

State Responsibility for Nickel Mining Activities (Case Study of Environmental Damage in Southeast Sulawesi Province)

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ABSTRACT

This study aims to explore the state's responsibility related to nickel mining activities, which are seen as a moral bond regulated in the constitution between the state and its people. The focus of this study is on the environmental impacts caused by nickel mining activities in Southeast Sulawesi Province, which is known as one of the nickel industry centers in Indonesia. Environmental damage that occurs in this region is the main focus, considering the important role of the state in ensuring the preservation of nature and the welfare of the affected community. Through a normative legal approach, this study examines state responsibility using three main methods: a conceptual approach, an analysis of relevant laws and regulations, and case studies of several incidents related to environmental damage due to nickel mining. From the results of the study, it was found that the problems arising from nickel mining activities in Southeast Sulawesi emphasize the need for clearer and more assertive state responsibility in dealing with environmental damage. The state should bear full responsibility for the negative consequences of mining activities, especially since existing regulations are often not effective enough in protecting the environment and local communities from the negative impacts caused.

Keywords: *country, nickel, southeast sulawesi*

INTRODUCTION

One of the crucial aspects in the mining sector that is currently hotly discussed is the nickel mining sector. This is because the supply of petroleum reserves in the country is increasingly depleting. Thus, nickel mining activities in



the country become one of the renewable energies. The reason is that Indonesia is popularly known as the largest nickel producing country in the world.¹

Indonesia is a country rich in mining elements, such as oil, silver, coal, gold, natural gas, copper, nickel, and so on. These minerals are controlled by the state (regulating, administering, supervising) and utilized as much as possible for the welfare of the Indonesian people.² Natural wealth shows that the existence of mining in Indonesia is truly thriving in prosperity.

It's just that mining management, which is under the control of state power, still has its own records. Uncontrolled mining, which is detrimental to the environment, continues to occur. As a result, the community is the party most affected. Environmental damage is inevitable.

Environmental problems have become bigger, broader and more serious in recent decades. This issue is not limited to the local or translocal level, but is global in nature, transcending regions, countries and borders. One of the essential issues to be discussed at that time was how to overcome transboundary pollution. Especially in the era of globalization, when many developed countries are increasingly encouraged by their understanding of capitalism to advance their economies. This will have an impact on losses that must be borne by other countries, either directly or indirectly.³

Indonesia itself is a country that feels the impact of environmental damage. The country with the most natural producers has made Indonesia look like the prima donna of Asian nickel mining. It is not an exaggeration considering that currently investors are flocking to invest in Indonesia. Mega industrial companies and their factories stand tall and strong. Unfortunately, the rule of law is almost completely absent in balancing investment in natural resources (SDA).

Rule of law principles in carrying out duties and functions as a state⁴, the government should be the guide.⁵ Governance is carried out by upholding the applicable laws and regulations. Law enforcement needs to pay attention to public aspects. The aim is that democracy and participation, government functions are

¹Fahris Suritno, Antonius Purwanto & Fonny J. Waani, "The Impact of Nickel Mining on the Lifestyle of Coconut Farmers in Waleh Village, North Weda District, Central Halmahera Regency", *Journal of the Scientific Society*, Vol. 2, no. 1 (2022): 2.

²Salim HS, *Mining Law in Indonesia*, (Depok: Rajawali Pers, 2017), 1.

³Deni Bram, "State Responsibility for Transnational Environmental Pollution", *Law Journal*, Vol. 18, no. 2 (2011): 194.

⁴The writer chose the rule of law diction considering that one of the elements of the rule of law is the supremacy of law.

⁵The law in question does not just enforce statutory norms. However, we look at the wisdom in enforcing the law.

carried out without neglecting collective interests and also include the involvement of society and the private sector as elements of the main pillars of state strength.⁶

One of the initial alternative efforts could be to start with legislative reform in the area of natural resource management. Legal regulations regarding this matter must take the interests of the people as the philosophical and sociological basis for all activities that utilize natural resources, as required by the constitution in Article 33 of the 1945 Constitution, namely that water, earth and natural treasures are used as much as possible for the prosperity of the people.⁷

It cannot be denied that the desire to enrich state finances is a common thing. Increasing the country's wealth through foreign exchange taxes, in the natural resources sector, is indeed important. However, this does not mean ignoring the principle of respect for society. Conflicts of interest often occur that surround the relationship between the state, in this case the government, and the people.

