CORRUPTIO

Fakultas Hukum, Universitas Lampung, Bandar Lampung, Lampung, Indonesia.
http://jurnal.fh.unila.ac.id/index.php/corruptio
Volume 6 Issue 1, January 2025. PP: 13-26
P-ISSN: 2723-2573 E-ISSN: 2745-9276

The Issuance of PT Tambang Mas Sangihe's Mining Operation Permit by the Ministry of Energy and Mineral Resources as an Act of Corruption

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Submitted: April 29, 2025; Reviewed: May 19, 2025; Accepted: October 28,, 2025

Article's Information

keywords:
Mining, Corruption, Sangihe Island , Abuse of Authority.

DOI :
https://doi.org/10.25041/corruptio.v6i1.4141

Abstract

This paper analyzes the actions of the Minister of Energy and Mineral Resources (ESDM) in issuing a Mining Operation Permit to PT Tambang Mas Sangihe as a criminal act of corruption. Based on the Jakarta High Administrative Court (PTTUN) Decision No. 140/B/2022/PT.TUN.JKT, the permit was proven to violate several legal provisions and was subsequently revoked. The issuance of the permit without proper legal basis caused environmental damage and loss of natural resources, which form part of state finances. These actions indicate that the Minister of ESDM abused his authority to benefit a corporation, resulting in losses to state finances or the economy, as regulated in Article 3 of Law No. 31 of 1999 on the Eradication of Corruption. This study employs a normative legal research method using conceptual and case approaches, supported by primary and secondary legal materials.

A. Introduction

Corruption is classified as an extraordinary crime because of its extensive and destructive impact. It not only causes economic and financial losses to the state but also undermines economic growth, disrupts sustainable development, and violates the socio-economic rights of citizens.[1] As a systemic offense that erodes the foundations of governance and deprives the public of their rightful benefits, corruption requires exceptional legal and institutional responses.[2]

The concept of corruption has evolved over time, reflecting diverse interpretations across linguistic, academic, and regulatory perspectives. There is no universally accepted international

[1] Hilmalia Sesy Riauroikha et al, "Tindak Pidana Korupsi yang Melibatkan Sektor Swasta Dalam Perspektif Kejahatan Lintas Negara (Studi Perbandingan Malaysia)," *Unes Law Review* 6, no. 1 (2023): 2790-2798.
[2] Toba Sastrawan Manik and Sunarso, "Death Penalty of Corruptors: Between the Human Rights and Challenges of Progress in Indonesian Law," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 14, no. 3 (2020): 233-246.

definition of corruption. Etymologically, the term originates from the Latin corruptio, meaning decay, degradation, or bribery. In general, it is understood as the abuse of public power for private gain.[3]

Corruption is closely associated with fraudulent and illegal practices committed for personal or group benefit.[4] According to the Great Dictionary of the Indonesian Language *(KBBI*), corruption refers to the embezzlement or misuse of state funds for private advantage. Sam Santoso also describes corruption as a form of theft, representing an abuse of office intended to obtain wealth or status for certain individuals or groups.[5]

The legal definition of corruption in Indonesia is outlined in thirteen articles of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001. These provisions generally define corruption as an unlawful act involving the abuse of authority, opportunity, or means, committed to enrich oneself, others, or a corporation, thereby causing losses to state finances or the national economy.[6] Law No. 20 of 2001 on the Eradication of Corruption (*UU Tipikor*) identifies thirty types of actions classified as corruption, which are broadly grouped into seven categories: causing losses to state finances, bribery, embezzlement in office, extortion, fraudulent acts, conflicts of interest in procurement, and gratification.[7]

Corruption is a multi-sectoral crime that can occur in the public sector, the private sector, and even in international contexts.[8] Several sectors in Indonesia are particularly vulnerable to corruption, including education, forestry, banking, and mining. Among these, the mining sector receives special attention due to its high economic value and susceptibility to corrupt practices. Mining represents a major contributor to national revenue, especially in resource-rich countries like Indonesia.

Indonesia possesses abundant mineral resources distributed across the archipelago, including coal, nickel, cobalt, lead, zinc, aluminum, bauxite, iron, gold, silver, tin, copper, manganese, chromium, petroleum, and natural gas. Consequently, mining activities are found in almost all regions of the country.[9] The management and control of these natural resources fall under the authority of the central and local governments, as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia.[10] The article states that "the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This constitutional provision carries profound philosophical meaning and serves as a fundamental guideline for state officials in managing natural resources, including mining activities.[11]

Although the mining industry is one of Indonesia's largest contributors to national revenue, it is also a sector highly prone to criminal acts, including mining-related offenses and corruption. One of the primary causes of such crimes is the inadequacy of regulatory frameworks. Mining activities in Indonesia are governed by Law No. 4 of 2009 on Mineral and

[3] Andi Munafri D Mappanturu, "Unsur Memperkaya Dan Menguntungkan Diri Sendiri, Orang Lain Atau Korporasi Dalam Tindak Pidana Korupsi," *Jurnal Media Hukum* 9, no. 2 (2021): 59-69.

