The Need for Systematic Use of The Principle of Specificity in Handling Criminal Cases Committed by Officials

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Abstract

Entering Golden Indonesia in 2045, it is, of course, expected that economic and industrial growth will increase. Policies supporting this increase are outlined in various laws and regulations, followed by enforcement. Criminal acts in the natural resources sector often involve government and corporate elites. The handling always ignores the principle of systematic specificity so that officials who violate any law are always qualified as committing a criminal act of corruption; this has given rise to academic criticism. Another weakness is that the Forestry and Mineral and Coal Law do not yet define officials as targets for criminal threats. It is understood that every law has norms that it wants to protect, meaning that every legal regulation, which has its character and dimensions, cannot be confused with one another. Moreover, the Corruption Eradication Law mandates that sanctions can only be applied to violations of other special laws as long as the law is expressly formulated. This research is normative, using secondary data and a comparative approach and analyzed prescriptively. The analysis results conclude that both the Forestry Law and the Mineral and Coal Law require special norms for officials so that they are not always qualified as corruptive acts, and the Corruption Eradication Law is not an "all-embracing act".

Keywords: Official; Principle of Systematic Specificity; Corruption.

1. INTRODUCTION

Economic growth remains high amidst the global economic slowdown. Data from the Central Statistics Agency (BPS) shows that Indonesia's economic growth in the second quarter of 2023 was recorded at 5.17%, an increase from growth in the previous quarter of 5.04%.[1].[1] It cannot be denied that corporations contribute to economic growth in Indonesia. However, it is unfortunate that many corporations violate the law. No one can deny that the development of the times and

the progress of civilization and technology have also been accompanied by the development of crime and its complexity.

Economic crimes committed by corporations are mostly crimes that violate laws and regulations in the field of natural resources. In this regard, it is interesting that Huntington stated that the rapid progress of industry and business is creating new rich people. "Corruption has become a bridge between groups with power and wealth," he said. One sells political power to gain wealth; the other sells the property to gain political power." [2][1]According to Huntington, corruption occurs when business and power centres interact. Corruption can occur when businesses give bribes to government officials to gain greater profits. Conversely, government officials may solicit bribes from businesses to obtain personal benefits. Corruption can damage a country's political and economic system and hamper economic growth[3]. However, can it always be qualified as committing a criminal act of corruption when officials are involved/collaborating in a crime committed by a corporation?

It can be seen how the laws and regulations in Indonesia respond to the complexity of crimes that occur, especially in the field of natural resources. Since the first semester of studying at the Faculty of Law, it has been understood that the law is like a cart that moves slowly while the crime faced is like an aeroplane that is developing at an extraordinary rate. Friedman stated that to understand law as a system, it can be approached from 3 (three) aspects: substance, structure, and legal culture. This research examines the substantive element, namely statutory regulations and the legal structure, in this case, law enforcement officers and officials.

Indonesia, rich in natural resources, must earnestly implement optimal and clean governance. One of the pillars of successful management is eradicating corruption and mafia in the natural resources sector. So far, the results of natural resources for people's prosperity have yet to be handled optimally. Don't repeat policies from the Government that could trigger criminal acts in the mineral resources sector. This happened when the Ministry of Trade issued Minister of Trade Ministerial Decree number 144/MPP/Kep/4/1999 dated April 22 1999; in this decree, tin was categorized as a free (unsupervised) good and the status of tin as a strategic commodity was revoked, so that it was no longer monopolized by one state-owned company and can be exported freely by anyone. As a result, this has led to the rise of illegal tin mining activities[4]. What is worrying is that tin mining in the Bangka Belitung Islands creates hundreds to thousands of former tin mining holes or pits. Some of the pits have yet to be reclaimed. Instead, they have been used as tourist locations[5].

II. RESEARCH METHODE

This research is normative legal research that uses a statutory approach, secondary data, relevant theory, and prescriptive analysis.

