51 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court, which has been amended by Law Number 7 of 2020. PT GKP itself is a legal entity in the form of a private legal entity and as a party that assesses whether its constitutional rights and authorities have been harmed due to the enactment of the law in question, including individuals of Indonesian citizens, customary law communities, public and private legal entities, and state institutions.

The Constitutional Court, in decision Number 35/PUU-XXI/2023, rejected PT GKP's application in its entirety. Based on the verdict read by the panel of judges, the applicant's request was declared rejected in its entirety. The rejection of the application is based on several legal considerations. First, the Court considered that Article 23 paragraph (2) clarifies that the utilization or management of small islands and their surrounding waters must be prioritized for the interests of conservation, education, research, tourism, fisheries, organic farming, animal husbandry, and national defense and security. The word "prioritized" is defined in the Indonesian Big Dictionary as being given priority and precedence, not as an absolute prohibition against other activities such as mining.

Second, Article 35 letter (k) prohibits mineral mining activities in coastal areas and small islands only if such activities, in terms of their technical execution, ecological, social, and cultural impact, could lead to damage and pollution, causing losses to the surrounding community. Therefore, it can be said that this prohibition is only conditional and not absolute.<sup>5</sup> Mining activities that do not cause such impacts are permitted as long as they meet applicable requirements, including licensing and environmental management.

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<sup>5</sup> Arwan Y Lopmeta, Jimmy Pello, and B V Wilhelmus, "Pelaku Penambangan Pasir Laut Sebagai Perbuatan Melawan Hukum Pidana Dan Kendala Hukumnya," *Petitum Law Journal*, 2024, <https://doi.org/10.35508/pelana.v2i1.16028>.

Third, the House of Representatives (DPR) stated that the Petitioner's request did not meet the legal standing requirement because, specifically and actually, no constitutional rights were harmed by the application of those articles. The Applicant's losses are stated to be material and related to the implementation of the norm, not the unconstitutionality of the law. Fourth, the Court assessed that the provisions in these articles provide legal certainty by offering guidelines for the long-term or sustainable utilization of coastal areas and small islands and do not discriminate against any party but rather provide legal protection for the environment and surrounding communities.<sup>6</sup>

Based on these considerations, the Constitutional Court firmly rejected the Petitioner's application in its entirety and declared that Article 23 paragraph (2) and Article 35 letter (k) of Law Number 27 of 2007 jo. Law Number 1 of 2014 are not contrary to the 1945 Constitution and remain legally binding. This decision also affirms that legal certainty remains intact as long as mining activities comply with applicable technical, ecological, social, cultural, and permitting regulations.

According to the Author, the considerations made by the Constitutional Court judges in this case align with both the Indonesian judicial system and the principles guiding their decisions. The presence of the Constitutional Court as the guardian of the validity of regulations is exercised through material testing of legislation against the 1945 Constitution, taking into account the principles of constitutionality, legal certainty, and protecting the constitutional rights of the petitioner.<sup>7</sup> The Constitutional Court interpreted Article 23 paragraph (2) and Article 35 letter (k) of Law No. 27 of 2007 concerning the Management of Coastal Areas and Small Islands conditionally, meaning that the prohibition against any mining activity in coastal areas and small islands is not absolute but must meet conditions to prevent environmental damage and harm to surrounding communities. This interpretation aligns with the principles of legality, legal certainty, and non-discrimination as guaranteed in the 1945 Constitution.<sup>8</sup> The judge's considerations also took into account the licensing documents and mining management

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<sup>6</sup> Tommy Cahya Trinanda, "Pengelolaan Wilayah Pesisir Indonesia Dalam Rangka Pembangunan Berbasis Pelestarian Lingkungan," *Matra Pembaruan: Jurnal Inovasi Kebijakan* 1, no. 2 (2017): 75–84, <https://doi.org/https://doi.org/10.21787/mp.1.2.2017.75-84>.

<sup>7</sup> Suci Wulandari et al., "Peran Mahkamah Konstitusi Sebagai Pelaku Sistem Kekuasaan Kehakiman Di Indonesia," *Sosio Yustisia Jurnal Hukum Dan Perubahan Sosial*, 2023, <https://doi.org/10.15642/sosyus.v3i2.516>.

<sup>8</sup> M I Silehu and Cekli Setya Pratiwi, "Polemik Tambang Nikel Di Pulau Gag Raja Ampat : Ditinjau Dari Perspektif Positivisme Hukum," *Al-Balad: Jurnal Hukum Tata Negara Dan Politik Islam*, 2025, <https://doi.org/10.59259/ab.v5i1.232>.

mechanisms based on applicable legal provisions, so the Supreme Court's absolute interpretation rejecting the appeal maintains legal certainty and provides room for sustainable business operations. The Constitutional Court ensured its decision would apply prospectively to guarantee regulatory harmonization and the sustainability of natural resource management. The opinion of the Indonesian House of Representatives in this case also draws attention to the importance of a comprehensive evaluation and regulation of norms for the protection of the environment and society. So, the thoughts of the Constitutional Court judges align with the Indonesian judicial system, which sees the Constitutional Court as the last authority to check if laws follow the constitution, support the protection of constitutional rights, and provide legal certainty for everyone involved.<sup>9</sup>