[4] Srimin Pinem et al, "Dinamika Pemberantasan Tindak Pidana Korupsi Di Indonesia," *Jurnal Yuridis* 10, no. 2 (2023): 87-94.

[5] Rudolf Johaner Hasoloan et al, "The Spirit of the Anti-Corruption Movement in the Campus Environment Throught Various Community Creativity Social Media Movements," *Jurnal of Creativity Student* 7, no. 2 (2022): 283-310.

[6] Farida Sekti Pahlevi, "Strategi Ideal Pemberantasan Korupsi di Indonesia," *Journal of Law and Family Studies* 4 No. 1 (2022): 28-44.

[7] Alivia Reva Andiyani and Ismunarno, "Perbandingan Hukum Jenis Perbuatan Yang Dilarang Dalam Tindak Pidana Korupsi Antara Antara Indonesia Dan Singapura," *Recidive* 10, no. 1 (2021): 29-36.

[8] Tri Hayati, "Hak Penguasaan Negara Terhadap Sumber Daya Alam dan Implikasinya Terhadap Bentuk Penguasaan Tambang," *Jurnal Hukum dan Pembangunan* 49, no. 3 (2023): 768-787.

[9] Arief Setiawan, "Potensi Cadangan Mineral dan Batubara Di Indonesia dan Dunia," *INTAN: Jurnal Penelitian Tambang* 1, no. 1 (2018): 20-31.

[10] Athari Farhani and Ibnu Sina Chandranegara, "Penguasaan Negara terhadap Pemanfaatan Sumber Daya Alam Ruang Angkasa Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Konstitusi* 16, no. 2 (2019): 235-254.

[11] Nur Aviva Ramadhani et al, "Kewenangan Penguasa Negara Terhadap Sumberdaya Alam Atas Bentuk Pengusahaan Perkebunan Kelapa Sawit," *Jurnal Ilmiah Hukum* 1, no. 2 (2022): 89-96.

P-ISSN 2723-2573
E-ISSN 2745-9276

Coal Mining and its amendment, Law No. 3 of 2020 (*UU Minerba*), along with related regulations. However, unclear and complex provisions regarding the issuance of mining permits often create legal uncertainty. This regulatory ambiguity discourages compliance among mining actors and contributes to the proliferation of illegal practices.[12]

The lengthy and complicated process for obtaining mining permits creates loopholes for various offenses, such as unlicensed mining, submission of false information, and other related violations. Moreover, regulatory noncompliance is not limited to private actors. Government officials have also been implicated in irregularities, particularly in the issuance of mining permits that deviate from established procedures, resulting in losses for both the community and the state.

A notable example is the mining conflict in Kutai Kartanegara Regency, East Kalimantan. The dispute arose from improper land acquisition by the local government, which failed to ensure fair compensation for affected landowners.[13] As a result, local communities engaged in unlawful resistance, highlighting how administrative negligence can inflict significant harm on citizens. Beyond social losses, such negligence also causes lasting environmental degradation.

Another case illustrating governmental mismanagement is the gold mining project of PT Tambang Mas Sangihe in Sangihe Islands Regency, North Sulawesi. In 2021, the Ministry of Energy and Mineral Resources granted the company an operational permit to conduct gold mining activities, despite widespread public opposition. The community rejected the project due to concerns over environmental sustainability, fearing that mining operations would cause irreversible ecological damage in the Sangihe Islands.

Furthermore, the mining permit issued by the Ministry of Energy and Mineral Resources (*ESDM*) for PT Tambang Mas Sangihe was deemed procedurally flawed and inconsistent with prevailing laws and regulations. In response, the Sangihe Islands community filed a lawsuit with the State Administrative Court seeking the revocation of the company's mining operation permit. The case ultimately resulted in a Supreme Court cassation decision in 2023, which annulled the *ESDM* Ministerial Decree granting the permit. The Court held that the permit violated several legal provisions, including those stipulated in the Law on Environmental Protection and Management (*UU PPLH*).

The issuance of the mining operation permit for PT Tambang Mas Sangihe raises significant legal concerns, particularly regarding potential elements of corruption. The Ministry's decision to grant the permit is viewed as detrimental to both the Sangihe Islands community and the national economy. Issuing a permit that contravenes legal regulations may constitute a form of corruption resulting in financial losses to the state.

This type of corruption, which causes state financial loss, is regulated under Articles 2(1) and 3 of the Corruption Law (*UU Tipikor*). The decision to authorize PT Tambang Mas Sangihe's mining activities arguably provided undue benefit to the company, allowing it to exploit mineral resources in violation of legal norms. Consequently, it becomes necessary to examine whether the Ministry's actions in issuing the mining operation permit meet the elements of a criminal act of corruption under Indonesian law.