III. RESULTS AND DISCUSSION

The analysis in this article focuses on 2 (two) laws, namely Law Number 41 of 1999 Yo Law Number 19 of 2001 concerning Forestry[6] and Law Number 4 of 2009 Yo Law Number 3 of 2020 concerning Mining[7], Minerals and Coal

3.1. Forestry Law

In Law Number 41 of 1999 Yo Law Number 19 of 2001 concerning Forestry, it has not made officials subjects who are targets of criminal threats. Meanwhile, in the Minister of Forestry Regulation Number: P.55/Menhut-II/2006 Jo. Minister of Forestry Regulation Number: P.63/Menhut-II/2006 Jo. Minister of Forestry Regulation Number: P.8/Menhut-II/2009 Jo. Minister of Forestry Regulation Number: P.45/Menhut-II/2009 concerning Administration of Forest Products Originating from State Forests (Ministry of Forestry Regulation concerning Administration of Forest Products)[8], Article 44 paragraph (7) determines: Violations committed by Officials Approving Logging Results Reports (P2LPH)/ Official for Ratifying Reports on Production of Non-Timber Forest Products (P2LP-HHBK), Official for Issuing Certificates of Legal Round Wood (P2SKSKB), or Official for Examining Round Wood Receipts (P3KB) in addition to being subject to the sanction of dismissal as P2LPH/P2LP-HHBK, P2SKSKB , or P3KB, may also be subject to other sanctions based on applicable laws and regulations according to the level of the violation.

Based on the provisions of Article 44 of the Minister of Forestry Regulation above, it appears that the sanctions threatened against officials are only administrative sanctions and do not yet regulate criminal sanctions against officials who deliberately do not monitor the permits that have been issued. For example, suppose a permit holder carries out logging outside the permitted area or exceeds the permitted area. In that case, sanctions can only be imposed on the permit holder, while the relevant forestry official is not subject to criminal sanctions or administrative sanctions.

If traced, the types and procedures for business permits and SKSHH documents still need to be more diverse and complicated to trace. Administrative officials in this segment have a dominant position and authority over applicants and permit holders, so there is a tendency for violations to be easily committed by the administrative officials themselves. A description of the duties of officials in granting licenses in the forestry sector can be found in the Regulation of the Minister of Forestry, specifically, which regulates the requirements for granting a permit. Meanwhile, licensing relies on administrative procedures or requirements.

Issuance of permits that rely on administrative procedures is included in the scope of public services. In connection with the position of a forestry official in granting permits, it is relevant to explain the meaning of permits given by N.M. Spelled and J.B.J.M. ten Berge, quoted by Adrian, states that a permit is an agreement from the authorities based on law or government regulations to deviate in certain circumstances from the prohibitive provisions of the law[9]. In line with this, Bagir Manan stated that a permit is an instrument or tool of State power. Issued by a particular official to provide a prohibited activity [10]. However, because there are requirements that must be fulfilled by the legal entity or individual relating to the activity, it is permitted by the official concerned. Licensing means that officials are only willing to grant permission if the specified requirements are met. The granting of a forestry business permit implies that this business sector is within the government's authority to manage and utilize forest products for the greatest prosperity of the people. Permission granted to a person or legal entity also means that the business being developed is limited to certain requirements guided by the methods of carrying out actions (giving permission)

Implementing duties in public service is related to what is called maladministration. In this regard, Tatiek stated: "Maladministration is not only one of the parameters for whether there is a personal or official error but also to determine whether maladministration in government actions is a personal responsibility or an office responsibility." Meanwhile, Article 1 number 3 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia explains the meaning of maladministration, namely:

> "Maladministration is behaviour or acts that violate the law, exceed authority, use authority for purposes other than those for which the authority is intended, including negligence or neglect of legal obligations in the administration of public services carried out by State and government administrators which cause material and immaterial losses to society and individuals.[11]

Based on the definition above, maladministration is an act against the law.

The licensing requirements contained in several Minister of Forestry Regulations are a benchmark for whether there is maladministration. The fulfilment of specific requirements for issuing a forestry business permit is assessment material for officials in providing recommendations and the permit itself. Whether the official granting or rejecting a permit application has undergone a fair administrative procedure. This means granting the permit must stay within the requirements specified in the Minister of Forestry Regulations. If it is proven that the deviation was done intentionally or negligently, then a "grey area" appears, namely whether it is a criminal act; if it is a criminal act, it will qualify under which article in the Forestry Law. It is not found in the Forestry Law but in the Ministerial Regulation.

