

Mining Corruption and Environmental Degradation in Indonesia: Critical Legal Issues

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ABSTRACT

Indonesia has enacted mining law, environmental protection law, and a number of rules addressing mining and environmental issues. However, the establishment of these numerous laws and regulations has not resulted in a decline in corruption cases and environmental degradation. In fact, government officials are frequently lenient with mining industry owners who fail to follow good environmental standards. This is critical since Indonesia has spent the last two decades attempting to resolve corruption and environmental challenges. This study describes specific instances of mining and environmental law confusion resulting from corrupt activities. The study takes a normative legal approach. Resources have been gathered through examinations of mining and environmental laws and regulations, as well as reports by multiple authorities that track the same subject. The study demonstrates how prior Indonesian mining law policy acknowledged regional governments as mining authorities. The policy has caused widespread mining corruption, particularly in the area of business permits, involving regional political leaders and the private sector. The irresponsibility of regional political elites has jeopardized the environment and ecosystem. It is also an echo of overlapping legislation and authorities in the mining and environmental sectors.



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1. Introduction

Article 33 of the 1945 Constitution of the Republic of Indonesia stipulates that the Indonesian economy shall be organized as a common endeavor based upon the principles of the family system. This constitutional provision also stipulates that sectors of production that are essential to the country and that affect the lives of the Indonesian people shall fall under the authority of the State. This provision further states that the land, the waters, and the natural resources therein shall be under the authority of the state and shall be used for the greatest good of the people. To comply with the principles of democracy and the rule of law, the 1945 Constitution also prescribes that the organization of the national economy shall be conducted on the basis of an economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental

perspective, self-sufficiency, and maintaining a balance in the progress and unity of the national economy (Ahmed, 2020).

As prescribed by the 1945 Constitution, the economy of Indonesia derives from its land, its waters, and other natural resources, including the exploitation of minerals through mining. Indonesia continues to be a significant player in the global mining industry, with significant production of coal, copper, gold, tin, bauxite, and nickel. Indonesia also continues to be one of the world's largest exporters of thermal coal. However, the current situation of mining in Indonesia does not seem to reflect the vision of the founding fathers when they framed the 1945 Constitution, namely, an environment-friendly and just exploitation of natural resources for the greatest good of the Indonesian people. One of the major issues compromising mining in Indonesia is mining corruption (Sabani et al., 2019).

Corruption in the mining sector must be traced all the way back to the beginning of the mining process, specifically the granting of mining business permits. While mining business permits fall under Administrative Law, they are inextricably linked to authority issues. The mining business licensing sector is an ideal venue for entrepreneurs and government officials to meet and discuss their various issues. While mining permits are an administrative matter, poor administration can have criminal consequences. Maladministration is a specific type of behavior, in which an authorized official violates a legal standard (Ridzuan et al., 2019).

Maladministration constitutes a personal error that can be construed as a government act and debasement of the position. As a result, criminal sanctions may be imposed and classified as acts of authority abuse that result in criminal acts of corruption. Such mismanagement must be evaluated for its potential to cause harm to the state. Thus, mining business permits are the critical issue in the state mining sector, as this sector provides an opportunity for entrepreneurs and the government to collaborate in their maladministration, which results in corruption (O'Callaghan, 2010).

According to a 2011 study by the Corruption Eradication Commission, there are four priority sectors for combating and preventing corruption: political-government, energy, food, and natural resources (SDA). These four sectors are critical to many people's livelihoods and are the primary source of state losses. The mining sector can be classified as part of the political-government sector, the energy sector, or the natural resources sector. Naturally, this is related to the government authority in managing the mining sector, from mining business permits to supervision and management of mining revenues. Due to this core government position, it grows complicated when it comes to engaging in maladministration and mining corruption practices. It is more influenced by the uncertainty of bureaucratic services and public administration in the context of the political-government sector. Significant corruption in the mining sector is more likely to be state-captured corruption, controlled by narrow, vested interests of political forces, bureaucrats, and businessmen, that frequently involve big names, big money, and considerable power. This is exacerbated by the lack of integrity in the private sector (Nguyen et al., 2021).