Previous research by Eprilia et al. (2024) examined corruption committed by a State-Owned Enterprise (*BUMN*) in the mining sector that resulted in losses to state finances.[14]The novelty of the present study lies in its analysis of the unlawful issuance of a mining operation permit for PT Tambang Mas Sangihe by the Ministry of Energy and Mineral Resources (*ESDM*),

[12] Ivanka Salsabila and Aullia Vivi Yulianingrum, "Tinjauan Yuridis Terhadap Tindak Pidana "Melakukan Usaha Petambangan Tanpa Izin Usaha Pertambangan" (Studi Putusan Nomor 312/Pid.Sus/2019/PN.Smr)," *YUSTISIA MERDEKA: Jurnal Ilmiah Hukum* 9, no. 1 (2023): 1-11.
[13] Egidio Fernando Alfamantar, "Penanganan Konflik Lahan Pertambangan," *Jurnal Ilmu Kepolisian* 13, no. 3 (2019): 175-186.
[14] Farina Firda Eprilia *et al,* "State Losses Due to Corruption of Tin Commodity Trade Area of PT Timah Tbk Mining Business License Area," *Jurnal Poros Hukum Padjajaran* 6, no. 1 (2024): 108-123.

which is examined as a potential act of corruption detrimental to state finances. Although corruption that causes losses to state finances is explicitly regulated under Indonesian law, its enforcement remains relatively weak, particularly in the mining sector where large-scale exploitation of natural resources often occurs. Efforts to strengthen the capacity of law enforcement institutions such as the Corruption Eradication Commission (*KPK*), the Attorney General's Office, and the National Police are crucial to ensure legal certainty in handling corruption cases involving the misuse of governmental authority in the issuance of mining permits.[15]

This study employs a normative legal research method focusing on the analysis of legal materials by examining theories, concepts, principles, and relevant laws and regulations.[16] The research adopts a legislative approach to analyze statutory provisions on corruption and mining, a conceptual approach to understand the management of natural resources and state finances, and a case approach to assess judicial decisions related to the PT Tambang Mas Sangihe case.[17] The legal materials used in this study consist of primary and secondary sources.[18] Primary legal materials include laws and regulations concerning corruption and mining, as well as court decisions related to PT Tambang Mas Sangihe. Secondary legal materials consist of books, journals, and other academic references relevant to corruption and mining.[19]

B. Discussion

1. The Facts of the Mining Case of PT Tambang Mas Sangihe in Sangihe Islands Regency

In January 2021, the Ministry of Energy and Mineral Resources (*ESDM*) issued Decree No. 163.K/MB.04/DJB/2021, granting a Mining Operation Permit (*IUP* Operasi Produksi) to PT Tambang Mas Sangihe. The decree approved the transition of the company's Contract of Work (CoW) to the Production Operation stage, authorizing gold mining activities in the Sangihe Islands Regency, North Sulawesi.[20]

According to Law No. 4 of 2009 on Mineral and Coal Mining, as amended by Law No. 3 of 2020 , mining operations in Indonesia must be conducted under specific licenses. Article 35 paragraph (3) of the Minerba Law outlines nine types of mining business permits, namely: Mining Business Permit (*IUP*), Special Mining Business Permit (*IUPK*), Special Mining Business Permit as a Continuation of Contract or Agreement Operations, People's Mining Permit (*IPR*), *SIPB*, assignment permit, Transportation and Sales Permit, Mining Services Business Permit (*IUJP*), and Sales *IUP*.[21]

An *IUP* generally consists of two stages: the exploration stage, which covers general investigation, exploration, and feasibility study; and the production operation stage, which includes construction, mining, processing and refining, as well as transportation and sales. Thus, the Mining Operation Permit issued by the Ministry of Energy and Mineral Resources represents the second stage of the *IUP*.

The issuance of the mining operation permit for PT Tambang Mas Sangihe generated strong public opposition from the Sangihe Islands community. The primary cause of resistance was

[15] Lindasari, "Asset Forfeiture As An Instrument In Fighting Corruption," *Corruptio* 5, no. 2 (2024): 83-90.
[16] Irwansyah, *Penelitian Hukum: Pilihan Metode Dan Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020)
[17] Irwansyah and Ahsan Yunus, *Penelitian Hukum : Pilihan Metode & Praktik Penulisan Artikel* (Sleman: Mirra Buana Media, 2021).
[18] Rihantoro Bayuaji and Dwi Elok Indriastuty, "Legal Analysis Of Violations Of The Prudential Banking Principle In Credit: A Perspective On Corruption And Money Laundering Crimes," *Corruptio* 5, no. 2 (2024): 69-82.
[19] Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi Cet-11* (Jakarta: Kencana Prenada Media Group, 2019).
[20] Yusak M. Papendang et al, "Pemberian Izin Pertambangan Pada Wilayah Pesisir Dan Pulau-Pulau Kecil Di Era Otonomisasi," *INNOVATIVE: Journal Of Social Science Research* 3, no. 3 (2023): 4672-4680.
[21] Ivanka Salsabilla and Aullia Vivi Yulianingrum, *Op Cit.*