Conflicts of interest are often found between the government and the community. On the one hand, the government wants to increase the country's foreign exchange through natural resources in the country. However, on the other hand, there is still little community involvement when it comes to bringing in investors. Both before and after mining activities take place.⁸ It is important to remember that the country's achievements do not mean that it carelessly violates the principles of environmental protection.

In the exploitation or management of natural resources, especially nickel mining activities, it must be carried out in a balanced manner with the preservation of environmental functions. The goal is for nickel mining activities to continue to support and source the life of the Indonesian population and other organisms in a sustainable manner. Therefore, nickel mining activities aimed at the welfare and prosperity of the people must be carried out in a balanced, harmonious and harmonious manner with environmental functions.⁹

⁶Aslam, Abd. Kadir Adyw & Rudi Hard, "The Government's Role in Controlling Illegal Nickel Mining in North Kolaka Regency", *Journal of Authority*, Vol. 5 No. 2 (2015): 123.

⁷Ayu Kholifa, *Measuring Human Rights Protection in the Revision of the Mining and Coal Law through UN Guiding Principles on Business and Human Rights*, *Justisia Journal*, Vol. 6 No. 1 (2021): 30.

⁸Ahsana Nadiyya, Ayu Putri Rainah Petung Banjaransari & Heni Rosida, "Measuring Mineral and Coal Laws Against the Vulnerability of Protecting the Rights of Customary Law Communities", *Rewang Rancang: Lex Generalis Law Journal*, Vol. 2 No. 3 (2021): 197.

⁹Ronny Adrie Maramis, "Responsibility for Environmental Recovery in Mining Investment Activities" (Postgraduate Dissertation, Hasanuddin University Makassar, 2013), 1-2.

Environmental protection and governance in nickel mining activities is crucial, because a healthy and good environment is a constitutional right and human right of every citizen. Article 28H of the 1945 Constitution of the Republic of Indonesia outlines that every person has the right to physical and spiritual well-being, to live and have a decent and healthy living environment, and has the right to receive health services. Thus, the government, state, and all policy makers in nickel mining activities, are obliged to preserve environmental functions.¹⁰

Environmental damage due to the proliferation of nickel mining permits in Southeast Sulawesi is concrete evidence that permits do not pay attention to environmental sustainability. The government tends to view mining from an economic perspective, ignoring the social, cultural and economic effects felt by the community. As Kompas wrote on November 6 2017, natural damage in several areas of Southeast Sulawesi (Sultra) is inevitable evidence of the effects of this environmental damage. Green fields stripped by heavy equipment have turned dry and red. Several hills also look pockmarked. Companies with expired permits leave mining sites before environmental conditions recover. Previous excavations formed a niche with a depression in the center. As a result of these conditions, the environment is becoming polluted and fish stocks in village waters are decreasing, forcing fishermen to go to sea further, because material from shipyards and mines during the rainy season is believed to seep into the sea.¹¹

RESEARCH METHOD

The methodology in this research is normative legal research by utilizing conceptual paradigms, legal procedures and cases. The data category examined is secondary data and is displayed in a qualitative way.

RESULT AND DISCUSSION

Problems with Nickel Mining Activities in Southeast Sulawesi Province

a. Criminalization of Citizens

One of the crucial parameters for evaluating the degree of democratization in natural resource management is considering the involvement of civilians. Environmental Protection and Management Law no. 32 of 2009 (UUPPLH)

¹⁰Samidu & Suriani BT. Tolo, "Legal Protection for Victims of Environmental Pollution in Nickel Mining Activities in South Konawe Regency", *Media Justice: Journal of Legal Studies*, Vol. 13 No. 1 (2022): 236.

¹¹Read more in the article: Mining Permits on Sale, Environmental Impact Ignored by JATAM <https://www.jatam.org/izin-pertambangan-diobral-dampak-lingungan-dikesampingkan>, accessed November 27, 2022.

opens up opportunities for a wide audience in terms of land planning and management. As a legal instrument, UUPPLH aims to strengthen environmental democracy. Democratic consolidation can be implemented by increasing access to information, public involvement, access to justice, and consolidating citizens' rights to protect and manage the environment.¹²

The above normative concepts regulated in UUPPLH are not directly proportional to practice in the field. We can see this in the criminalization that residents in Southeast Sulawesi province often experience. Especially in areas that reject nickel mining, including in their territory. The company views this rejection as a form of war. In fact, residents only want the place they live in, from their ancestors. It is still maintained and can be felt by children and grandchildren for generations to come.