Corruption in mining is not new, but studies on the issue are considered fresh. Marshall, for example, attempts to divide the definition of corruption in the mining sector into private and public corruption. Additionally, he explained that the level of supply and demand has an effect on corruption (Marshall, 2001). Riyadi examines how the culture of corruption in the form of abuse of office by political elites in the corruption case "*papa minta saham*" related to contract extensions. Riyadi sees it from a criminological perspective (Riyadi & Mustofa, 2020). The approach that views the correlation between mining management, regional autonomy, environmental issues, and corruption was written by Hamidi. Hamidi discovered that instances of maladministration were prevalent in the practice of mining management during the decentralization era. He characterized mismanagement as a dilution of the mining management sector's excellent government index. Additionally, maladministration refers to corruption in the administration of mining business licensing (Hamidi, 2015).

In a broader scope, the mining sector is a part of natural resources. A study on the tracking of corruption networks in the actor-based natural resource sector and how the relationships within the network were formed was carried out. Focusing on oil, gas, and forestry, Cepri concluded that corrupt practices in the natural resources sector had been systematically institutionalized, involving

actors with solid networks and specific interests. The establishment of this culture of corruption is none other than the transaction of resources between the private sector and public authorities, namely the government, reciprocally, and continuously (Ahmed, 2020). Muslihudin's research is more concerned with elaborating the mining and environmental sectors. Muslihuddin identified three specific areas where corruption in the mining sector poses a threat to environmental protection: (1) regional heads granting mining business permits to entrepreneurs without regard for environmental regulations and impacts; (2) environmental impact analysis manipulation; and (3) illegal levies on entrepreneurs that drive them to seek out harmful schemes to cover the costs of such extortion (Muslihudin et al., 2018).

The above-mentioned works talk about the potential for corruption in the mining sector. However, all those works have not seen mining corruption practices and environmental damage in a juridical approach. This is very significant because since the Law on Mineral and Coal Mining No. 4/2009 (the "Mining Law") was promulgated, various implementing regulations, including several amendments, have been issued by the government in an effort to fulfill the vision of the Indonesian founding fathers. Instead of bringing effectiveness and efficiency, the numerous derivative regulations have become obstacles and overlapping regulations that have complicated corruption prevention in Indonesia. Based on that, this paper discusses mining and environmental corruption issues in Indonesia from a juridical point of view.

2. Results and Discussion

2.1. Mining and Environmental Protection Laws

Mining is a business sector that, by definition, always has an impact on the natural environment. Mining activities have a dual nature. The first objective is to boost the country's economic prosperity, which is still far from ideal. On the other hand, environmental impacts are becoming apparent. As a result, mining businesses must undergo, from the outset, extensive licensing procedures related to their environmental impact. As it turns out, this convoluted procedure is interpreted not as part of environmental protection but as a barrier to investment in this sector. Because mining business actors are always profit-driven without regard for the environment, the mining sector is vulnerable to widespread corruption. Corruption is widely regarded as the gateway to environmental degradation (Pellegrini & Gerlagh, 2006).

The Indonesian modern environmental law has been developing since the early 1980's through the enactment of Law No.4/1982 on the Basic Provisions of the Management of the Living Environment (Law No.4/1982 on Basic Provisions on Environmental Protection), which constitutes an umbrella act for environmental protection. The enactment of Law No.4/1982 was followed by several environment-related laws, such as the Law No.5/1990 and the Law No.24/1992. Being an umbrella legislation, Law No.4/1982 required implementing regulations to produce effective enforcement. In addition to these laws, the Government also passed several important regulations such as the Regulation on the Environmental Impact Analysis and the Regulation on the Prevention of Water Pollution (Appleby et al., 2021).

These regulations, however, are considered insufficient and ineffective for controlling pollution and the deterioration of the environment. To overcome the problem, the Government replaced the above-mentioned Law No.4/1982 with Law No.23/1997, instead of enforcing the needed regulations. The enactment of Law No.23/1997 was followed by that of several laws and regulations, including Law No.41/1999 on the Forestry, Government Regulation No. 41/1999 on the Mitigation of Air Pollution, Government Regulation No.27/1999 on Environmental Impact Analysis (EIA), and Government Regulation No.4/2001 on the Mitigation of damage or environmental pollution in Relation to Forest and or Land Fires. Law No.23/1997 failed to manage the activities causing deterioration and pollution of the environment, due to its leniency toward environmental and other governmental officials who did not comply with environmental laws. On October 03, 2009, Law No.23/1997 was repealed and replaced by the Environmental Protection Law No.32/2009, which sets forth criminal sanctions for license issuers, including government officials and law enforcement officers, who do not comply with the laws and regulations related to environment protection (Husin & Tegan, 2017).

