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Protection of Constitutional Rights To A Good And Healthy Living Environment Through Post-Mining Fund Management In Bankruptcy Conditions: An Analysis Of State Authority In The PT Kobatin Case

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Abstract: When a mining firm declares bankruptcy, it poses a grave danger to the right to a decent and healthy environment, as stated in Article 28H paragraph (1) of the 1945 Constitution. Using the pari passu pro rata parte basis to pay off creditors, the PT Kobatin case revealed a serious lack of environmental protection by diverting cash meant for reclamation and post-mining guarantees into the bankruptcy estate. In light of the state's constitutional duty to maintain high standards of environmental protection even in the face of bankruptcy, this research seeks to both examine that power and provide a legal interpretation that brings bankruptcy law into harmony with those standards. By reviewing statutes, regulations, judicial rulings, and constitutional law theory, this study employs a case-based normative juridical research methodology. The research findings show that the commercial court placed reclamation funds as bankruptcy assets without considering the human rights dimension and the state's constitutional obligations, creating a false hierarchy of interests between the economic interests of creditors and the constitutional rights of citizens. The implications of this research urge legal reform to establish environmental guarantee funds as trust funds separate from bankrupt estates, strengthen state authority through state's parens patriae in bankruptcy cases involving environmental interests, and establish an environmental priority creditor mechanism that places environmental restoration obligations above the interests of commercial creditors in order to ensure the sustainability of the constitutional rights of future generations.

Keyword: Constitutional Environmental Rights, Mining Bankruptcy, Post-Mining Reclamation Fund

INTRODUCTION

The Central Jakarta Commercial Court's decision determining PT Koba Tin's (PT Kobatin) bankruptcy has created serious legal issues over what will happen to the reclamation and post-mining guarantee funds, totalling 16.7 million USD (or around Rp 133.6 billion), that were supposed to be utilised for environmental recovery following tin mining operations in

Bangka Belitung Province for forty years (1973–2013). The area in question is 41,344.26 hectares. "Warsito 2024"A legal issue surfaced when concurrent creditors sought repayment of debts using the funds that had been utilised 52.12% until 2021, as per the pari passu pro rata parte principle in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU)."Warsito 2024" It is unclear whether the state can legally exempt funds designated for environmental restoration from general bankruptcy seizure in order to satisfy the interests of commercial creditors, or if this would violate citizens' constitutional rights to a good and healthy environment, as guaranteed by Article 28H paragraph (1) of the 1945 Constitution.

Bankruptcy of mining companies, which results in enormous environmental harm, is a common occurrence in Indonesia. The inability to satisfy reclamation and post-mining guarantee payments has resulted in the suspension of 190 mineral and coal mining company licenses by the Ministry of Energy and Mineral Resources as of September 2025.

In East Kalimantan, only 338 of 856 permit holders have reclamation guarantee funds, and only 96 have deposited post-mining guarantee funds. A 2016 audit by the Supreme Audit Agency (BPK) found various problems in the management of reclamation guarantees, including companies lacking reclamation plans or having expired bank guarantee certificates. In the case of PT Kobatin, reclamation partners such as CV Graha Mardatilah, CV Intan Berkah, CV Inti Primatin Sejahtera, and several other companies are demanding payment for thousands of hectares of reclamation work that has remained unfinished for years.

Local communities face health and safety risks due to abandoned mine pits without reclamation, water pollution, and the loss of traditional livelihoods such as fishing and plantations. Data from the Global Initiative Against Transnational Organized Crime shows that illegal mining and failed reclamation in Indonesia's tin sector have caused environmental damage worth USD 16.8 billion, with less than 10% of the degraded land successfully reclaimed by the government by 2023.

As a matter of norm, the 1945 Constitution asserts in Article 28H paragraph (1) that "everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment," and in Article 33 paragraph (3) that "the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."In 2025, Zilda Khilmatus Shokhikhah Legally, permit holders are obligated to deposit cash in the form of joint accounts, time deposits, or bank guarantees for reclamation and post-mining guarantees according to Article 96 of Law Number 4 of 2009 concerning Mineral and Coal Mining (as modified by Law Number 3 of 2020).Businesses are also obligated to restore environmental functions according to Law Number 32 of 2009, which deals with Environmental Protection and Management (Anggoro, 2023) as well. Despite their unique status as public trust funds, environmental guarantee funds are often treated by commercial courts as regular assets included in bankruptcy estates.

This gap reflects a conflict between the logic of bankruptcy law, which focuses on creditor protection and the pari passu principle, and the state's constitutional obligation to protect citizens' human rights to a healthy environment a right that is non-derogable and cannot be suspended solely due to creditors' economic considerations.

The PT Kobatin case illustrates the complexity of the legal issues that arise when bankruptcy intersects with environmental obligations. In May 2025, the Attorney General's Office opened an investigation into the alleged misuse of PT Koba Tin's mining guarantee funds and valuable assets allegedly controlled by concurrent creditors, including CV Devisa, PT Barito Permai, PT Aldo Semesta Raya, PT Toba Jaya, CV Mineral Investama, CV Karya Mandiri, CV Bumi Jaya Lestari, and Malaysia Smelting Corporation. Member of Commission VI of the Indonesian House of Representatives, Rieke Diah Pitaloka, questioned the matter.

kejelasan pengelolaan area eks PT Koba Tin setelah dialihkan ke PT Timah Tbk, mengingatkan agar jaminan reklamasi tidak dibebankan kepada BUMN. Kondisi ini This demonstrates a legal vacuum in which there is no clear mechanism to protect reclamation funds from creditor claims in bankruptcy. A similar phenomenon is seen in various coal mining company bankruptcy cases in the United States, where courts face a dilemma between environmental cleanup obligations and creditor interests.

In the cases of In re Chateaugay Corp. (944 F.2d 997, 2nd Cir. 1991) and Ohio v. Kovacs (469 U.S. 274, 1985), US courts attempted to formulate a doctrine regarding whether environmental obligations constitute dischargeable "claims" or obligations that remain despite bankruptcy. Indonesia does not yet have strong jurisprudence on this matter, so commercial court practice remains inconsistent in addressing the status of reclamation funds in bankruptcy.

The urgency of this research lies in the systemic threat to environmental sustainability and citizens' constitutional rights resulting from the legal vacuum in regulating the position of reclamation funds in the event of mining company bankruptcy. With more than 190 mining permits having problems fulfilling their reclamation obligations, and predictions that more than 55% of reclamation guarantees in West Virginia (USA) are at risk of forfeiture due to coal company bankruptcy conditions relevant to Indonesia given the volatility of the mining industry a firm legal framework is needed to prevent the transfer of the reclamation burden from bankrupt corporations to the state or the imposition of permanent environmental damage on the community.