The existence of sanctions provisions for officials in the Minister of Forestry Regulations needs to be revised because the Forestry Law, as an essential provision, does not regulate these sanctions. These provisions must be "lifted" or regulated in the Forestry Law. These sanctions can be tested from the aspect of legal rules/norms. Testing of legal regulations (norms) requires a clear juridical basis for testing. The basis for testing legal rules is specific legal rules, namely higher or specifically determined legal rules, that can be used as a basis for testing, namely Law Number 12 of 2011 Yo. Law Number 15 of 2019 Yo Law Number 13 of 2022 concerning the Formation of Legislation (from now on Law P3)[12].
Article 7 paragraph (1) of the P3 Law regulates:
(1) The types and hierarchy of Legislative Regulations are as follows:
a. The 1945 Constitution of the Republic of Indonesia;
b. Decree of the People's Consultative Assembly;
c. Law/government regulation in lieu of law;
d. Government regulations;
e. Presidential decree;
f. Provincial Regional Regulations;
g. Regency/City Regional Regulations.
(2) The legal force of Legislative Regulations is in accordance with the hierarchy as intended in paragraph (1).

Article 8 reads:

(1) Types of statutory regulations other than those in Article 7 paragraph (1) include rules stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Financial Audit Agency, the Judicial Commission, Bank Indonesia, Ministers, bodies, institutions or commissions of the same level established by law or the government by order of law, Provincial Regional Representative Council, Governor, Regency/City Regional Representative Council, Regent/Mayor, Village Head or similar level.

(2) The existence of the Legislative Regulations, as intended in paragraph (1), is recognized. They have binding legal force as long as they are ordered by higher Legislative Regulations or formed based on authority.

Minister of Forestry regulations is formed based on authority in managing, utilising and administrating forest products. From an administrative law perspective, the material regulated by the Minister of Forestry Regulation must be by the provisions of the regulation itself. Preparing the material for a statutory regulation is required to fulfil the objectives that have been broadly formulated. In this case, the material regulated by the Minister of Forestry Regulation should regulate forestry issues. In contrast, the issue of termination as an employee of Forest Product Administration should be the subject matter of Law Number 43 of 1999 concerning Personnel and Government Regulation Number 53 of 2010 concerning Civil Servant Discipline.

If the Forestry Law is examined closely, there is not a single (1) article of the Forestry Law that delegates regulations regarding prohibitions and sanctions for officials who violate orders or bans relating to positions in forest product administration in Government Regulations. It should be understood that the Minister of Forestry Regulation is only qualified as a "policy provision" because it is not binding on the general public. After all, the regulative nature of the Minister of Forestry Regulation is that it is only implemented. Based on the provisions of Article 7 paragraph (2) of Law Number 12 of 2011 and Article 8, the existence of administrative sanctions in the Minister of Forestry Regulation Number: P.55/Menhut-II/2006 Jo. Minister of Forestry Regulation Number: P. 63 /Menhut-II/2006 Jo. Minister of Forestry Regulation Number: P. 8/Menhut-II/2008 can be questioned. Therefore, the function of the Ministerial Regulation is:

1. Carry out further regulation of the provisions of the Law which clearly state it;

2. Carry out further regulation of the provisions in Government Regulations, which clearly state this.

Neither the Forestry Law nor Government Regulations currently provide regulations on prohibitions and criminal sanctions for officials who violate orders or prohibitions relating to their position. Notably, the Explanation section is devoid of any clarification on why such sanctions for officials are not regulated.

The minutes of the Forestry Bill, particularly in the Government's Response to the Views of the ABRI Faction, highlight the imposition of sanctions on violators, taking into account the negligence of forestry administrators. However, the crucial point to note is that these actions, including persuasive, educative, and repressive measures, are not specifically regulated in the Forestry Law.