P-ISSN 2723-2573
E-ISSN 2745-9276

the lack of transparency in the permit application and issuance process, which failed to involve open public information or community consultation.[22] The community's main concern was that mining activities would threaten the fragile environment and ecosystem of the Sangihe Islands. With a total area of only 736.98 km², the Sangihe Islands are classified as small islands. However, the Ministry of Energy and Mineral Resources granted PT Tambang Mas Sangihe a mining operation area of 42,000 hectares, equivalent to 420 km² or approximately 57 percent of the island's total area.[23]

The permit also authorized a production operation period of 33 years, consisting of a 3-year construction phase and a 30-year production phase, running from 2021 to 2054. This duration clearly contradicts Article 47 letter (a) of the Minerba Law, which stipulates that the maximum period for metal mineral mining operations is 20 years, with the possibility of two extensions of 10 years each upon fulfilling the legal requirements. Therefore, the permit issued by the Ministry of Energy and Mineral Resources violated the legal provisions governing the duration of mining operations.

In addition, the designated mining area overlaps with critical zones of community life, including residential areas, places of worship, schools, agricultural land, and ancestral burial sites. The area also covers the Sahendarumang protected forest, which serves as a vital habitat for endemic flora and fauna, including the endangered Talaud Parrot. The inclusion of protected forest areas within the mining concession clearly breaches several legal provisions. These include Article 26A paragraph (1) of the Coastal and Small Islands Management Law (*PWP3K Law*), which requires ministerial approval from the Ministry of Maritime Affairs and Fisheries for the utilization of small islands; Article 39 of Law No. 41 of 1999 on Forestry, which prohibits the use of protected forests for development activities; and Article 134 paragraph (2) of the Minerba Law, which prohibits mining in restricted zones as stipulated by law.[24]

Furthermore, the issuance of the permit violates environmental regulations, particularly Article 26 of the Environmental Protection and Management Law (*PPLH Law*) as amended by Article 22 of the Job Creation Law, and Articles 27 to 33 of Government Regulation No. 22 of 2021 on Environmental Protection and Management. These provisions require that the Environmental Impact Assessment (*AMDAL*) process must involve communities directly affected by business activities. The disregard of these legal provisions demonstrates multiple procedural and substantive violations in the issuance of PT Tambang Mas Sangihe's mining operation permit.

Mining activities carried out by PT Tambang Mas Sangihe in the Sangihe Islands were expected to cause extensive environmental damage. One of the most significant anticipated impacts was the destruction of coastal areas. The Sangihe Islands possess not only rich terrestrial biodiversity but also abundant marine resources, as the region is predominantly coastal. Most of the local population depends on the sea for their livelihoods, primarily as fishermen. Consequently, mining operations threatened to damage mangrove forests and coral

[22] *Ibid.*
[23] Zen Lutfulloh and Wahyu Donri, "Akibat Hukum Penerbitan Surat Izin Usaha Pertambangan (IUP) Pada Kekayaan Alam Kepulauan Sangihe,"*Jurnal Ilmu Pemerintahan Widya Praja* 47, no. 2 (2021): 175-194.
[24] Ferdinandus et al, "Identifikasi Kandungan Unsur Mineral Pada Area Bekas Tambang Emas Placer dengan Metode X-Ray Flourescence," *G-Tech: Jurnal Teknologi Terapan* 8, no. 4 (2024): 2921-2928.

reefs, which serve as vital habitats for various marine species and support the community's economic and ecological well-being.[25]

Public resistance to PT Tambang Mas Sangihe's mining activities culminated in legal action. The Sangihe Islands community filed a lawsuit against PT Tambang Mas Sangihe and the Minister of Energy and Mineral Resources before the Jakarta State Administrative Court (*PTUN*), registered under Case Number 146/G/2021/*PTUN*.Jkt. The object of the lawsuit was Decree No. 163.K/MB.04/DJB/2021, which granted the company its mining operation permit. The plaintiffs argued that the issuance of the permit violated several legal provisions and endangered the community's environment and livelihood.

The Jakarta *PTUN*, however, rejected the community's lawsuit. Undeterred, the plaintiffs filed an appeal with the Jakarta High Administrative Court (*PTTUN*). In its decision Number 140/B/2022/PT.TUN.JKT, the *PTTUN* overturned the *PTUN* judgment and granted the community's request to revoke the *ESDM* Ministerial Decree. In response, PT Tambang Mas Sangihe and the Ministry of Energy and Mineral Resources submitted a cassation appeal to the Supreme Court, seeking to annul the *PTTUN* decision.