Constitutional Court Decision Number 35/PUU-XXI/2023 actually contains a rather different view or reason (concurring opinion). A concurring opinion is known as an opinion/decision recorded directly by one or more judges who agree with the more dominant opinion of the panel of judges in a case but have different reasons.<sup>10</sup>

In that decision, Constitutional Justice Suhartoyo, in a dissenting opinion regarding the judicial review of Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands as amended by Law Number 1 of 2014, emphasized that the rules in Article 23 paragraph (2) and Article 35 letter (k) must be carefully examined and interpreted conditionally and contextually. He highlighted the use of the phrase "prioritized" in Article 23 paragraph (2), which he said leads to prioritizing the interests of research, conservation, education, tourism, fisheries, organic farming, animal husbandry, and national defense in coastal areas and small islands but does not automatically prohibit other activities such as mining. The prohibition against mineral mining activities in Article 35, letter (k), is conditional according to Suhartoyo, meaning it only applies if such activities cause environmental damage, pollution, or harm to the surrounding community. He also emphasized the importance of sustainable management and government oversight to ensure that mining does not damage the environment and provides legal certainty and fair treatment to mining permit holders who have complied

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<sup>9</sup> Muhammad Syaiful Anwar and Silvia Yuniarti, "Kebijakan Pengelolaan Lingkungan Pasca Tambang Di Wilayah Pesisir Kepulauan Bangka Belitung Berbasis Good Governance," in *Proceedings of National Colloquium Research and Community Service (SNPPM)*, 2024, <https://doi.org/https://doi.org/10.33019/snppm.v6i0.3686>.

<sup>10</sup> Haidar Adam, "Dissenting Opinion Dan Concurring Opinion Dalam Putusan Mahkamah Konstitusi," *Al-Jinayah: Jurnal Hukum Pidana Islam* 3, no. 2 (March 22, 2018): 307-24, <https://doi.org/10.15642/aj.2017.3.2.307-324>.

with the law. In his view, the Supreme Court's interpretation, which considers the ban an absolute and unconditional prohibition, could lead to legal uncertainty and discrimination against legitimate permit holders, thus deviating from the constitutional principles in Article 28D and Article 28I of the 1945 Constitution, which guarantee the right to legal certainty and equal treatment. Thus, Suhartoyo proposed that the assessment of these articles be conducted holistically, systematically, and with an emphasis on the principles of sustainability and justice, so that the regulation of coastal and small island utilization does not negate the right to responsibly manage or use natural resources and provides certainty for business actors. This opinion reinforces the principle that legal norms must be clear and unambiguous to ensure legal stability and justice for all parties.

Meanwhile, three constitutional judges, M. Guntur Hamzah, Daniel Yusmic, and Anwar Usman, provided different reasons that strengthened the Constitutional Court's main decision regarding the prohibition of mineral mining activities in coastal areas and small islands, as stipulated in Article 35 letter k of Law Number 27 of 2007 and the amendment to Law Number 1 of 2014. They jointly affirmed that the ban is not merely normative but has strong considerations based on the precautionary principle, environmental protection, and the sustainability of critical natural resources. All three highlighted that small islands are highly vulnerable ecosystems with significant biodiversity value that must be protected for the sake of environmental sustainability and the well-being of surrounding communities. Therefore, mining activities on small islands are categorized as high-risk activities (abnormally dangerous activities) with the potential to cause irreversible environmental damage.<sup>11</sup>

In their view, this protection aligns with the mandate of Article 33 paragraph (4) of the 1945 Constitution regarding the management of natural resources for the greatest prosperity of the people and the principle of sustainable development (strong sustainability), which must be maintained. The three constitutional judges mentioned above also agreed that the enforcement of this ban should not be compromised to maintain harmony between natural resource management and environmental protection and to avoid significant risks to the ecosystem and society. Their approach differs in emphasizing both ecological risk aspects and socio-cultural impacts, while also affirming

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<sup>11</sup> Rominaldo Lezhera Letfa, Jimmy Pello, and Darius A Kian, "Studi Hukum Pidana Dalam Kaitannya Dengan Penambang Pasir Laut Ditinjau Dari Undang-Undang Nomor 1 Tahun 2014 Atas UU No. 27 Tahun 2007 Tentang Pengelolaan Wilayah Pesisir Dan Pulau-Pulau Kecil: Studi Kasus Kabupaten Alor," *Majelis: Jurnal Hukum Indonesia* 1, no. 4 (2024): 12–21, <https://doi.org/https://doi.org/10.62383/majelis.v1i4.228>.

the legitimacy of strict sanctions stipulated in the law for violations of the mining ban on small islands. Thus, their differing reasons strengthen the foundation of the Constitutional Court's decision to prohibit mineral mining in coastal areas and small islands as a means of constitutionally protecting the environment and the sustainability of nature and all the resources it contains.<sup>12</sup>