The absence of a formulation of actions and sanctions for officials has consequences in handling illegal logging. It can be observed in 2 (two) Supreme Court decisions:

Decision of the Supreme Court of the Republic of Indonesia				
No.	Number: 1755 K/PID.SUS/2009	Number: 1268 K/Pid.SUS/2008	Number : 360 K/PID.SUS/2007	
Laws and regulations are violated	1.Issue the Regent's Approval SRT North Bengkulu No: 522/0710/Keh 19 Sept` 2001 regarding Pen approval IUPHHK proposal for forests Production- HA on behalf of PT. BAT; 2.Issue North Bengkulu Regent's Decree No: 74 2002, February 19, 2002	1. Publishing Documents SKSHH is invalid and contrary to Article 4 paragraph (5) Minister of Forestry Decree No: 126/KPTSII/2003; 2. Violates the provisions of Article 16 paragraph (3) of the Decree of the Minister of Forestry No. :	a. Knowing that there is illegal logging by people in the region. Calabai b. Publishing SKSHH, Ordered to Treasurer deposits 20% PSDH and DR funds to Central PSDH and DR c. The country suffers	

	regarding the granting of IUP-HHK to Production Forest-HA at PT. BAT without checking and approved by the Director General Inventory and Use Management Forest	126/KPTS-II/2003	IDR 147,651,760;	
The basis of the judge's decision	Article 50 paragraph (3) letter a Jo. Article 78 paragraph (2), paragraph (14) and paragraph (15) of Law no. 41 of 1999 concerning Forestry in conjunction with Article 55 paragraph (1) 1 of the Criminal Code	Article 50 paragraph (3) letter h Jo Article 78 paragraph (7) of the Forestry Law Jo. Article 55 paragraph (1) 1 of the Criminal Code Jo. Article 56 paragraph (2) of the Criminal Code	Corruption crimes committed consecutively as continuing acts violate Article 3 Jo. Article 17 Jo. Article 18 paragraph (1) letter b, paragraph (2), paragraph (3) of the Corruption Law	

Source: primary legal materials (processed).

In the decision Number: 1755 K/PID.SUS/2009 and Number: 1268 K/Pid.SUS/2008 above, the judge sentenced the Official as a participant and assistant to the main perpetrator. This is not by Article 52 of the Criminal Code, which mandates that if the perpetrator of the crime is an official, the penalty imposed is increased by 1/3 of that of the ordinary perpetrator (not an official). Thus, the official concerned was punished in his capacity as a perpetrator of an ordinary crime. In case Number: 360 K/PID.SUS/2007. Officials are penalised as perpetrators under the Corruption Crime Law because the type of crime or mode of "issuing a Legal Certificate of Forest Products" is only listed in Minister of Forestry Regulation Number: P.55/Menhut-II/2006 Jo. Minister of Forestry Regulation Number: P.63/Menhut-II/2006 Jo. Minister of Forestry Regulation Number: P.8/Menhut-II/2009 Jo. Minister of Forestry Regulation Number: P.45/Menhut-II/2009 concerning Administration of Forest Products Originating from State Forests (Ministry of Forestry Regulation concerning Administration of Forest Products); meanwhile, as a norm, the establishment of statutory regulations. Ministerial regulations cannot regulate criminal sanctions. Based on this, special rules are needed in the Forestry Law.

Because normatively, the Forestry Law does not yet regulate provisions for sanctions for officials who violate orders or prohibitions relating to positions in forestry laws and regulations. Orders or prohibitions related to positions include supervision, issuance of business permits, issuance and use of Legal Certificates for Forest Products (SKSHH), issuance of documents and use of Legal Certificates for Round Wood (SKSKB). Utilization of protected forests is carried out through area utilization business permits as regulated in Article 26 paragraph (1) of the Forestry Law, business permits for utilizing environmental services are regulated in Article 26 paragraph (2) of the Forestry Law, permits for the collection of non-timber forest products are regulated in Article 26 paragraph (3) Forestry Law. Meanwhile,

production forest utilization can take the form of area utilization for which permits are regulated by Article 29 paragraph (1), utilization of environmental services is regulated in Article 29 paragraph (2) of the Forestry Law, and business permits for the use of non-timber forest products are regulated by Article 29 paragraph (3) of the Forestry Law. Some of these permits can be granted if they meet the criteria and standards outlined in several Minister of Forestry regulations and do not regulate sanctions for officials if the permits granted do not meet the established procedures. This shows that there is a vacuum in norms, namely that the Forestry Law needs to regulate or formulate criminal sanctions for officials who violate licensing requirements in issuing forestry business permits.