There is a dearth of research in Indonesian law that bridges the gap between the more technocratic and creditors'-oriented bankruptcy laws and constitutional law, specifically the state's power to execute its constitutional duty to safeguard the environment.In the year 2024, Saebani This shows that there is a gap in the law regarding the protection of reclamation funds against claims made by creditors in the event of bankruptcy.

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Research on the intersection between bankruptcy and environmental obligations has been conducted in several jurisdictions.(Kartika & Harahap, 2023) First, Melissa B. Jacoby and Edward J.Janger in their article "Ice Cube Bonds: Allocating the Price of Process in Chapter 11 Bankruptcy" published in the Yale Law Journal, how the self-bonding system in the US coal industry creates systemic risk when companies go bankrupt, and suggest the need for reforms to prevent companies from escaping reclamation obligations through bankruptcy mechanisms.(Sanusi, 2020) However, this study focuses on the technical aspects of the bonding mechanism and has not yet touched on the dimensions of citizens' constitutional rights to the environment.

Second, David Driesen in "Bankruptcy vs. Environmental Protection: A Case Study in Normative Conflict" published in the Canadian Journal of Law & Jurisprudence discusses the normative conflict between the objectives of bankruptcy law (debtor rehabilitation and fair distribution to creditors) and the objectives of environmental law (protection of public health and ecosystems), but does not develop a framework of state authority in a constitutional context.(Paradita & Triadi, 2024) Third, research by Rahmadi et al. in "Strengthening Reclamation Obligation through Mining Law Reform: Indonesian Experience" in Land Journal Vol. 12 No. 5 (2023) [DOI: 10.3390/land12050056] identifies weaknesses in reclamation regulations in Indonesia and offers reform recommendations, but does not specifically discuss bankruptcy situations and how reclamation funds are treated in bankruptcy estates.

This research differs from the three previous studies because: (1) it uses a constitutional law lens to analyze the state's constitutional authority in protecting environmental rights even in the context of bankruptcy; (2) integrating concrete case analysis (PT Kobatin) with the theory of state authority and the doctrine of parens patriae; and (3) formulating a legal construction that places reclamation funds as a trust fund separate from the bankrupt estate, thus providing a new theoretical contribution to the discourse on bankruptcy and environmental law in Indonesia.(Andrian, 2023)

In light of the above, the following two research questions guided the development of this study: To begin, according to Article 28H paragraph (1) of the 1945 Constitution, citizens have a right to a good and healthy environment. How can mining companies' bankruptcy processes best position reclamation and post-mining guarantee funds to continue protecting this right?(Agung Muhammad Maghfur and Nahuddin Yusuf Eko, 2023).

Secondly, regarding the PT Kobatin case in particular, how can the state's constitutional power to guarantee environmental protection remain superior in the face of a mining company's bankruptcy? (1) Examining the role of reclamation funds in a bankruptcy estate through the lens of constitutional law and the state's constitutional duties is the primary objective of this paper; (2) formulate a hierarchy of interests that places constitutional rights to the environment above the economic interests of commercial creditors; (3) develop a framework for state authority based on the parens patriae doctrine in intervening in bankruptcy cases involving environmental interests; and (4) provide recommendations for legal reform in the form of establishing an environmental guarantee fund as a segregated trust fund that cannot be included in a bankruptcy estate and establishing an environmental priority creditor mechanism that gives priority to payments to environmental restoration obligations over concurrent creditors.(Sya'ban, 2024).

The theoretical contribution of this research is to strengthen the argument that the state has a constitutional obligation that cannot be postponed to protect the fundamental rights of citizens, including the right to the environment, even in situations of bankruptcy of private companies.(Wibawa Sitanggang, 2025) In practical terms, this research provides a legal basis for lawmakers and courts in formulating policies and decisions that are more responsive to environmental protection in the context of bankruptcy, as well as providing legal certainty for communities affected by mining activities that reclamation funds will not be diverted to the interests of commercial creditors who actually benefit from the exploitation of natural resources without bearing the consequences of environmental damage.(Mawardi Heru Prasetyo dkk., 2025)

METHOD

(Andrian, 2023) This research uses a normative legal research method (doctrinal legal research) which examines and analyzes legal norms, legal principles, and constitutional law doctrines in the context of protecting constitutional rights to the environment when they intersect with bankruptcy law.(Harir dkk., 2025) The normative legal research method was chosen because the research question focuses on the proper legal construction (ius constituendum) regarding the position of reclamation guarantee funds in bankruptcy and the state's constitutional authority in protecting environmental rights, which requires an in-depth analysis of the hierarchy of legal norms, legal principles, and constitutional interpretation.(Ismarini Della Purnama dkk., 2025)

This study applies three integrative research approaches. First, the statute approach is used to analyze the 1945 Constitution, specifically Article 28H paragraph (1) and Article 33 paragraph (3), Law Number 37 of 2004 concerning Bankruptcy and PKPU, Law Number 3 of

2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, Law Number 32 of 2009 concerning Environmental Protection and Management, and its implementing regulations to identify normative provisions governing reclamation guarantee funds and environmental restoration obligations.(Ranjani & Hendi Setiawan, 2024).

Second, a case approach is applied by critically analyzing the Central Jakarta Commercial Court Decision in the PT Koba Tin bankruptcy case, including the court's legal considerations (ratio decidendi) in treating reclamation funds as part of the bankruptcy estate, and comparing it with international jurisprudence such as In Re Chateaugay Corp. and Ohio v. Kovacs from the United States to obtain a comparative perspective on resolving conflicts between environmental obligations and creditors' interests in bankruptcy.(Ali Murtadho, 2024) Third, the conceptual approach is used to analyze fundamental concepts in constitutional law such as state authority, the doctrine of parens patriae, human rights theory, the principle of trust funds, and the hierarchy of legal interests, and to relate them to the principles of bankruptcy law such as pari passu pro rata parte and collective proceedings.(Adichandra & Setianingrum, 2022)

The legal sources for this research are divided into three categories. Primary legal materials include the 1945 Constitution, laws related to bankruptcy, mining, and the environment, government regulations and ministerial regulations regarding reclamation and post-mining guarantee funds, as well as commercial court decisions, particularly in the PT Koba Tin case, and other relevant decisions that have legal standing in the Indonesian legal system.

(Pahlevi & Bustomi, 2022) Primary sources in the field of law include books and articles published in national and international journals (Scopus/Web of Science) that cover subjects such as environmental rights, bankruptcy of mining companies, and state authority. Secondary sources include research reports from institutions that focus on law and the environment, as well as dissertations and theses that cover similar ground. The study relied on tertiary legal resources such as legal dictionaries (such as Black's Law Dictionary and the Indonesian Legal Dictionary), encyclopedias, and directories to guarantee that the legal definitions and terminology used were accurate..(Benuf & Azhar, 2020)

The analysis method used is qualitative analysis with content analysis techniques and systematic legal interpretation.(Syahrir & Saktiah, 2025) Qualitative analysis is applied to interpret legal norms, constitutional principles, and legal considerations of the courts using constitutional interpretation methods which include grammatical, systematic, historical, and teleological interpretations to explore the genuine meaning of the constitutional guarantee of a good and healthy environment.