Substantively, the law has accommodated the basic principles of environmental protection, but these regulations are not necessarily implemented effectively. As a general rule, Law No.32/2009 can serve as a guide for law enforcers in pursuing parties responsible for environmental damage. Even the first article of Law No.32/2009 defines a destructive action against the environment as one that exceeds the standard criteria for environmental damage. From the start, this standard has referred to the existence of an environmental damage standard. Then, in Article 97 of this Law, the basis for punishing perpetrators of environmental destruction was established. This law appointed ministers and regional leaders (governors, regents/mayors) to oversee all businesses/activities involved in environmental protection and management (Husin & Tegnan, 2017).

On a broader scale, mining and the environment are considered to be a part of natural resources. The Act established various legal instruments for the prevention of pollution and/or environmental damage, to fulfill the protection process. These include Strategic Environmental Studies (KLHS), Spatial Planning, Environmental Quality Standards, Environmental Damage Standard Criteria, AMDAL, Environmental Management Efforts and Environmental Monitoring Efforts (UKL-UPL), Licensing, Environmental Economical Instruments, Environmentally Based Laws and Regulations, Environmentally Based Budgets, and Environmental Risk Analysis. KLHS is the leader in environmental pollution prevention and control through the use of these instruments. The emphasis on environmental protection is demonstrated by the existence of two stages of permits that must be met by any individual or business actor/activity involved in environmental management, namely the requirement to obtain an environmental permit prior to obtaining a business and/or activity permit. Along with prevention tools, law enforcement tools (administrative, civil, and criminal) are regulated and applied. These tools include administrative sanctions, restitution, and criminal sanctions (Zhang et al., 2016).

Law enforcement instruments against perpetrators of pollution and environmental destruction consist of administrative, civil, and criminal mechanisms. Article 76 Paragraph (2) of Law Number 32 of 2009 explains that administrative sanctions can exist in the form of written warnings, government coercion, freezing of environmental permits, and revocation of environmental permits. If an environmental crime is committed on behalf of a business entity, criminal charges and sanctions will be imposed on the business entity and/or the person who gave the order to commit the crime, and/or the person who acts as the leader of the activities in the crime. From the norms contained in the Law on Environmental Protection and Management, mining business actors are directly or indirectly bound to conduct mining businesses that do not conflict with this Law. If the mining businessman or woman turns out to be doing business in violation of environmental laws and regulations, administrative sanctions in the form of freezing and/or revoking permits can be invoked. Even criminal prosecution can be imposed on the company. At this level, mining permits, and activities cannot be separated from environmental protection laws (Zhang et al., 2016).

2.2. Mining and Environmental Corruption

Fighting corruption in Indonesia has been going on for decades, and yet it seems like the phenomenon is spreading wider and stronger within nearly all vital sectors of life, including the protection of the environment through legislation and regulations. Aware of this regrettable situation, the government passed Law No. 30/2002 allowing the creation of the Corruption Eradication Commission (KPK). This law has significantly changed the fight against corruption in Indonesia. Since its creation, the Commission has been hunting down malfeasants, wherever they are, like never before (Duerrenberger & Warning, 2018).