The many cases of criminalization of environmental activists that have emerged prove that there has been a reduction in various forms of public involvement, both government and private sector efforts to prevent public resistance from emerging.¹³ In fact, in a democracy, criticism and input are the spice of the state. It is very concerning that this practice of criminalization is carried out without legal protection from the state for the freedom of expression of citizens' opinions.

Neglect of legal protection for environmental activists is not only interpreted as a denial of these various provisions, but also extends to the aspect of denying human rights which are constitutionally guaranteed in the 1945 Constitution which philosophically must be presented as citizens' rights with state obligations and responsibilities. in implementation¹⁴

For example, violence and criminalization are found on Wawoni Island which is located in southeast Sulawesi. Residents have been rejecting a mining company called PT Derawan Berjaya Mining since 2007. In 2015 there were clashes between the police and residents which resulted in 14 Wawoni residents being persecuted and found guilty of surrendering, refusing exploitation. Many

¹²Dini Suryani, Fatima Fildzah Izzati, Imam Syaifi, Pandu Yuhsina Adaba & Septi Satriani, "The Decline of Democracy in Natural Resources Governance: Strengthening Oligarchy and Weakening Civil Society Participation", *Journal of Political Research*, Vol. 18 No. 2 (2021): 177.

¹³Mohammad Vieri, Muhammad Alfitras, and Stanislaus Democracy, "Reformulation of Anti-Eco-SLAPP Arrangements in Mining Conflicts", *Legislative Journal*, Vol. 5, No. 1 (2021): 29.

¹⁴Indah Nur S. Saleh & Bitu G. S, "Reformulation of Legal Protection for Champions of the Right to a Good & Healthy Environment", *Jatiswara Journal*, Vol. 37, no. 2 (2022): 166.

residents were even arrested by the police because they were tortured. Physical violence also leads to sexual violence, as happened to the Wawoni women.¹⁵

A total of three residents of Sukarela Jaya Village, Kec. Southeast Wawonii, Kab. Konawe Islands, Prov. Southeast Sulawesi was arrested by the Southeast Sulawesi Police. The three, namely La Dani alias Anwar, Hastoma, and Hurlan were arrested on Monday, January 24 2022, at approximately 13.30 WITA. Hastoma and Anwar were ambushed on his farm at lunchtime. Meanwhile, Hurlan was arrested at his residence. Until now, the reason for the arrest of the three has not been reported. Based on local information, the three of them were on a sea voyage, using a police speedboat to the Southeast Sulawesi Regional Police Office in Kendari. As is known, the three of them are elements of the front line of the community who oppose mining in the Wawonii Islands. Local residents, whose economy mostly depends on plantations/agriculture and the sea, reject nickel mining efforts by PT Gema Kreasi Perdana (GKP), a branch of the Harita Group company. The community's persistence in rejecting nickel mining led to criminalization, intimidation and threats, until in 2019 a total of 28 residents were policed by the company.¹⁶

Protection of the freedom of expression of Wawonii residents is a natural thing. The existence of Wawonii, which should be protected, as the smallest islands, should receive attention from the state. Allowing criminalization shows that the state is absent from environmental democracy.

b. Polluted Residential Settlements

Mining activities carried out by PT Pintu Multi Sejahtera (GMS) are assumed to have triggered the flood disaster which affected dozens of residential areas in Sangi-sangi Village, Kec. Laonti, Kab. South Konawe (Konsel) on Sunday, July 3 2022. Muhammad Roy, a local resident, said that this was the first time this flood had been experienced since PT GMS carried out land clearing and mining activities right behind residential areas.

For Harun M. Husen, environmental pollution occurs when foreign elements, organisms, materials, energy or other elements enter the environment,

¹⁵Drafting Team, *Small Islands of Indonesia, Homeland of Mining: Report on the Whole Body Destruction of Small Islands in Indonesia by Mineral and Coal Mines*, Research Report, Jakarta: Mining Adokasi Network, 2018, p. 6.