Through Decision Number 650/K/TUN/2022, the Supreme Court rejected the cassation appeal and upheld the Jakarta *PTTUN* decision. The Court found that the mining operation permit for PT Tambang Mas Sangihe had been issued without compliance with the Environmental Impact Assessment (*AMDAL*) requirements mandated by law. Despite the ruling, the Ministry of Energy and Mineral Resources delayed its implementation and only revoked Decree No. 163.K/MB.04/DJB/2021 eight months later.[26]

Even after the permit's revocation, PT Tambang Mas Sangihe did not immediately cease its operations. The company argued that its activities were still valid under an existing work contract and that it only needed to apply for a new permit to continue mining. This situation reflects persistent regulatory and enforcement weaknesses in Indonesia's mining governance, particularly regarding compliance with environmental and administrative law.[27]

2. The Role of State Finance

In the case of mining in the Sangihe Islands, the Minister of Energy and Mineral Resources granted a mining operation permit to PT Tambang Mas Sangihe for gold extraction. Beyond the exploitation of gold as the primary objective, the mining activities also resulted in environmental degradation and pollution, particularly in protected forest areas and surrounding waters. Such damage has serious consequences for various species of flora, fauna, and marine biota that inhabit the Sangihe Islands. Both the environment and the mineral resources within the Sangihe Islands constitute natural resources of economic value that fall under the state's control, as mandated by the Constitution. Therefore, it is necessary to clarify the concept of state finance in this context.

One of the essential elements in proving a corruption offense is the existence of state financial loss.[28] State finance plays a fundamental role in achieving the goals of the nation,

[25] Econusa.id, "Tambang Emas di Sangihe Berdampak pada Kehidupan Nelayan", Juli, 13, 2022. Avaible online https://econusa.id/id/ecoblog/tambang-emas-di-sangihe-berdampak-pada-kehidupan-nelayan/.

[26] Tempo.com, "PT Tambang Mas Sangihe Tetap akan Eksplorasi Meski Izin Operasional Dibatalkan", September, 11, 2022. Avaible online https://www.tempo.co/hukum/pt-tambang-mas-sangihe-tetap-akan-eksplorasi-meski-izin-operasional-dibatalkan--292126

[27] Kompas.id, "Status Operasi Produksi PT Tambang Mas Sangihe Akhirnya Dibatalkan", September 19, 2023. Avaible online https://www.kompas.id/baca/nusantara/2023/09/09/status-operasi-produksi-pt-tambang-mas-sangihe-akhirnya-dibatalkan

[28] Teuku Syarafi and Mahdi Syahbandir, "Confiscation of Corruption Asset in Indonesia Legal System: A Study of Criminal Law in Aceh," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 2 (2024): 665-686.

P-ISSN 2723-2573
E-ISSN 2745-9276

making it imperative that its management remain transparent, accountable, and free from corruption and abuse of power.[29] The concept of state finance, however, has often been defined narrowly by Indonesian scholars. Laurensius Arliman S. (2020), for instance, defines state finance formally as the State Revenue and Expenditure Budget, which is managed under the authority of the President as the head of government.[30]

According to Law Number 17 of 2003 concerning State Finance, Articles 1 and 2 define state finance as all rights and obligations of the state that can be valued in money, as well as all assets, whether in the form of money or goods, owned by the state as a result of those rights and obligations. Historically, this definition draws from Van Der Kemp's concept presented at the Indonesische Comptabiliteitswet (ICW) seminar in Jakarta in 1970[31], which described state finances as all rights measurable in monetary terms and all possessions owned by the state arising from those rights.[32]

The authority to manage state finances is vested in the President as the head of government. This authority is further delegated to regional heads within the framework of regional autonomy[33] to manage regional finances, including regional assets that are considered separate from national finances.[34]Heru Susanto (2006) emphasizes that a state managing its finances lawfully, efficiently, effectively, and responsibly aligns with the principles of good governance as mandated by a democratic system. The ultimate purpose of state financial management is to achieve public welfare by prioritizing the public interest. Through the proper exercise of its financial authority, the state fulfills its role in promoting social justice and ensuring social security for all citizens.[35]

3. The Relationship between Mining Natural Resources and State Finances

State finances originate from state revenues, which are classified into two main categories: tax revenues and non-tax state revenues (*PNBP*). Tax revenues constitute the primary source of state income, while *PNBP* refers to central government revenues that do not derive from taxes.[36] In general, there are four types of *PNBP*, namely revenues from natural resources, profits from state-owned enterprises (*BUMN*), revenues from public services, and other non-tax revenues. Revenues from natural resources represent income obtained from the government's share in the management of oil and gas as well as non-oil and gas resources.[37]

In accordance with the mandate of the Constitution, Indonesia's natural resources are controlled by the state and must be utilized for the greatest prosperity of the people. Indonesia possesses abundant natural resources, including agricultural land, plantations, fisheries, forests, and mineral resources. These resources are managed by the state through various regulatory and administrative mechanisms in line with applicable laws. The management of these resources generates state income, which is categorized as *PNBP* and forms an integral part of state finances.