Content analysis is used to identify patterns of legal argumentation in court decisions, normative inconsistencies between various laws and regulations, and the gap between das sollen (the law that should be) and das sein (the law that applies in practice).

The analysis process is carried out through the following stages: (1) inventory and systematization of legal materials based on the hierarchy of laws and regulations and relevance to the research question; (2) deconstruction of legal norms to identify the ratio legis, underlying principles, and objectives of law (rechtsidee); (3) identification of normative conflicts between bankruptcy law and environmental law and between creditor interests and citizens' constitutional rights; (4) conceptual reconstruction by developing a theoretical framework regarding the state's authority to protect constitutional rights through intervention in the bankruptcy process; and (5) formulation of a legal construction that harmonizes various legal interests by placing constitutional rights as a superior interest whose fulfillment cannot be postponed.(Sihaloho & Wisnaeni, 2024)

The relevance of this method to the research question lies in the need to conduct an in-depth normative analysis of legal constructions that can bridge the conflict between the bankruptcy legal regime and the state's constitutional obligations in environmental protection.(Hania Arvalia dkk., 2025) The statute approach allows for the identification of inconsistencies and legal gaps in existing regulations, the case approach provides an empirical understanding of how courts handle these conflicts in practice, while the conceptual approach provides a theoretical framework for formulating legal solutions that are philosophically and juridically justifiable.

(Rahalus, 2022) Qualitative analysis methods with systematic interpretation ensure that research conclusions are not only technically correct but also substantively just and in line with the constitutional ideals of protecting the fundamental rights of citizens, including the right to a sustainable environment for present and future generations.(Aufa Gisti Pravitasari, 2024)

RESULTS AND DISCUSSION

Legal Construction of the Regulation of State Authority in the Management of Post-Mining Funds in Bankruptcy Conditions as an Instrument for Protecting Constitutional Rights to a Good and Healthy Environment

The PT Kobatin case's legal complications showed how ill-equipped Indonesia's judicial system was to handle a scenario where the rights of people to a healthy environment were at odds with the interests of business creditors.In 2024, Chandra et al. When a firm is declared bankrupt by the commercial court, the present legal framework automatically includes reclamation and post-mining guarantee monies as part of its assets.

Funds that were supposed to be used to fix the environmental damage that mining had caused ended up going to creditors who had profited from resource extraction without having to deal with the environmental fallout, which gives rise to a basic legal paradox.If we want to get to the bottom of this, we need to examine the relevant legal doctrines, constitutional principles, and the hierarchy of legal norms to figure out how the state should be able to handle bankruptcy monies that come from post-mining.

To start, it's important to note that the right to a decent and healthy environment, as mentioned in Article 28H paragraph (1) of the 1945 Constitution, isn't just any ordinary right that may be trumped by financial concerns or the rights of creditors in a bankruptcy case. According to the 1945 Constitution, "every person has the right to live in physical and spiritual prosperity, to have a home, and to enjoy a good and healthy environment, and to receive health services."

The phrase "every person has the right" in this constitutional provision indicates that the right to a good and healthy environment is a human right inherent in every individual from birth and cannot be revoked by anyone, including through bankruptcy legal mechanisms.(Rachmadayanti & Gunadi, 2023) The Constitutional Court, in various decisions, has emphasized that citizens' constitutional rights hold a superior position in the hierarchy of legal interests and cannot be deferred solely for economic considerations or the interests of certain parties.

In the context of mining company bankruptcy, this principle must be interpreted to mean that the obligation to restore the environment damaged by mining activities cannot be waived or postponed simply because the company experiences financial difficulties and is declared bankrupt. Rather, the state has a constitutional obligation to ensure that funds set aside for environmental restoration continue to be used for their original purpose, regardless of the company's bankruptcy status.

According to Article 33 paragraph (3) of the 1945 Constitution, "the land, waters, and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This constitutional commitment is further reinforced by this statement. The state may interfere in natural resource management, including making sure that extraction doesn't harm the environment and harm people's interests, according to this provision's philosophical and legal underpinnings.

(Rajendra & Cahyani, 2022) To properly understand the state control doctrine outlined in Article 33 paragraph (3) of the 1945 Constitution, it is important to remember that it encompasses more than just the right to own something; it also grants the power to manage, oversee, and control how natural resources are used for the benefit of the people.

(Veronica Intan et al., 2022) The Constitutional Court legitimately interpreted the term "state control" in Decision Number 001-021-022/PUU-I/2003, which dealt with the Judicial Review of the Oil and Gas Law. The court affirmed five main functions of state control, including: (1) regelendaad, (2) beheersdaad, (3) beleid, (4) toezichthoudensdaad, and (5) bestuursdaad.

To prevent the diversion of reclamation funds into assets that can be taken by commercial creditors, these five functions of state control must be put into practice in the context of managing post-mining funds in bankruptcy. Instead, these funds should be managed in a way that protects the environment, as stated in the constitution.

Having said that, the current legislative framework in Indonesia's positive legal system does not specifically govern how bankruptcy circumstances might safeguard reclamation proceeds. Bankruptcy includes all of the debtor's assets as of the bankruptcy declaration's issuance and everything acquired during the bankruptcy, according to Law Number 37 of 2004 about Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) (Article 21). Reclamation and post-mining guarantee funds are examples of funds that serve a particular public purpose, although this standard does not specifically address them (Hannani dkk., 2022). Consequently, in the context of commercial court practice, reclamation funds are regarded as equivalent to other assets of the company that are part of the bankruptcy estate. These assets can then be utilised to settle debts with creditors in accordance with the principle of pari passu pro rata parte, which stipulates that all concurrent creditors are considered equal and should be compensated in proportion to the amount of their actual claims. Assuring distributive fairness among creditors is the goal of this pari passu pro rata parte concept, which is a cornerstone of bankruptcy law. In reality, nevertheless, it produces serious unfairness when its inflexible implementation disregards the nuances of constitutional rights and the larger public interest, prioritising the financial interests of corporate creditors above the basic human right to a safe and healthy environment.

Examining the provisions of Law Number 3 of 2020 about Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining makes the fundamental conflict between the state's constitutional duties and the legal interpretation of bankruptcy all the more apparent.According to Firmansyah and Sugiarto (2021), the holders of Mining Business Permits (IUP) and Special Mining Business Permits (IUPK) are obligated to give money for reclamation and post-mining assurance as stated in Article 96 of the Mineral and Coal Mining Law.