Four administrative instruments are used to prevent environmental pollution. These include spatial planning, environmental quality standards, EIA, and a licensing system. This section describes the possibility of corruption occurrence in each of these instruments. Spatial planning is an instrument to prevent environmental conflict of interest. For example, an industry may not be located in a residential area, or a mining concession may not be permitted in a national park or other protected forest or area. In reality, there are many cases where a plan is allocated to a residential area or a mining concession is permitted to operate in a protected forest (Sovacool, 2021). For example, Azirwan, the Secretary of the Regional Government of Kepri (Kepulauan Riau), wanted to build a complex of Government Offices in a protected area. He needed the approval of both the Minister of Forests and the Parliament. To smooth his plan, Azirwan bribed Al Amin Nur Nasution (a Member

of Parliament Commission IV) with Rp 3 billion. Both Azirwan and Al Amin Nasution were charged with bribery under Article 5 (1) of the Corruption Law. Azirwan received a 2 ½ year sentence and was fined Rp 100 million while Al Amin Nasution was sentenced to 8 years imprisonment with a fine of Rp 250 million and a restitution of Rp 2.957.000.000.

The second pollution prevention instrument is environmental quality standards. Corruption can take place at a monitoring stage whereby an environmental inspector is bribed to not report the non-compliance of a mining company after generating waste above the environmental quality standards. The conspiracy of the environmental inspector and the director of the company fall in the category of environmental corruption. The third instrument to prevent pollution is EIA. Owners or proponents of any activity, which has a large and important impact on the environment, are required to have EIA by the government. The EIA should be approved by an EIA Commission before the mining license is issued by the Environmental Impact Mitigation Board (BAPEDAL). Corruption mostly happens in EIA studies and the approval process by EIA Commission (Sabani et al., 2019). Usually, the proponent of the activity bribes the EIA Commissioners and the officers of Environmental Impact Mitigation Board (BAPEDAL).

Activities like applying and issuing licenses to utilize environmental and natural resources act as corruption triggers because licensing means money for either the applicant or for license-issuing officer. In this stage, the proponent of the project is asked to pay some amount of money so as to get an operational permit without necessarily getting an environmental permit or fulfilling certain requirements. A good example is a beach reclamation case in Karimun in the Province of Kepri. In that case, a company, Jaya Anurya Karimun Ltd., sought to undertake a beach reclamation project from the Government of Karimun. The Government then conferred an operational permit without obliging the company's director to obtain the required EIA and environmental permits. The Police are now investigating this case. If found guilty, the Director of Jaya Anurya Karimun Ltd and the Head of the Regional Government could be charged with bribery under the Corruption Eradication Law. The legal grounds for this prosecution are breach of the Environmental Protection Law (Yanuardi et al., 2021).

In the mining sector, allegations of abuse of authority are manifested through the uncontrolled issuance of IUPs. The phenomenon of regional heads selling mining permits generally increases significantly with the approach of regional elections. This was demonstrated by KPK in 2019. Since 2009, when regions were granted authority to issue IUPs, at least 10,000 new IUPs have been issued. Approximately 4,000 of those IUPs, however, did not qualify as Clean and Clear (CnC) because they failed to meet administrative, regional, and EIA requirements. Until now, mining permits have remained one of the most pervasive areas of corruption (Petermann et al., 2007). Corruption in the mining and environmental sectors is rampant in several ways, including in (1) the buying and selling of mining permits for personal and group interests, and (2) the manipulation of supervisory and law enforcement reports. These two modes are inextricably linked to a lack of institutional coordination in mining governance and of Civil Society, Political Will, and Information Disclosure regarding mining (Petermann et al., 2007).

It is no secret that the mining licensing sector is one of the most massive sources of corruption. This is confirmed by studies of natural resource corruption conducted by Transparency International Indonesia (2018), KPK (2017) and ICW (2016). The corrupt practice of providing Mining Business Permits (IUP) continues to occur because of the supply and demand and the balance between politicians, businessmen, government officials, and law enforcement. The decentralization system that gives autonomous rights to regions, especially at the district and city levels, to manage their resources turns out to have side effects on the complexity of national mining governance. After the enactment of Article 1 (7) of Law No. 4 of 2009 concerning Mineral and Coal Mining, Mining Business Permits (IUP), which include permits for construction, mining, processing and refining activities, as well as transportation and sales in the context of mining, were subsumed by the authorities of local governments (OCallaghan, 2010).

The widespread corruption of Mining Business Permits has served as the impetus for the government to seize control of all mining permits from the provincial government on December 11, 2020. This is in accordance with Law No. 3 of 2020 on Mineral and Coal Mining. The central

government's takeover is the result of the executive's recognition of the corrupt state of Mining Business Permits in the decentralized era.