¹⁶ <https://kontras.org/2022/01/24/tiga-warga-penolak-tambang-di-wawonii-ditangkap-polisi/>, quoted November 27, 2022.

causing a decrease in environmental quality, such as: the environment no longer functions according to its ecological purpose.¹⁷

Article 1 Paragraph (14) UUPPLH, outlines that environmental pollution is "The entry or importation of living creatures by human activities so that they exceed the established environmental quality standards". On the other hand, in order to measure the presence of pollution, environmental quality standards are validated. As outlined in Article 1 Paragraph (13) of UUPPLH that "Environmental quality standards are the limits or levels of living things, substances, energy or components that exist or must exist and/or pollutant elements whose existence is allowed to be tolerated in a particular resource as environmental elements."¹⁸

The problem of environmental destruction and pollution poses a serious risk to human welfare. This is especially true if the problem is handled by various companies engaged in mining, forestry, and so on. When this problem occurs, the loss will not only be felt by one or two people, but by all human beings on this earth.¹⁹

Compensation for pollution should receive special attention from law enforcers. When society is confronted with a company, its position will be weak. Providing legal protection, increasing the community's bargaining position in dealing with companies. This is not a blind bias towards society. But it is based on law.

UUPPLH outlines the existence of instructions for compensation for losses or taking other actions to restore the environment that has been polluted and damaged. In the 2009 UUPPLH, the payment mechanism by the party who pollutes is stated in Article 2, which is further explained in Article 14 letter h, Articles 42 and 43. The arrangement of the mechanism in question includes in the form of regulations related to the internalization of environmental funds, environmental rehabilitation guarantee costs, levies. along with environmental taxes.²⁰

c. Post-mining reclamation funds

Commercial mining operations will likely influence environmental transformation to a small or large extent depending on the technicalities of the operation. In order to control this effect, the government requires mining

¹⁷Mulida Hayati, "Legal Protection for the Community Against Environmental Pollution Due to Cultivating Swallows", *Journal of Legal Research*, Vol. 27, no. 1 (2018): 41.

¹⁸Ibid.

¹⁹Nina Herlina, "Environmental Problems and Environmental Law Enforcement in Indonesia", *Scientific Journal*, Vol. 3, no. 2 (2015): 4-5.

²⁰Muhammad Akib, *Environmental Legal Politics - Dynamics and Reflections in Regional Autonomy Legal Products*, (Jakarta: Rajagrafindo Persada, 2013), 123.

companies to carry out reclamation, as regulated in the Mining Law and other relevant regulations.²¹

The condition of mining areas in Southeast Sulawesi Province is worrying. Requires the state to guarantee environmental preservation. The state has granted permits for nickel mining activities. It would not be an exaggeration if the state had to intervene. This is where the reclamation guarantee fund is important, to carry out repairs.

The Mining Law emphasizes the implementation of Post-mining Reclamation which is always related to environmental management as stated in the General Explanation to the third paragraph of the a quo Law, "Strengthening policies related to environmental management in Mining business activities, including the implementation of Reclamation and Post-Mining".²²

During the mining process, the company must prepare a guarantee fund for recovery as well as collateral after exploitation. To ensure that the miner complies with the Rehabilitation and Post-Mining plan, the miner must provide Rehabilitation Guarantee in an amount consistent with the Rehabilitation and Post-Mining plan.²³

The implementation of reclamation and post-mining programs that are mandatory for mining companies is now considered insufficient for environmental revitalization. The reason is, in several regions of Indonesia there are many used mining lands that have been left behind by mining companies. Mining companies' obligations to remediate environmental damage through post-mining landfills and pathways are clearly and openly regulated by many mining-related laws and regulations.²⁴

Southeast Sulawesi regarding reclamation funds raises its own problems. Discussions related to reclamation and post-mining guarantees were an interesting topic of discussion. The problem is, in this area there are at least more than 300 IUPs that are currently operating to extract agricultural products. At the beginning of July 2019, the Corruption Eradication Committee succeeded in identifying six districts in Southeast Sulawesi that had not submitted post-mining

²¹Ade Lutfi Prayogo, "Responsibilities of Community Mining Business Actors in Reclamation of Gumuk After Mining Activities", *Lentera Hukum*, Vol. 5 Issue 3 (2018): 45.