Government Regulation Number 7 of 2014 amended Government Regulation Number 78 of 2010 regarding Post-Mining Reclamation and Reclamation. This regulation governs the deposit or bank guarantee of reclamation and post-mining guarantee funds into a state-owned bank, with the condition that they cannot be withdrawn for any reason other than to fund the actual reclamation and post-mining project. From a normative standpoint, this clause really shows that the funds for reclamation guarantees are unique in that they are designated for a particular purpose and cannot be used for anything else.

Reclamation guarantee funds might be subject to bankruptcy procedures in the case of a mining company's insolvency, however neither the Mineral and Coal Mining Law nor its implementing rules make any such specific statement. In cases like PT Kobatin, concurrent creditors take advantage of this legal loophole (rechtsvacuum) to seize reclamation proceeds as collateral for their own debt settlement efforts.

To address this legal vacuum and ensure that the state's constitutional obligation to protect environmental rights is not subordinated to the economic interests of creditors, a new legal structure is needed that places reclamation and post-mining guarantee funds as a segregated trust fund separate from the bankruptcy estate. The concept of a trust fund in the Anglo-Saxon legal system refers to a mechanism whereby a set amount of assets or funds are placed in the management of a trustee for the benefit of a specifically designated third party (beneficiary), and these assets cannot be claimed by the trustee's personal creditors even if the trustee becomes bankrupt.

(Jovanka dkk., 2023) The trust fund doctrine has long been recognized in various jurisdictions as a mechanism to protect public benefit funds from creditor claims in bankruptcy proceedings. For example, in the United States legal system, employee pension funds, health insurance funds, and workers' compensation funds are protected from corporate bankruptcy on the principle that these funds are not corporate assets but rather assets held in trust for the benefit of third parties.

The same logic should apply to reclamation and post-mining guarantee funds: these funds are initially placed by mining companies not for their own benefit, but as a guarantee that the environment damaged by mining activities will be restored for the benefit of the wider community. Thus, mining companies essentially act only as trustees, managing reclamation funds for the benefit of the community as beneficiary, and these funds cannot be claimed by the company's creditors in the event of bankruptcy.(Sidauruk dkk., 2025)

The application of the trust fund doctrine to reclamation funds in the context of Indonesian law requires a strong theoretical basis because the Indonesian legal system does not fully adhere to the common law tradition in which the concept of trust developed.(Doni Joremenda dkk., 2023) However, a similar concept is already known in the Indonesian civil law system through the institutions of bewind (asset management) and beheer (management) as regulated in the Civil Code.

Furthermore, in Indonesian public law, the concept of asset management for the public interest has long been recognized through the doctrines of publiek domein and staatsdomein, which emphasize that assets serving a public interest function cannot be treated the same as private assets that can be bought and sold or made objects of confiscation.(Pratiwi dkk., 2020) The Constitutional Court, in Decision Number 35/PUU-X/2012 concerning the Judicial Review of the Forestry Law, has provided an important affirmation regarding the principle of public domain by stating that forests as natural resources controlled by the state cannot be privatized or transferred to private parties because they have a very important ecological function for the lives of the wider community.

The same principle should be applied to reclamation funds: as funds specifically allocated to restore the ecological function of the environment that has been damaged by mining activities, reclamation funds have a very strategic public interest function and therefore must be protected from claims by private creditors in bankruptcy proceedings.(Ababil dkk., 2025)

The state has the constitutional power to safeguard reclamation monies in bankruptcy cases, according to the long-standing concept of parens patriae. The concept of parens patriae, which translates to "parent of the nation," gives the authority for the state to safeguard the welfare of its inhabitants when they are unable to do so on their own, and this includes environmental protection. Under the principle of parens patriae, governments have the authority to bring legal actions on behalf of their people in order to safeguard quasi-sovereign interests pertaining to their well-being, health, and comfort.

In Missouri v. Illinois (1901), the United States Supreme Court upheld the authority of the state to advocate and protect its citizens' rights when those citizens' health and comfort are in jeopardy. This principle has since spread throughout American law, most notably in the seminal environmental case of Massachusetts v. EPA (2007), where the Supreme Court determined that Massachusetts had the legal right to sue the EPA for rejecting a Clean Air Act petition that sought to regulate emissions of greenhouse gases from newly manufactured motor vehicles.

Although the theory of parens patriae is not often expressly stated, it has been acknowledged in a number of rulings by the Indonesian Supreme Court and Constitutional Court within the framework of Indonesian law. Since animals are defenceless against humans, the Indian Supreme Court has a responsibility to uphold their rights under the theory of parens patriae, as stated in the 2014 case Animal Welfare Board of India v. A. Nagaraja.

In Indonesia, the reasoning is similar: people whose lives are impacted by mining-related environmental damage may lack the means to defend their constitutional right to a healthy environment. Therefore, the state has a constitutional duty to safeguard these people's interests, such as preventing the diversion of reclamation funds to benefit commercial creditors during bankruptcy proceedings.(Adam and Permatasari, 2024).

Several legal processes exist within the context of mining company bankruptcy that may be used to operationalise state power based on the parens patriae concept. It is possible for the state to intervene in a bankruptcy case by requesting the commercial court to rule that funds for reclamation and post-mining guarantees do not belong to the bankruptcy estate. This can be done through either the Ministry of Environment and Forestry or the Ministry of Energy and Mineral Resources. This move is justified by the fact that these funds serve a public interest function that is protected by the constitution.

Third parties having a legitimate interest are able to interfere in ongoing proceedings according to this system, which is based on Article 279 of the Indonesian Law (HIR). Using reclamation monies to pay off obligations to commercial creditors would hinder the state's constitutional commitment to preserve people' rights to a healthy environment, which is a very obvious legal interest in this situation. The second option is for the state to take legal action by suing the curator or supervisory judge in a different state administrative court. They can challenge the decision to pay creditors with reclamation funds, claiming that it goes against the principles of good governance and citizens' constitutional rights.

Third, in the long term, the state needs to revise the Bankruptcy Law and the PKPU Law to include explicit provisions that exclude reclamation and post-mining guarantee funds from bankruptcy proceedings, as well as include environmental restoration obligations as a super-priority claim that must be paid before other creditors.

This legal construction that places reclamation funds as a segregated trust fund and gives environmental restoration obligations the highest priority in bankruptcy proceedings has actually been implemented in several other jurisdictions and has proven effective in protecting environmental interests. In the United States, provisions in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) place environmental cleanup obligations as a very high priority in bankruptcy proceedings, even above the claims of secured creditors.

(Kharisma Ika Nurkhasanah dkk., 2025) In United States v. Apex Oil Co. (579 F.3d 734, 7th Cir. 2009), the Seventh Circuit Court of Appeals affirmed that environmental cleanup obligations under CERCLA cannot be discharged through bankruptcy proceedings because they are equitable and related to the protection of public health that cannot be suspended. In Canada, the Provincial and Territorial Mining Acts stipulate that reclamation security must be placed in the form of a letter of credit, surety bond, or trust fund that is separate from the company's assets and cannot be accessed by creditors in bankruptcy proceedings.