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[29] Wahid, "Kerugian Keuangan Negara Akibat Tindak Pidana Korupsi Dalam Badan Usaha Milik Negara," *Jurnal Ilmu Hukum* 7, no. 1 (2024): 23-40.
[30] Laurensius Arliman S., "Makna Keuangan Negara Dalam Pasal 23E Undang-Undang Dasar 1945," *Lex Librum: Jurnal Ilmu Hukum* 6, no. 2 (2020): 187-200.
[31] Fuad and Rio Rama Baskara, "Managing State Finances Amid Globalization; Challenges And Opportunities," *Widya Pranata Hukum* 6, no. 1 (2024): 118-132.
[32] Aprilia Dwi Susanti, "Perspektif Hukum Keuangan Negara Terhadap Mekanisme Pertanggungjawaban Pengelolaan Anggaran Pendapatan dan Belanja Negara," *Jurnal El-Dusturie* 1, no. 2 (2022): 53-70.
[33] Titon Slamet Kurnia, "Otonomi Daerah dan Demokrasi: Kritik terhadap Pendapat Mujani dan Liddle tentang Mandat Populis Kepala Daerah." *Undang: Jurnal Hukum* 6, no. 2 (2023): 415-445.
[34] Aprilia Dwi Susanti, *Op Cit.*
[35] Khamazi Zada, "Kedaulatan Dalam Pengelolaan Keuangan Negara: Perspektif Siyasah Syar'iyyah," *SALAM: Jurnal Sosial dan Budaya Syar-I* 9, no. 4 (2022): 1129-1138.
[36] Fatma Ulfatun Najicha, "Peranan Hukum Pajak Sebagai Sumber Keuangan Negara Pada Pembangunan Nasional Dalam Upaya Mewujudkan Kesejahteraan Rakyat," *Jurnal Ius Civile* 6, no. 1 (2022): 169-181.
[37] Adi Putra et al, "Penerimaan Hasil Pengelolaan Sumberdaya Alam dan Pengaruh Terhadap Penerimaan Negara Bukan Pajak di Indonesia," *Jurnal Development* 11, no. 1 (2023): 29-64.

However, an important legal question arises regarding whether environmental destruction resulting from mining activities can be classified as a form of corruption that causes losses to state finances. To date, environmental damage as an element of state financial loss has not been explicitly regulated in the Corruption Law, which primarily interprets state losses in monetary terms. This limitation indicates the need for a broader understanding of state financial losses, one that encompasses the economic value of environmental degradation and the depletion of natural resources controlled by the state.[38]

In the Explanation section of the Corruption Law, it is explained that:

> "*The state finances referred to are all state assets in any form, which are separated or inseparable, including all parts of state assets and all rights and obligations arising from:*
>
> *(a) being under the control, management and accountability of state institution officials, both at the central and regional levels;*
>
> *(b) being under the control, management and accountability of State-Owned Enterprises/Regional-Owned Enterprises, foundations, legal entities, and including third party capital based on agreements with the State."*

The formulation of Article 33 paragraph (3) of the 1945 Constitution emphasizes that "the earth, water, and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." The phrase "natural resources contained therein" refers to all natural resources within the territory of Indonesia, including minerals and other mining materials.[39] Furthermore, the interpretation that "state finance is all natural wealth in any form" indicates that natural resources are part of the state's assets. Arifin P. Soeria Atmadja (1986) explains that state finance is synonymous with state wealth, which consists of assets and liabilities.[40] Therefore, all objects possessing economic value, such as land, water, rivers, mines, and mountains within the territory of the Republic of Indonesia, form part of state finance. Based on this understanding, minerals and coal are natural resources contained within the earth of Indonesia that must be managed optimally, efficiently, transparently, sustainably, and equitably to make a significant contribution to state finances.[41]

4. Corruption, Abuse of Office and Detrimental Acts to State Finances.

Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001 (Corruption Law), was enacted as a legal instrument to address corruption through a strong and efficient legal framework.[42] This law serves as one of the key foundations in the enforcement of criminal law in Indonesia. It regulates various forms of corruption recognized as criminal acts, including corruption that results in losses to state finances.[43] Provisions regarding corruption that is detrimental to state finances are specifically stipulated in Article 2 and Article 3 of the Corruption Law.

Article 2 paragraph (1) of the Corruption Law states:

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[38] Daffa Ladro Kusworo dan Titi Anggraini, "Extensive Interpretation of State Financial Losses in Tin Sector Corruption: A Comparative Study of Emerging Economies," *Integritas: Jurnal Antikorupsi* 10, no. 2 (2024): 173-186.

[39] Suryadi Marthadinata dan Iskandar Zulkarnain, "Analisis Semiotika Pesan Komunikasi Ekonomi Politik Pendiri Bangsa dalam Pelaksanaan Pasal 33 UUD 1945," *Jurnal Disrupsi Bisnis* 7, no. 4 (2024): 650-657.

[40] Arifin P. Soeria Atmadja, *Mekanisme Pertanggungjawaban Keuangan Negara: Suatu Tinjauan Yuridis,* Jakarta: Gramedia, (1986): p. 18.