²²Aneka Rahma, "Positive Legal Analysis of Post-Coal Mining Reclamation of Pt. "Lake Mas Hitam, Central Bengkulu", *AL-IMARAH: Journal of Islamic Government and Politics*, Vol. 7, no. 2 (2022): 301.

²³*Ibid.*

²⁴Ayu Linanda and Hudali Mukti, "Obligations of Mining Companies in Carrying out Reclamation and Post-mining in Samarinda City", *YURISKA Legal Scientific Journal*, Vol. 8, no. 2 (2017): 67.

reclamation guarantees. Reporting from the old KPK.Go.Id. The six (6) districts are as follows:²⁵

1. Bombana Regency Rp. 3.9 billion;
2. Kolaka Regency Rp. 7.8 billion;
3. North Kolaka Regency Rp. 5 billion and Rp. 148 Million;
4. Konawe Regency Rp. 2.2 billion;
5. South Konawe Regency Rp. 2.4 billion and Rp. 12.8 Million;
6. Konawe Regency.

The realization of reclamation funds was not implemented properly, seen from the lack of disbursement of the reclamation budget. This has an impact on delays in the realization of post-mining reclamation work. The impact of environmental damage continues to be destruction and neglect. It is not a concern of the state.

The Requirement of State Accountability for Environmental Damage Due to Nickel Mining in Southeast Sulawesi Province

a. Favoring Local Communities

Siding with the community means upholding democracy in the nickel mining environment. Democracy simply or literally means the people giving orders or government of the people. In other words, democracy is seen as a style or form of government in which the people give orders, either directly or by elected representatives.²⁶

The state's support in resolving various problems relating to the environment, especially towards the people of the country, can actually be seen through the mechanism for preparing a regulation and its implementation. Indonesia is a legal country that implements the dominant legal order of the civil law system. Thus, like most civil law systems, the law is positioned as the only source of law.²⁷

Achieving prosperity and prosperity for the entire population of Indonesia was one of the desires aspired to by all the founding fathers of the Indonesian

²⁵ <https://penasultra.com/dana-jaminan-reklik-dan-pasca-tambang-di-sultra-dikemanakan/>, accessed November 27, 2022.

²⁶Hernadi Effendi, *Equality of Position before the Law and Government Concept and Implementation*, (Bandung: Mujahid Press, 2017), 61. Quoted from Siti Hidayat, "Community Participation in the Formation of Laws (Comparative Study of Indonesia and South Africa)", *Bina Journal Noble Law* Vol. 3, no. 2 (2019): 225.

²⁷Tutik Nurul Janah, *The State's Partisanship in Efforts to Alleviate Poverty in Rural Areas*, *Islamic Review: Journal of Islamic Research and Studies*, Vol. 6, no. 2 (2017): 212.

nation. A development mechanism that provides opportunities for a handful of population groups to enjoy the results of development while alienating other population groups is a violation of the will above.²⁸

Populist economists believe that the mechanisms for developing the country's economy are increasingly far from the desires of prosperity, social justice and consideration for all residents of the country. This arises due to development regulations that do not favor the people and the tendency of the market economy which allows the powerful to access more productive economic resources, while the people are considered more submissive to development. It is passive and accustomed to accepting the situation. As a result, social inequality accompanied by poverty occurs earlier as a result of development mechanisms.²⁹

Through legal instruments, the state can play its maximum role in supporting local communities. It was stated by Rudolf Von Relhing that:³⁰

1. *Law was only one way to achieve the end, namely social control*(law is simply one of many ways to realize the will of the people, namely implementing social control);
2. *An instrument for serving the needs of society where there is an inevitable conflict, between the social needs of man and each individual's self interest*(a device to provide services for the various needs of the people, in a place where there is inevitable conflict between social needs. Each person has his or her own individual needs) The basic thing about the function of law (social control) is that apart from ensuring stability, namely the absence of conflict that occurs damaging the interactions and activities of the people within.³¹

Formation of laws both at the statutory level and at technical regulations. Illustrating that can the state be classified as siding with the interests of local residents? Because the commitment to taking sides is seen from the regulations that are formed.

b. Transparent and Accountable in Supervision

Being transparent and accountable in carrying out supervision is a powerful weapon for monitoring nickel mining practices. Only in this way will it be easier

²⁸ Nunung Nuryartono & Hendri Saparini, *Social Economic Disparity and Poverty, Constitutional Economics: A New Direction for Indonesia's Economic Awakening*, (Jakarta: Soengeng Sarjadi Syndicate, 2009), 283-284. Quoted from Alfitri, *Welfare State Ideology in the Foundation of the Indonesian State: Analysis of Constitutional Court Decisions Regarding the National Social Security System*, *Journal of the Constitution*, Vol. 9, no. 3 (2012): 450.