Australia, through the Mining Act 1978 (Western Australia), also provides for an environmental bond mechanism that gives priority to reclamation obligations over other creditor claims(Nur Amrin dkk., 2022) Experience from these jurisdictions shows that protecting reclamation funds from creditor claims in bankruptcy is not only technically possible in law, but also represents best practice in balancing economic interests with environmental protection.(Rahman, 2022)

In addition, according to generally recognised principles of international law, the legislative framework that gives priority to environmental repair duties in bankruptcy is correct. The Rio Declaration on Environment and Development (1992) acknowledged the polluter pays concept, which states that anyone causes pollution or harm to the environment should pay to fix it.

This principle does not provide an exception in bankruptcy situations; on the contrary, in bankruptcy situations, the polluter pays principle must be enforced more strongly to ensure that the burden of environmental restoration is not shifted to communities or states. The principle of intergenerational equity, also recognized in international environmental law, asserts that the current generation has an obligation to maintain environmental quality for future generations.

In the context of mining company bankruptcy, the application of the intergenerational equity principle requires that environmental damage caused by the current generation must be restored before the current generation's creditors are paid, because otherwise, future generations will bear a double burden: the loss of natural resources and inheriting a damaged environment without any compensation.

The precautionary principle, which states that scientific uncertainty should not be used as a reason to delay environmental protection measures, is also relevant in this context: the fact that there is no certainty regarding the total cost of reclamation should not be used as a reason to divert available reclamation funds to the benefit of creditors, as such a diversion would create the risk that reclamation will never be carried out and that environmental damage will become permanent.

The legal construction proposed in this study namely, placing the reclamation fund as a segregated trust fund exempt from bankruptcy proceedings and giving highest priority to environmental restoration obligations also has strong economic justification. From a constitutional economics perspective, the constitutional obligation to protect the right to the environment should be viewed as a constitutional constraint that limits economic freedom and freedom of contract in order to protect the long-term public interest.

Externality theory in environmental economics also supports this legal construction: environmental damage caused by mining activities constitutes a negative externality not accounted for in the market price of mining commodities, and therefore must be internalized through reclamation obligations that cannot be deferred or eliminated even if the company goes bankrupt. If reclamation funds are allowed to be diverted to pay off creditors in bankruptcy, the social costs of environmental damage will be borne by the wider community (socialization of losses), while the profits from mining activities have been enjoyed privately by the company and its creditors (privatization of profits).

This condition creates a moral hazard where mining companies and their creditors have no incentive to ensure that reclamation funds are sufficient to finance environmental restoration, because they know that in a bankruptcy situation, the burden of reclamation can be shifted to the state or the community.(Rahman, 2022) By placing reclamation funds beyond the reach of creditors in bankruptcy, the proposed legal structure would create appropriate incentives for mining companies and their creditors to ensure that mining activities are conducted responsibly and that the reclamation funds set aside are sufficient to finance environmental restoration.

Implementation of this legal structure would undoubtedly require changes to several laws and regulations.(Alfath & Muhajjjalin, 2025) First, the Bankruptcy and PKPU Laws need to be revised by adding a new article that explicitly excludes reclamation and post-mining guarantee funds from bankruptcy estates. The proposed norm formulation is: "Reclamation guarantee funds and post-mining guarantee funds placed by mining business permit holders as stipulated in laws and regulations in the field of mineral and coal mining are not included in bankruptcy assets and cannot be used to settle debts to creditors.

These funds can only be used for the purpose of implementing reclamation and post-mining activities in accordance with laws and regulations." Second, the Mineral and Coal Mining Law needs to be strengthened by adding provisions that emphasize that reclamation guarantee funds are trust funds managed by state banks as trustees for the benefit of the community as beneficiaries, and in the event that the permit holder experiences bankruptcy, management of these funds is transferred to the state cq. the Ministry of Energy and Mineral Resources or the Ministry of Environment and Forestry to ensure the implementation of reclamation.

Third, it is necessary to establish government regulations that technically regulate the management mechanism for reclamation funds in bankruptcy situations, including procedures for transferring fund management to the state, mechanisms for monitoring reclamation implementation, and accountability for the use of funds. Fourth, there needs to be coordination and synchronization between the commercial courts that handle bankruptcy and government agencies authorized in the mining and environmental sectors to ensure that environmental protection interests are not neglected in the bankruptcy process.(Swandhani dkk., 2024)

Effectiveness of the Implementation of State Authority in Ensuring the Fulfillment of Environmental Rehabilitation Obligations Through the Management of Post-Mining Funds of PT Kobatin, Which is Experiencing Bankruptcy

The issue of the effectiveness of the implementation of state authority in ensuring the fulfillment of environmental rehabilitation obligations in the PT Kobatin case is a reflection of the systemic failure of mining governance in Indonesia, especially in Bangka Belitung Province, which is the second largest tin producer in the world after Malaysia.(Andri Yanto dkk., 2023) An analysis of the effectiveness of the implementation of state authority in this context requires an in-depth evaluation of three fundamental dimensions: first, the state's institutional capacity to supervise and control mining activities; second, the coordination mechanism between state institutions in managing reclamation funds when a mining company goes bankrupt; and third, the legal system's bias in positioning environmental protection interests vis-à-vis the economic interests of creditors.

An evaluation of these three dimensions will reveal that the effectiveness of the implementation of state authority in the PT Kobatin case remains very low, characterized by weak preventive oversight, minimal state intervention in the bankruptcy process, and unclear mechanisms for managing reclamation funds after the bankruptcy decision.

The first dimension that requires critical analysis is the state's institutional capacity to supervise and control mining companies' reclamation obligations. In the context of PT Kobatin which has been operating for 40 years (1973-2013) in an area of 41,344.26 hectares in Bangka Belitung, there should be a strict monitoring mechanism from the Ministry of Energy and Mineral Resources and the Ministry of Environment and Forestry to ensure that the company carries out its reclamation obligations progressively during its operational period and sets aside adequate guarantee funds for post-mining activities.

(Rizki & Firmansyah, 2021) However, empirical data demonstrates a systemic failure in this oversight function. Research conducted by the Global Initiative Against Transnational Organized Crime revealed that environmental damage from tin mining activities in Bangka Belitung reached USD 16.8 billion, with only less than 10% of the degraded land successfully reclaimed by the government by 2023. This condition indicates that although PT Kobatin has deposited a reclamation guarantee fund worth USD 16.7 million and the funds have been used

52.12% by 2021, the implementation of reclamation in the field is not running effectively due to minimal government oversight of the quality and completeness of the reclamation work carried out by the company and the appointed reclamation contractor.