[41] Marthin B. Salinding, "Konsep Peguasaan Negara Terhadap Sumber Daya Mineral dan Batubara yang Berkeadilan," *Borneo Law Review* 6, no. 2 (2022): 219-235.

[42] Andi Harunsyah Peter Noel Weenas, "Efektivitas Undang-Undang Tindak Pidana Korupsi Sebagai Alat Rekayasa Sosial," *Jurnal Yustika* 27, no. 1 (2022): 24-41.

[43] Berlian Marpaung, "Memahami Pemenuhan Unsur Perbuatan Korupsi yang Merugikan Keuangan Negara Dalam Tindak Pidana Korupsi," *Jurnal Nalar Keadilan* 2, no. 2 (2022): 12-28.

P-ISSN 2723-2573
E-ISSN 2745-9276

> *"Any person who unlawfully commits an act of enriching himself or another person or corporation which may be detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least IDR200,000,000,- (two hundred million rupiah) and a maximum of IDR1,000,000,000,- (one billion rupiah)."*[44]

Article 3 of the Corruption Law states:

> *"Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position which can harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least IDR50,000,000.00 (fifty million rupiah) and a maximum of IDR1,000,000,000.00 (one billion rupiah)."*[45]

The main difference between Article 2 paragraph (1) and Article 3 of the Corruption Law lies in their core elements. Article 2 paragraph (1) contains the element of "acting against the law," whereas Article 3 emphasizes the element of "abuse of authority." In practice, Article 2 paragraph (1) is generally applied to non-civil servants or private individuals who commit acts of corruption that harm state finances, while Article 3 is applied to civil servants or public officials.[46] However, this distinction is often debated, as the criminal sanction under Article 2 paragraph (1) is heavier than that under Article 3. To determine whether an act constitutes corruption that harms state finances, it is necessary to assess whether the act fulfills the elements of the respective article.[47] The elements of Article 2 paragraph (1) include: (1) every person, (2) acting against the law, (3) enriching oneself, another person, or a corporation, and (4) causing a loss to state finances or the economy. The elements of Article 3 include: (1) every person, (2) intending to benefit oneself, another person, or a corporation, (3) abusing authority, opportunity, or means available due to position or office, and (4) causing potential losses to state finances or the economy.[48]

5. The Ministry of Energy and Mineral Resources Issuing Mining Operation Permits for PT Tambang Mas Sangihe

The Ministry of Energy and Mineral Resources' issuance of a Production Operation Permit to PT Tambang Mas Sangihe may constitute a criminal act of corruption causing state financial losses. To determine this, it is necessary to assess whether the elements of corruption under Article 3 of the Corruption Law are fulfilled. As the Ministry is a public institution and its officials are public officials, Article 3 serves as the relevant legal basis.

a. The element "Every Person"

The first element, "every person," as defined in Article 1(3) of the Corruption Law, includes both individuals and corporations. In this case, the Minister of Energy and Mineral Resources, who holds authority to issue mining permits, qualifies as an individual subject to the law.[49]

[44] Wahib, *Op Cit.*
[45] Wahbi Rahman et al, "Discretion of Government Officials Detrimental to State Finances: The Intersection Between Administrative Illegality and Criminal Illegality," *Law Reform* 20, no. 2 (2024): 230-249.
[46] Vidya Prahassacitta, "Perubahan Makna terhadap Pasal 2 dan 3 Undang-Undang Nomor 31 Tahun 1999 Pasca Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 15, no. 3 (2018): 502-524.
[47] I Putu Agus Sudiyasa Putra et al, "Tindak Pidana Korupsi yang Dilakukan oleh Karyawan Badan Usaha Milik Negara," *Jurnal Analogi Hukum* 3, no. 3 (2021): 411-416.
[48] Said Munawar et al, "*Legislative Error* Pasal 3 UU No. 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi," *Jurnal Rectum* 7, no. 1 (2025): 188-200.
[49] Yudhi Christiawan Samuel et al, "Pertanggungjawaban Pidana Pelaku Tindak Pidana Korupsi Pengadaan Barang Dan Jasa Dalam Perspektif Peraturan Perundang-Undangan," *Hangoluan Law Review* 1, no. 1 (2022): 1-35.

Given that Article 3 applies specifically to civil servants or public officials, the Minister meet the definition of a public official under Article 1(2) as "every person."

b. Element of "Benefiting Oneself or Another Person or a Corporation"

In the element of "benefiting oneself or another person or a corporation", there are 3 aspects, namely oneself, another person and the corporation.