²⁹Ibid.

³⁰Soesi Idayanti, *Sociology of Law*, (Yogyakarta: Tanah Air Beta Publishers, 2020), 2.

³¹Ibid.

for people to make assessments. Ideal or not yet ideal monitoring system for nickel mining activities in Southeast Sulawesi Province. Whether implemented by the Central Government or Regional Government.

The emergence of control is one of the many management tasks aimed at ensuring that the entity acts in harmony with its responsibilities and duties in accordance with plans that have been established to achieve its goals efficiently, effectively and in line with the regulations in force.³²

Nickel mining practices often overlap in mining activities. This shows that nickel mining is still often characterized by intervention between parties with an interest in supervision. Differences in interpreting violations often occur. When the Central Government chooses to remain silent and the Provincial Government believes that environmental damage is not caused by nickel mining. The anomaly of these two attitudes is clearly visible, with the reality on the ground.

Surveillance with different attitudes and statements apparently occurs due to a lack of transparency. Supervision without transparency will only make the institution carrying out supervision subject to interests that deviate from the will of the public. Transparency and oversight cannot be separated.

The principle of openness plays a crucial role in implementing the idea of good governance. With information that is transparent and easy to open, it is easier for the public to get involved and understand concrete processes of public interest. Information openness opens up space for social transactions between stakeholders and the government.³³

Accountability and transparency are interrelated with each other. Transparency refers to the freedom to obtain information. Meanwhile, accountability concerns accountability to the public regarding each activity carried out.³⁴ Supervision of nickel mining should be based on transparency and accountability.

Transparency requires transparent, clear, timely and comparable information about financial and regulatory conditions. Accountability is the

³²Mayer Hayrani DS, "Regulation of Central Supervision of Mineral and Coal Mining Business Licenses in the Era of Regional Autonomy", Indonesian Legislation Journal Vol 16 No. 1 (2019): 143.

³³Aries Iswahyud, Iwan Triyuwono & M. Achsin, "The Relationship between Understanding Accountability, Transparency, Participation, Value For Money and Good Governance (Empirical Study of SKPD in Lumajang Regency)", Accounting Scientific Journal, Vol. 1, No. 2 (2017): 152.

³⁴Fadjar Trisakti, Adnin Dikeu Dewi Berliana, Al Bukhori & Alya Fitri, "Transparency and Public Interest", Journal of DIALECTICS: Journal of Social Sciences, Vol 19 No. 1 (2021): 30.

respect of institutional management for the laws and regulations that apply.³⁵By implementing supervision that upholds transparency. In fact, organizing nickel mining is subject to the interests of the people alone.

CONCLUSION

The problems of nickel mining activities in Southeast Sulawesi Province can be seen in two ways. First, criminalization of citizens is carried out by companies against citizens who are deemed to be disturbing the company's interests. Surprisingly, the authorities, in this case the police, responded responsively to this matter; secondly, post-mining reclamation funds are becoming increasingly unclear. The lack of reclamation in occupied mining areas is a fact that environmental damage was deliberately allowed to occur.

The state's responsibility for environmental damage caused by nickel mining in Southeast Sulawesi province can be seen in two ways. First, taking sides with local communities, granting permits to companies carrying out mining activities. Ignoring the safety of local residents' residences. Supporting local communities is required; Second, transparency and accountability in supervision are needed. This was done so as not to give the impression that the state was siding with the mining oligarchy.

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³⁵Indar Khaerunnisa & Adi Wiratno, "The Influence of Tax Morality, Tax Culture & Good Governance on Taxpayer Compliance", *Journal of Accounting and Taxation Research*, Vol. 1 No. 2 (2014): 211-224. See also Aprilia Puspasari, "Principles of Good Governance Transparency and Accountability at the North Cikarang Pratama Tax Service Office", *Perspective Journal*, Vol. 17 No. 2, (2019): 197.

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