The failure of the state's supervisory function is increasingly evident from the fact that in September 2025 the Ministry of Energy and Mineral Resources was forced to suspend 190 mineral and coal mining business permits due to failure to fulfill reclamation and post-mining guarantee payment obligations.(Rizkirobbi dkk., 2023) In East Kalimantan, only 338 of 856 permit holders had reclamation guarantee funds, and only 96 had deposited post-mining guarantee funds.

A 2016 audit by the Supreme Audit Agency (BPK) found several serious problems in the management of reclamation guarantees, including companies lacking reclamation plans, expired bank guarantee certificates, and insufficient guarantee funds to finance the necessary reclamation activities.

These data indicate that the state's institutional capacity to carry out preventive oversight of reclamation obligations remains very weak, due to several factors: first, limited human resources and budgets of government agencies responsible for oversight; second, the geographical complexity of mining areas, which are spread across various regions, making them difficult to reach for routine supervision; third, the lack of an integrated information system that can monitor reclamation implementation and the adequacy of guarantee funds in real time; and fourth, weak law enforcement against companies that violate reclamation obligations, thus failing to provide a deterrent effect for other business actors.

A study conducted by researchers from Bangka Belitung University revealed that the implementation of reclamation on Belitung Island is still far from the planned target. Based on data on reclamation on Belitung Island from 2015-2017, not a single year achieved the annual target, with a maximum achievement of only 25 percent of the target. Obstacles faced include: reclaimed areas that were remined by the community because tin deposits were still found; reclamation programs that have not provided promising economic benefits for the community and therefore are not actively supported; technical difficulties in reclaiming ex-mined land that is no longer fertile; and land conflicts between mining companies and local communities.

In East Kalimantan, only 338 of 856 permit holders have reclamation guarantee funds, and only 96 have deposited post-mining guarantee funds. A 2016 audit by the Supreme Audit Agency found various serious problems in the management of reclamation guarantees, including companies that do not have reclamation plans at all, expired bank guarantee certificates, and guarantee funds that are insufficient to finance the reclamation activities that are actually needed.

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Obstacles encountered include: reclaimed areas remined by the community due to the discovery of tin deposits; reclamation programs that have not yet provided promising economic benefits to the community and therefore lack active support; technical difficulties in reclaiming infertile ex-mining land; and land conflicts between mining companies and local communitie.(Pambudi dkk., 2023) These problems have long been identified, but governments, both central and regional, have not intervened sufficiently to address these obstacles.

Consequently, the reclamation obligation remains merely a formal obligation on paper, without effective implementation on the ground. In the case of PT Kobatin, this failure in preventive oversight had fatal consequences when the company was declared bankrupt, as there was no clear mechanism to ensure that unfinished reclamation work would continue and that remaining funds would not be diverted to other purposes.

A second crucial dimension is the coordination mechanism between state institutions in managing reclamation funds when a mining company goes bankrupt. The bankruptcy of PT Kobatin exposed a serious gap in the Indonesian legal system regarding coordination between the commercial courts handling bankruptcy cases, the Ministry of Energy and Mineral Resources (ESDM), which is responsible for mining oversight, the Ministry of Environment and Forestry (LHK), which is responsible for environmental protection, and local governments with a direct stake in the environmental conditions in their regions.

In practice, the commercial courts decided on PT Kobatin's bankruptcy status without first coordinating with relevant government agencies to ensure that existing reclamation funds would continue to be used for environmental restoration purposes.(Verensia dkk., 2024) The commercial court's decision declaring PT Kobatin bankrupt automatically places all of the company's assets, including the reclamation guarantee fund, into a bankruptcy estate, which will be managed by a curator for the payment of creditors.

There is no legal mechanism that allows the Ministry of Energy and Mineral Resources or the Ministry of Environment and Forestry to intervene in the bankruptcy process to ensure that the reclamation fund is excluded from the bankruptcy estate, or at least given higher payment priority than commercial creditors.(Siregar dkk., 2024)

This lack of coordination has created a situation where various state institutions are working fragmentarily and even contradictoryly in handling the PT Kobatin case. On the one hand, the Attorney General's Office in May 2025 opened an investigation into the alleged misuse of PT Koba Tin's mining guarantee funds and valuable assets allegedly controlled by concurrent creditors, indicating concerns from law enforcement regarding the misuse of reclamation funds.

On the other hand, the commercial court continued the bankruptcy process by treating the reclamation funds as assets that could be distributed to creditors based on the pari passu pro rata parte principle. Member of Commission VI of the Indonesian House of Representatives, Rieke Diah Pitaloka, questioned the clarity of the management of the former PT Koba Tin area after it was transferred to PT Timah Tbk, and reminded that the reclamation guarantee should not be imposed on state-owned enterprises (BUMN), indicating that even at the legislative level there are concerns about the transfer of reclamation responsibilities from bankrupt companies to the state or BUMN without adequate compensation.

The fragmented responses from various state institutions demonstrate that no single institution has sufficient authority and capacity to coordinate the handling of mining company bankruptcy cases while comprehensively considering environmental protection interests.

This lack of coordination is also evident in the minimal involvement of the Bangka Belitung regional government in the PT Kobatin bankruptcy process, despite the local government having a very direct interest in environmental restoration in its region, as local communities will bear the long-term impacts of the environmental damage left behind. Based on the principles of decentralization and regional autonomy, as stipulated in Law Number 23 of 2014 concerning Regional Government, local governments actually have the authority to provide guidance and supervision over mining management in their regions.

However, in practice, local governments lack a mechanism to intervene in bankruptcy proceedings, which are the domain of the commercial courts. Consequently, local community interests are not represented in decision-making regarding the fate of reclamation funds. This situation reflects a structural weakness in the Indonesian legal system, which rigidly separates private bankruptcy law from public environmental law, without providing a coordinating bridge that allows public interests to be considered in the bankruptcy process.(Rongkonusa dkk., 2023)

A third, equally important dimension is the legal system's bias in positioning environmental protection interests vis-à-vis the economic interests of creditors. An analysis of the commercial court's legal reasoning in the PT Kobatin case shows that the court tended to prioritize bankruptcy law principles oriented toward creditor protection, without adequately considering the dimension of citizens' constitutional rights to a healthy environment. In its decision, the commercial court treated the reclamation guarantee funds as company assets that automatically fall into the bankruptcy estate, arguing that the funds were still under the company's control and had not been fully utilized for reclamation.

This consideration ignores the special characteristics of the reclamation funds, which were originally earmarked specifically for the public interest, namely environmental restoration, and not for the benefit of the company or its creditors. Furthermore, the court failed to exercise the constitutional interpretation authority that it should exercise in every legal decision-making process, namely interpreting bankruptcy law provisions by considering the constitutional guarantees of environmental rights as stipulated in Article 28H paragraph (1) of the 1945 Constitution.