1) Oneself
   Himself, meaning that from the unlawful act, the perpetrator enjoys increasing his own wealth or property.
2) Another Person
3) Other people, as a result of the perpetrator's unlawful actions, there are other people who benefit from the increase in wealth or property.
4) Corporation
5) Corporations, as a result of the perpetrator's unlawful actions, result in a corporation, namely a group of people or an organized group of assets, whether a legal entity or not, benefiting from the increase in wealth or property.[50]

Minister of Energy and Mineral Resources in issuing a Mining Operation Permit to PT Tambang Mas Sangihe is unlawful. PT Tambang Mas Sangihe as a corporation of the legal entity type that benefits from the actions of the Minister of Energy and Mineral Resources clearly fulfills the elements of benefiting a corporation.

c. The element of "Misusing the Authority, Opportunity or Facilities Available to Him Due to His Position or Status"

The element of "abusing the authority, opportunity, or means available because of one's position" is a key component of Article 3 of the Corruption Law, applying to acts committed within the scope of official duties.[51] From 2019 to 2024, the Minister of Energy and Mineral Resources was Arif Tasrif.[52] Ministerial Decree No. 163.K/MB.04/DJB/2021, issued in January 2021 during his tenure, granted a Production Operation Permit to PT Tambang Mas Sangihe. Under Article 37 of the Mineral and Coal Law, the Minister responsible for mineral and coal affairs is authorized to issue such permits.[53]

However, the issuance of this permit involved several legal violations, as confirmed by the Supreme Court's Cassation Decision, which upheld the Administrative High Court's ruling to revoke it. The court found that the process violated regulations on mining in small islands, the use of protected forest areas, and public participation in the Environmental Impact Assessment (*AMDAL*).

By issuing the permit despite these violations, the Minister of Energy and Mineral Resources misused his authority for the benefit of PT Tambang Mas Sangihe, thereby fulfilling the element of "abusing authority, opportunity, or means available because of position" under Article 3 of the Corruption Law.

d. Element "Can be detrimental to state finances or the state economy"

This element was initially considered a formal offense because it included the word "can," indicating that both actual and potential losses to state finances or the state economy were sufficient to establish corruption. However, following Constitutional Court Decision No.

[50] Andi Munafri D. Mappanturu, "Unsur Memperkaya Dan Menguntungkan Diri Sendiri, Orang Lain Atau Korporasi Dalam Tindak Pidana Korupsi," *Jurnal Media Hukum* 9, no. 2 (2021): 59-69.

[51] Revata Vappa Lazuardi and Luthfie Arya Deanova, "Unsur "Menyalahgunakan Wewenang" dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi," *Referendum: Jurnal Hukum Perdata dan Pidana* 1, no. 3 (2024): 160-168.

[52] Hukumonline.com, "Terkait Kasus CISEM 2, Mantan Menteri ESDM Penuhi Panggilan KPPU", December 19, 2024. Avaible online https://www.hukumonline.com/berita/a/terkait-kasus-cisem-2--mantan-menteri-esdm-penuhi-panggilan-kppu-lt67641531255fc/

[53] Novita Eka Utama, "Sentralisasi Terhadap Kewenangan Pemerintah Daerah dalam Perizinan Tambang Pasca Pemberlakuan Undang-Undang Mineral dan Batubara," *Lex Renaissance* 2, no. 8 (2023): 360-378.

P-ISSN 2723-2573
E-ISSN 2745-9276

25/PUU-XIV/2016, the term "can" in Articles 2(1) and 3 of the Corruption Law was removed, converting the offense into a material one. Consequently, actual loss to state finances or the state economy must now be proven.[54]

As previously explained, mining resources constitute part of state finances.[55] PT Tambang Mas Sangihe's mining activities in the Sangihe Islands caused physical damage in the form of excavation pits and depletion of gold resources. The Production Operation Permit issued by the Minister of Energy and Mineral Resources was declared legally and procedurally invalid and found to have violated several legal provisions, as confirmed by the Supreme Court Cassation Decision No. 650/K/TUN/2022.

C. Conclusion

The issuance of the Mining Operation Permit for PT Tambang Mas Sangihe through the Decree of the Minister of Energy and Mineral Resources has raised concerns since its announcement. As proven before the Administrative High Court (*PTTUN*), the permit violated several legal and regulatory provisions. The Minister's decision to issue the permit is strongly indicative of a corruption offense involving abuse of official authority that caused losses to state finances. Therefore, the Minister of Energy and Mineral Resources may be held criminally liable under Article 3 of Law No. 20 of 2001. Law enforcement institutions, particularly the Corruption Eradication Commission (*KPK*), should investigate both the government officials responsible for issuing the permit and the mining company involved once such violations are established.

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[54] M. Naufal Najmuddin and Romlan, "Tinjauan Yuridis Kerugian Keuangan Negara Akibat Tindak Pidana Korupsi," *Jurnal Justicia* 13, no. 1 (2024): 52-61.

[55] Harly Clifford Jonas Salmon, "Kata Dapat Merugikan Keuangan Negara Dalam Undang-Undang Tindak Pidana Korupsi dan Undang-Undang Perbendaharaan Negara," *MATAKAO Corruption Law Review* 1, no. 1 (2023): 19-27.

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