Corruption also takes the form of falsified supervisory reports in the mining sector. The Ministry of Energy and Mineral Resources, the Ministry of Forestry, the Ministry of the Environment, local Governments, the Police, and the Attorney General's Office frequently perform sub-optimally in their supervisory functions. This is due to a variety of uncoordinated factors among related institutions, a lack of transparency in the supervisory system, which creates opportunities for illegal negotiations, and a small number of supervisors assigned by state agencies to perform supervisory functions. For example, the Ministry of Energy and Mineral Resources has a total of approximately 27 Civil Servant Investigators (PPNS) tasked with supervising numerous complex entities. The practice of illegal negotiations, which these supervisors are incapable of policing, results in a significant amount of potential state revenue that is poorly absorbed by the state (Moisé, 2020).

2.4. Corruption in Law Enforcement

There are three kinds of enforcement available under the environmental protection law: administrative, civil, and criminal. Since civil enforcement does not involve the use of executive power, it may not create the possibility of executive corruption. The potential for corruption in civil enforcement is that the judges are bribed by defendants or polluters so as to ensure verdicts to free polluters from any responsibility. However, while this civil action is not part of the executive, in the practice of mining and environmental administration, the level of corruption depends on the integrity of the private sector. Mining Business License corruption cases always involve the private sector in its position as the bribers.

It is quite surprising that 80 percent of the corrupt practices in Indonesia involve the private sector, according to a number of findings from the Transparency International Indonesia survey (2017). The Indonesian Survey Institute's 2019 findings also confirm that the prevalence of corrupt practices between government officials and business people remains relatively high in the country. According to tracking data, 49 survey respondents believed it was common for businessmen to give gifts to government employees in violation of official regulations. These surveys are a reflection of reality, as a lack of business integrity contributes to the reality of a corrupt business world. This pattern of transactions is motivated by several factors: the desire to expedite complex procedures, win tenders, and persuade licensing officers to expedite the licensing process. It appears as though this practice of license corruption extends beyond the mining sector to all lines of the licensing sector, which brings together government and business actors. The mining sector is the backbone of the natural resources sector, contributing significantly to state revenue each year but also carrying the risk of permanent natural damage if oversight is lax (Lukito, 2016).

In a marine pollution case in Wacopek, Bintan Island, Antam Ltd (PT Antam) was sued by the fishermen to pay compensation for its arsenic waste that polluted the sea and caused the death of all the fish. Antam Ltd was found guilty and fined Rp 2 billion by Tanjung Pinang Court. However, the Court of Appeals in the town of Pekanbaru absolved the defendant of all charges. According to the Court of Appeal, the sample of water submitted by the defendant did not contain arsenic, and the evidence provided by both parties contradicted each other. The plaintiff believed that the decision of the Court of Appeal was unlawful, and its judges were bribed by Antam Ltd. He based his claim on the information he had received that two weeks prior to the ruling all judges and registrar officers of the Appeal Court had been invited to join a tennis tournament in Jakarta under the auspices of and at the expense of Antam Ltd. Unfortunately, the plaintiff could not give evidence of such a claim. With regard to administrative and criminal enforcement, corruption can be committed by either law enforcers, administrators, or businesspeople. It happens in the whole process of law—inspection, investigation, prosecution, trial, and execution. At the inspection stage, corruption involved environmental inspectors and police agents (Husin & Tegan, 2017).

In every pollution incident, the victims of pollution file an environmental complaint with the Environmental Mitigation Board and Police Office. The environmental inspectors and police agents must find evidence as to whether or not pollution occurred. The environmental inspectors and police agents must ensure that the environmental standard is breached by the polluters. Usually, the polluters employ a “scratch my back and I will scratch yours” approach. The polluters negotiate with

the environmental inspectors and police agents so as not to continue the process of law. In return, the environmental inspectors and police agents are paid for closing the case. For example, there have been many environmental complaints filed by Jatam Kaltim, an NGO activist, to the Environmental Mitigation Board and Police Office in East Kalimantan, but the process of law failed to run due to corruption. Corruption is one of the main reasons why environmental cases are not brought to court. Corruptors get away with their crime by bribing investigators, prosecutors and judges. A good example happened in East Kalimantan where the Managing Director of Kideco Jaya Agung Ltd, a foreign company in Paser Region, East Kalimantan, was sentenced to one year in jail the Supreme Court. The execution of the sentence of the Managing Director has not been carried out by the attorney office. Jatam Kaltim argued that the execution officer had been bribed by the Director of Kideco Jaya Agung (Tegnan, 2015).