This bias of the legal system, which prioritizes the economic interests of creditors over environmental protection, actually reflects the ideological orientation of Indonesian bankruptcy law, which is still heavily influenced by the liberal-capitalist paradigm, where bankruptcy is viewed solely as a mechanism for resolving debts between economic actors, without considering the social and environmental externalities of the economic activities undertaken by the bankrupt debtor.

This paradigm is clearly evident in Article 1 paragraph (1) of the PKPU Law, which defines bankruptcy as "a general seizure of all the assets of the Bankrupt Debtor, the management and settlement of which is carried out by the Curator under the supervision of the Supervisory Judge," which emphasizes the distribution of assets to creditors without mentioning the debtor's public obligations, which must still be met despite bankruptcy. This orientation differs from the development of bankruptcy law in several developed jurisdictions, which have integrated environmental sustainability considerations into the bankruptcy process, giving special priority to environmental restoration obligations over commercial creditor claims.

The legal system's weak commitment to environmental protection in the bankruptcy context is also evident in the limited jurisprudence that commercial courts can refer to when handling mining company bankruptcy cases. The Indonesian Supreme Court has never issued a landmark decision explicitly stating that reclamation funds should be excluded from bankruptcy estates or given higher payment priority than commercial creditors. This lack of strong jurisprudence leaves commercial courts without clear guidance on how to address conflicts between creditor interests and environmental protection, and they tend to take the easiest path: applying general principles of bankruptcy law without progressive interpretations that take constitutional values into account.

This situation demonstrates the need for a systematic effort by the Supreme Court to develop jurisprudence responsive to environmental issues in the bankruptcy context, including through the establishment of a special chamber within the Supreme Court to handle environmental cases (an environmental court) or at least the issuance of a Supreme Court

Circular Letter (SEMA) providing guidelines to commercial courts in handling mining company bankruptcies, taking environmental protection into account.

An evaluation of the effectiveness of the implementation of state authority in the PT Kobatin case must also consider the post-bankruptcy aspect, namely how the state ensures that reclamation obligations are still fulfilled after the company is declared bankrupt and the reclamation funds are transferred to the curator.(Lingga dkk., 2025) In practice, after PT Kobatin was declared bankrupt, there was no clear mechanism for who would be responsible for continuing the unfinished reclamation work.

Reclamation partners such as CV Graha Mardatilah, CV Intan Berkah, CV Inti Primatin Sejahtera, and several other companies demanded payment for thousands of hectares of unfinished reclamation work, but their demands were treated the same as those of other concurrent creditors, who had to wait for the distribution of the bankruptcy estate.

This situation created significant uncertainty, as it was unclear whether reclamation work would continue, who would continue it, and where the funding would come from. Local communities affected by the environmental damage caused by PT Kobatin's mining activities over 40 years had no certainty about when their environment would be restored, while the abandoned mine pits continued to pose health and safety risks.

This lack of clarity regarding the post-bankruptcy reclamation management mechanism demonstrates that the state lacks a clear protocol for handling situations where a mining company goes bankrupt before completing its reclamation obligations. Ideally, in a situation like this, the state should immediately take over the management of the remaining reclamation funds and continue reclamation work by appointing a new contractor or carrying out reclamation independently through authorized government agencies.

However, in the case of PT Kobatin, the former mining area was transferred to PT Timah Tbk without any clarity on whether PT Timah Tbk would assume the reclamation obligations that were PT Kobatin's responsibility, or whether it would simply take over the area for new mining operations without prior reclamation. Member of the Indonesian House of Representatives (DPR RI) Rieke Diah Pitaloka rightly questioned this and reminded that reclamation guarantees should not be placed on state-owned enterprises (SOEs), implying concerns that the state would ultimately bear the reclamation burden that should be the responsibility of PT Kobatin and its creditors who have benefited from decades of natural resource exploitation.

To improve the effectiveness of the state's authority to ensure the fulfillment of environmental rehabilitation obligations through post-mining fund management in bankruptcy, systemic reforms are needed in several aspects. First, there is a need to strengthen the institutional capacity of government agencies responsible for mining oversight, both in terms of human resources, budgets, and information systems.

The Ministry of Energy and Mineral Resources and the Ministry of Environment and Forestry need to build an integrated monitoring system that can monitor in real time the implementation of reclamation and the adequacy of guarantee funds at each mining location, as well as conduct regular audits of the quality of reclamation work carried out by mining companiesThis monitoring system must be complemented by a firm and effective sanction mechanism for companies that violate reclamation obligations, including revocation of business licenses, significant administrative fines, and even criminal sanctions for company officials who deliberately ignore reclamation obligations.

Second, a clear coordination mechanism needs to be established between the commercial court and relevant government agencies in handling mining company bankruptcy cases. This coordination mechanism could take the form of a requirement for the commercial court to consult with the Ministry of Energy and Mineral Resources and the Ministry of Environment and Forestry before deciding on a mining company's bankruptcy application, in order to obtain information on the status of the company's reclamation obligations and the adequacy of the set aside guarantee funds.

Based on this information, the commercial court can make specific considerations in its decision regarding the protection of reclamation funds from creditor claims. Furthermore, a mechanism needs to be established that allows the government to intervene in the bankruptcy process to ensure that environmental protection interests are not neglected. This government intervention could take the form of a request to the commercial court to determine that reclamation funds are excluded from the bankruptcy estate and their management transferred to the state to continue unfinished reclamation work.

Third, there needs to be a paradigm shift in Indonesia's bankruptcy legal system to integrate environmental sustainability considerations into every bankruptcy process, particularly for companies operating in the extractive sectors such as mining, plantations, and forestry.

This paradigm shift must be realized through a revision of the Law on the Protection of Environmental Protection and the Protection of Creditors (UUK-PKPU) by including provisions explicitly stipulating that environmental restoration obligations are a super-priority claim that must be paid before other creditors, and that funds set aside for environmental restoration purposes are excluded from the bankruptcy estate.

This provision must be accompanied by a clear mechanism for managing post-bankruptcy reclamation funds, including the authority of the state to take over management of these funds and continue reclamation work if the bankrupt company is unable to complete them. The revised Law on the Protection of Creditors (UUK-PKPU) must also regulate the accountability of creditors who have benefited from environmentally damaging company activities, with a mechanism whereby creditors can be asked to contribute to reclamation financing if existing guarantee funds are insufficient.

Fourth, there needs to be a special institution established to manage reclamation funds separately from mining companies, so that these funds cannot be claimed by creditors in the event of bankruptcy. This institution could take the form of a Public Service Agency (BLU) under the Ministry of Energy and Mineral Resources or the Ministry of Environment and Forestry, tasked with managing reclamation and post-mining guarantee funds from all mining companies in Indonesia.

Under this mechanism, the guarantee funds deposited by mining companies are no longer under the control of the companies themselves but are instead deposited directly with the BLU, which manages them in profitable investments, ensuring the funds continue to grow and are sufficient to finance future reclamation activities. If a mining company goes bankrupt, the funds deposited with the BLU cannot be claimed by creditors because they are not company assets. The BLU can directly use the funds to continue reclamation work by appointing competent contractors.