## **2. The Impact of Constitutional Court Decision Number 35/PUU-XXI/2023 on Mining Regulations in Coastal and Small Islands**

The Constitutional Court's decision Number 35/PUU-XXI/2023, which stated that the petition for judicial review by PT Gema Kreasi Perdana could not be granted, has significant consequences for mining governance in coastal areas and small islands. While Article 23 paragraph (2) and Article 35 letter (k) of Law Number 27 of 2007 as amended by Law Number 1 of 2014 remain in effect, the Constitutional Court affirmed that the restriction of mining activities is not absolute but depends on technical and environmental conditions. Therefore, the effects of this decision need to be viewed from a legal perspective, ecological protection, investment certainty, and the rights of local communities.<sup>13</sup>

### **a. Consequences for the Environmental Regulatory and Policy Framework**

The affirmation that the mining ban is conditional provides a new direction for the pattern of environmental law development. This means that mining on small islands is permissible as long as the environmental impact assessment results do not indicate serious potential damage or social impact. This policy configuration encourages the government to tighten environmental permit instruments, environmental impact assessments (EIAs), and the application of the precautionary principle in every permit issuance. In this way, the regulatory framework that is formed is not only economically oriented but also integrates conservation aspects so that resource exploitation is carried out more measuredly and responsibly.<sup>14</sup>

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<sup>12</sup> Dina Sunyowati, "Tata Kelola Kelautan Berdasarkan Integrated Coastal and Ocean Management Untuk Pembangunan Kelautan Berkelanjutan," *Perspektif: Kajian Masalah Hukum Dan Pembangunan* 15, no. 1 (2022), <https://doi.org/https://doi.org/10.30742/perspektif.v15i1.41>.

<sup>13</sup> Muhammad Farhan Ramadhany, Gede Sutresna Wijaya, and Anung Muharini, "Assessment of Natural Radioactivity Concentration and Radiological Risk in Tanjung Enim's Coal Mine, South Sumatra, Indonesia," 2022, <https://doi.org/https://doi.org/10.21203/rs.3.rs-1469889/v2>.

<sup>14</sup> Yu Ning, "Advancing EIA Framework for Deep-Sea Mining: A Critical Review of Current Regulations and Proposals," *Frontiers in Marine Science*, 2025, <https://doi.org/10.3389/fmars.2025.1612889>.

**b. Impact on Legal Certainty for Business Actors**

The Constitutional Court's decision also has a direct impact on the investment climate in the mining sector. The Constitutional Court's rejection of the applicant's request makes it clear that business actors cannot freely explore the coastal area. They must strictly adhere to legal and environmental standards to operate. From the perspective of legal certainty, this decision provides certainty because the norm remains in effect, but it also requires proof that the mine does not damage the ecology and does not harm the surrounding community. In other words, achieving legal certainty necessitates heightened compliance obligations, requiring mining businesses to adopt a more robust environmental strategy.

**c. Impact on Environmental Protection and Ecosystems of Small Islands**

Small islands are ecologically vulnerable areas. By strengthening the conditional ban, the Constitutional Court reinforces the constitutional guarantee of the right to a healthy environment. This decision provides a strong basis for the state to prioritize conservation, tighten oversight, and minimize the potential for permanent damage. Thus, the sustainability aspect becomes the main focus: the utilization of natural resources can only be done if it maintains the continuity of the ecosystem and does not eliminate the ecological value inherent in the coastal area.

**d. Impact on the Protection of Coastal Community Rights**

The decision also has significant social implications. By including the environment and surrounding communities as mandatory elements to be considered before mining permits are granted, the Constitutional Court indirectly expands the legal protection for coastal communities. Fishing communities, indigenous peoples, and traditional economic actors have received stronger legal legitimacy to reject activities that threaten their living spaces. This indicates that the decision not only addresses normative issues but also touches upon social justice and the distribution of natural resource benefits.<sup>15</sup>

**C. CONCLUSIONS**

The Constitutional Court (MK) Decision Number 35/PUU-XXI/2023 explicitly states

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<sup>15</sup> Ahmad Duroi Nasution, Ramlan Ramlan, and Ida Nadirah, "Reconstruction Of Provincial Authority In The Field Of Marine Affairs And Fisheries To Regency/City Governments In Realizing The Welfare Of Small-Scale Fishermen In Indonesia," *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 2024, <https://doi.org/10.31941/pj.v22i2.4968>.

that the prohibition of mining activities on small islands is conditional, taking into account technical, ecological, social, and cultural impacts, and is therefore not absolute. This decision strengthens environmental protection and ensures legal certainty in the sustainable management of coastal areas, with major implications for mining governance, namely the continued validity of mining restriction norms under certain conditions, increased legal certainty for business actors accompanied by the obligation to meet strict environmental standards, the strengthening of sustainability principles and ecosystem protection in regulatory practice, and the protection of coastal communities' rights through legal mechanisms that prioritize environmental and social safety.

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