In 2018, the KPK, the Ministry of Energy and Mineral Resources, the Ministry of the Environment, and the Ministry of Forestry collaborated on a comprehensive study to assess and conserve natural resources. The study discovered 10,000 mining business permits, of which 6,000 were found to be problematic. Both are related to tax payment transparency, the community's rights surrounding the mine site still being held hostage, and the environmental ecosystem being destroyed as a result of uncontrolled mining exploration. The KPK research team's findings are undoubtedly surprising, given that more than half of Indonesia's mining businesses have encountered difficulties since the licensing stage (Widojoko, 2017). The KPK also established the "Minerba Korsup" in response to the study's findings, which began carrying out a number of interventions and policy advocacy efforts to improve national mining governance. This policy of special attention aims to maximize the mining sector's contribution to the country's GDP, as it is the largest contributor to the country's GDP in comparison to other natural resource sectors (Agarwal et al., 2020).

2.5. Dealing with Mining Corruption Issues: *Lex Specialis Derogaat Legi Generalli*

According to research conducted by the Corruption Eradication Commission (KPK) in 2018, Transparency International in 2017, and Indonesia Corruption Watch in 2016, the national mining sector was dominated by "informal governance," which wields greater authority than formal political and legal authority. "Informal power" is a term that refers to a cross-interest gathering of political power holders, government officials, law enforcement officers, and mining industry players who form a separate work system capable of controlling any formal or legal government decision or work mechanism (Isra et al., 2017).

The results of a study by the Mining Advocacy Network (Jatam) from 2014 to 2018 showed found some 23 cases of corruption in the mining sector, with state losses of around Rp. 210 trillion, equivalent to eight times the cost of the 2019 election (Tempo, December 19, 2018; Media Indonesia, February 06, 2019). The corrupt practice of the mining sector is suspected of involving political elites, both local and national, including candidates for regional heads, which also involve leaders of corporations or mining companies. Until now, a number of corrupt practices with heavy losses are suspected of continuing to occur in Kalimantan, Papua, Sulawesi, and other areas. Unfortunately, indications of this corrupt practice are not taken seriously by the government and law enforcement officials, so it seems as if this omission and silence allow, and even encourage, the corrupt process to continue (Umam et al., 2020).

This was confirmed by data and information provided by KPK in 2019, which noted that there were approximately 10,000 mining permits, of which 60 percent were illegal (Alfada, 2019). In fact, corporations categorized as legal also often carry out corrupt and collusive practices that violate the law. They are thus freed from the obligation to pay reclamation guarantees and close former mining holes after exploration. The KPK findings data have been submitted to the Ministry of Energy and Mineral Resources, which has the authority to review the Contract of Work, Coal Mining Concession Work Agreement (PKP2B), and Mining Business Permit (IUP). However, the Ministry of Energy and Mineral Resources itself feels that it has no more authority because the mining sector licensing regime is controlled by the local government in the decentralized political system. Although the Ministry of Energy and Mineral Resources has a Civil Servant Investigator (PPNS) authorized to investigate alleged criminal acts, the Ministry of Energy and Mineral Resources at the mid-level still does not have the authority to enter licensing jurisdiction areas managed by local governments (Irsan & Utama, 2019).

Meanwhile, regional control mechanisms are ineffective, as all systems have been centralized under the control of local governments. As a result, there are practically no field-level action steps, including investigations and enforcement. Additionally, almost all stakeholders appear to disregard reform efforts aimed at increasing the mining sector's transparency and accountability. Concerning the illegal licensing or possession of corporate right-to-use documents (HGU) that frequently overlap, these issues should be easily resolved through President Joko Widodo's "One Map Policy." However, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) has yet to open HGU documents to the public, or the One Map Policy, which remains closed to the public, implying that the problem of overlapping land use by mining corporations remains unresolved. As a result, the state's political and legal decisions regarding national mining governance have been adapted to the network's narrow interests (Duerrenberger & Warning, 2018).