This model has been successfully implemented in several countries, such as Canada and Australia, where reclamation funds are managed by independent institutions separate from the mining companies, thus protecting them from the risk of bankruptcy.

Fifth, there is a need to strengthen the role of civil society and local communities in overseeing reclamation implementation and managing reclamation funds.(Taruna & Dwi Putri, 2025) Based on the principle of public participation recognized in international environmental law, specifically Principle 10 of the 1992 Rio Declaration, communities have the right to obtain information about activities that impact their environment, to participate in decision-making, and to access dispute resolution mechanisms when their environmental rights are violated.

In the context of reclamation fund management, this principle must be realized by providing communities with access to information regarding the amount of guarantee funds deposited by mining companies, how these funds are used, and the extent of reclamation work.

Communities must also be given the opportunity to participate in reclamation planning, including determining priority areas for reclamation and the type of rehabilitation that best suits local needs. Furthermore, communities must have access to citizen complaint and lawsuit mechanisms if companies or the government violate reclamation obligations, thus creating a bottom-up monitoring mechanism that complements government oversight.

Sixth, there needs to be firm law enforcement against parties involved in the misuse of reclamation funds, as is currently being investigated by the Attorney General's Office in the PT Kobatin case.(Dewi & Yuliana, 2023) The Attorney General's Office's investigation into the alleged misuse of PT Koba Tin's mining guarantee funds and valuable assets allegedly controlled by unsecured creditors must be continued to completion. If legal violations are proven, the perpetrators must be subject to maximum sanctions to create a deterrent effect.

This law enforcement is aimed not only at company management who violates reclamation obligations, but also at creditors who deliberately claim reclamation funds for their own benefit, knowing that the funds should be used for environmental restoration. In some jurisdictions, the doctrine of piercing the corporate veil exists, allowing dominant shareholders or creditors to be held personally liable for environmental damage caused by a company if they are proven to have actively participated in decisions that led to the violation of environmental obligations.

A similar doctrine needs to be developed in the Indonesian legal system to ensure that those who benefit from natural resource exploitation also bear the ecological consequences of such activities. Seventh, there needs to be an alternative financing mechanism for the reclamation of mining areas abandoned by bankrupt companies if the available guarantee funds are insufficient.

This mechanism could take the form of a national trust fund financed by contributions from all mining companies in the form of a special levy calculated based on production volume or the area exploited. This national trust fund functions as an insurance mechanism that can be used to finance the reclamation of mining areas abandoned by bankrupt companies whose guarantee funds are insufficient.

This financing model aligns with the principle of extended producer responsibility, which recognizes that the industry as a whole has a collective responsibility to address the negative externalities generated by their production activities. With a national trust fund, the community and the state no longer bear the risk that reclamation will not be carried out if a company goes bankrupt, because alternative funding sources are available for this purpose.

CONCLUSION

Permits in September 2025 due to failure to fulfill reclamation obligations, and in East Kalimantan, only 338 of 856 permit holders had reclamation guarantee funds. Second, there is minimal coordination between state This research reveals fundamental legal issues within the Indonesian legal system concerning the protection of constitutional rights to a healthy and good environment when intersecting with bankruptcy legal mechanisms, as manifested in the case of PT Kobatin.

Two major areas of study lead us to the same conclusion: the bankruptcy laws that regulate the state's ability to handle post-mining funds are severely flawed and fail to adequately safeguard the environmental rights of the people.

To begin, with respect to the legislative framework controlling governmental power, this study reveals that the existing legislative framework in Indonesia does not specifically rule the safeguarding mechanism for reclamation and post-mining guarantee funds in the case of bankruptcy of mining companies. Except for funds that serve a public interest role, such reclamation funds, all of the debtor's assets are considered bankruptcy assets under Law Number 37 of 2004 on Bankruptcy and PKPU. However, the bankruptcy status of these funds is not directly addressed in Law Number 3 of 2020, which controls the need to provide reclamation guarantee funds but does not cover coal and mineral mining in general.

A legal conundrum arises from this lack of normative guidance: the pari passu pro rata parte principle allows for the redistribution of monies meant to repair environmental harm to settle business obligations owed to creditors. Article 28H paragraph (1) of the 1945 Constitution guarantees people' fundamental rights to the environment, and this condition goes against that. It puts the economic interests of commercial creditors above these rights.

Based on the findings of this study, the proper legal interpretation would be to establish a separate trust fund for reclamation and post-mining guarantee funds, which would be kept apart from the bankruptcy estate and would be immune to claims made by creditors during the bankruptcy procedure. In the context of environmental protection, for example, the notion of parens patriae, which authorises the state to safeguard the interests of individuals who are unable to do so on their own, provides strong constitutional support for this legal interpretation in Article 28H paragraph (1) and Article 33 paragraph (3) of the 1945 Constitution.

The state's constitutional authority to ensure the protection of reclamation funds can be operationalized through intervention mechanisms in bankruptcy proceedings, filing lawsuits to overturn the curator's decision to use reclamation funds for creditor payments, and, in the long term, through revisions to the Bankruptcy Law and the PKPU (Deferred Payment for Debt) to include explicit provisions excluding reclamation guarantee funds from bankruptcy estates and establishing environmental restoration obligations as a super-priority claim, which must be paid before other creditors.

Second, regarding the effectiveness of the state's authority to ensure the fulfillment of environmental rehabilitation obligations through the management of post-mining funds for the bankrupt PT Kobatin, this study found that this effectiveness remains very low, characterized by three fundamental weaknesses. First, the state's weak institutional capacity to carry out its preventive oversight function regarding the mining company's reclamation obligations.

This is evident from the fact that although PT Kobatin has been operating for 40 years and deposited reclamation guarantee funds worth USD 16.7 million, reclamation implementation on the ground has been ineffective, with only 52.12% of the funds utilized by 2021 and many areas remaining unreclaimed. This oversight failure is systemic, as evidenced by data showing that the Ministry of Energy and Mineral Resources was forced to suspend 190 mining business institutions in managing reclamation funds when mining companies experience bankruptcy.

Commercial courts decide on bankruptcy status without coordinating with the Ministry of Energy and Mineral Resources or the Ministry of Environment and Forestry to ensure the protection of reclamation funds, the Attorney General's Office opens an investigation into alleged misuse of reclamation funds, and the Indonesian House of Representatives questions the transfer of reclamation responsibilities to state-owned enterprises (SOEs).

However, there is no mechanism to coordinate these various responses into a coherent policy. Third, the legal system's weak bias towards environmental protection interests vis-à-vis creditors' economic interests, as evidenced by the commercial court's legal reasoning that treats reclamation funds as ordinary assets without considering them.

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