As of now, corruption in the mining sector remains relatively similar to corruption in the natural resources sector in general. Mining sector corruption tends to be "grand" or "state-captured" corruption. It involves big names, big money, and great abuse of authority. Mining sector corruption tends to be "structural" rather than "institutional." Therefore, the results of the identification of the study of corruption in the mining sector do not merely involve problems of the regulatory system, administration, and bureaucratic constraints. It is also caused by factors of the political-economic structure that involve the forces of local and national power elites, capable of regulating and deceiving systems and rules, to law enforcement (Umam et al., 2020). This structural factor is why corrupt practices in the mining sector tend to be persistent and can persist (immunity to change) despite various reform efforts.

The enforcement of the Corruption Eradication Law in environmental cases is not without handicaps. The first handicap is due to the principle of *lex specialis derogat legi generali*, meaning that the rules of special laws are subordinate to general ones. Both Environmental Protection and the Anti-Corruption laws are *lex specialis* of the Indonesian Penal Code. Should a case of environmental violation involve corruption, one might ask which law is to apply, giving rise to the issue of overlapping regulations. The second handicap relates to the principle of subsidiarity in criminal law. This principle puts criminal law secondary in the enforcement of law, especially functional law like environmental law. Therefore, the breach of environmental law should first be tackled with administrative sanctions outlined in the environmental Law, i.e., the Environmental Protection Law.

The law enforcement officers have no power to use criminal sanctions, either as set forth in the Environmental Protection Law or in the Corruption Eradication Law. The last handicap lies in the phrase of Article 14 of the Corruption Eradication Law, which specifies that the provisions of the Corruption Eradication Law cannot be used against anyone who breaches another law (such as the Environmental Law) and does not refer to the act as corruption. Similarly, none of the provisions of the Environmental Protection Law stipulates that a breach of environmental regulations is considered corruption. To prevent corruption in the protection and management of the environment, the Environmental Protection Law should be revised in a way that supports the implementation of the Corruption Eradication Law.

The first thing to do is strengthen the subsidiarity principle, which is only mentioned in the Preamble of the Environmental Protection Law. The Environmental Protection Law should specify an exception for implementing the *ultimum remedium* principle, by inserting a provision to allow criminal law to become *primum remedium*. The exceptions should also specify that if the breach of environmental standards involves corruption, criminal law can become *primum remedium*. The second thing to do is accommodate the ruling of Article 14 of the Corruption Eradication Law. A new provision should be inserted into Chapter XV of the Environmental Protection Law. This new article must clearly specify that a breach of environmental law and regulations, which involves bribery, or any illegal payment, should be qualified as corruption. It should also solve the problem of *lex specialis derogat legi generali* principle by ruling which law is to prevail over a case of corruption in protecting and managing the environment. To prevent the corruption that occurs when utilizing international funds under the REDD+ Program, the Environmental Protection Law should be revised so as to rule that deviations from international fund use shall constitute crimes of corruption.

3. Conclusion

In order to mitigate mining corruption and environmental pollution in Indonesia, Law No. 32/2009 on environmental protection establishes several requirements that must be met before the acquisition of a license and the commencement of any environment-related activity. Those requirements pertain to spatial planning, environmental quality standards, EIA, and licensing. However, despite the existence of such mechanisms along with numerous laws and regulations on both the protection of the environment and the eradication of corruption, pollution, and many other forms of environmental degradation still occur in Indonesia. The struggle to eradicate corruption in the protection of the environment is hindered by various principles, such as subsidiarity in criminal law and *lex specialis derogat legi generalli*, which means that rules of special laws are subordinate to those of a general law. There is a need to reform the environmental law by strengthening the subsidiarity principle and revising Article 14 of the Corruption Eradication Law. The Environmental Protection Law must accommodate the ruling of Article 14 of the Corruption Eradication Law by classifying any breach of environmental law involving bribery or any illegal payment as an act of corruption. The new provision should also solve the *lex specialis derogat legi generalli* dilemma.

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