Provisions for administrative sanctions for officials, especially officials, as mentioned in the Minister of Forestry Regulation Number: P.55/Menhut-II/2006 Jo. Minister of Forestry Regulation Number: P.63/Menhut-II/2006 Jo. Minister of Forestry Regulation Number: P.8/Menhut-II/2009 Jo. Minister of Forestry Regulation Number: P.45/Menhut-II/2009 concerning Administration of Forest Products Originating from State Forests (Ministry of Forestry Regulation concerning Administration of Forest Products), Article 44 paragraph (7) determines: Violations committed by Officials Approving Logging Results Reports (P2LPH)/ Official for Ratifying Reports on Production of Non-Timber Forest Products (P2LP-HHBK), Official for Issuing Certificates of Legal Round Wood (P2SKSKB), or Official for Examining Round Wood Receipts (P3KB) in addition to being subject to the sanction of dismissal as P2LPH/P2LP-HHBK, P2SKSKB, or P3KB, may also be subject to other sanctions based on applicable laws and regulations according to the level of the violation. Article 44 of the Minister of Forestry Regulation regulates that the sanctions threatened against officials are only administrative sanctions and does not yet regulate criminal sanctions.

In law enforcement against violations committed by officials at the Ministry of Forestry, the Corruption Law is applied because:

1. Normatively, it is not regulated by the Forestry Law.

2. If the articles in the Forestry Law are applied but not in their capacity as an official, most of their positions are as "helpers". Of course, this contradicts the basic principles regulated in Article 52 of the Criminal Code, namely sanctions plus 1/3 heavier than ordinary perpetrators.

3.2. Officials as Targets of Criminal Threats

Historically, the principle of legality, born in the 18th century, was not intended to overcome all societal problems through criminal law. However, the necessity of laws is a manifestation of the desire to secure the legal position of the people towards the state. The authors of criminal law theory at that time explained

the meaning of law using the paradigm of "social contract" or "community agreement". In the "social contract," it is described that there is a community agreement to appoint several people to regulate community life (read: officials). The contract also determines what actions are prohibited and punishable by criminal penalties for those who violate them. Thus, if there is a violation, the violator receives the agreed-upon punishment. However, developments to date show the opposite, meaning that criminal law through the principle of legality has a political dimension. The state increases its influence on people's lives through policies with criminal law norms[13].

Criminal law also applies to public officials who commit crimes that can be punished. Mistakes can occur, whether solely due to personal mistakes or acts or omissions in carrying out office. In a country based on law, officials are prohibited from violating orders or prohibitions related to their position. This is in line with what Peters stated: *"... the limitations of, and control over, the powers of the State constitute a fundamental juridical dimension of criminal law; The juridical task of criminal law is not merely policing society but ensuring the accountability of the police*.[13]

In connection with the obligation of officials to comply with the provisions of laws and regulations, Bagir Manan views officials as law enforcers, as quoted by Afifah et al., that environmental law enforcement officers are (a) Police; (b) Judge; (c) Prosecutor; (d) Responsible official/technical agency; (e) Legal advisors/lawyers[14]It can be understood that officials are an element of the law enforcement apparatus because officials oversee the implementation of laws and regulations relating to the technical agency they lead.

What Peters stated was that the juridical task of criminal law is not "to regulate society" but to "regulate the authorities" in line with Article 52 of the Criminal Code, which determines that if an official commits a criminal act, the judge can impose sanctions that are heavier than society in general. The provisions of this article were reaffirmed by Bagir Manan: "...However, it could also be the other way around, public officials will be threatened with heavier penalties compared to ordinary legal subjects who commit similar criminal acts..."[15].

3.3. Lessons to be Learned from Brazil and Australia

In fact, without having to compare it with laws from other countries, the PPLH Law regulates officials as targets for criminal threats. Article 111 determines that if officials grant permission to applicants who do not meet the requirements, they can be sentenced to prison and a fine. Furthermore, if an official does not supervise the compliance of the person in charge of business activities with statutory regulations, he or she is threatened and can be sentenced to imprisonment and a fine. Because the PPLH Law as an umbrella act can be a guide for the formation of sector laws including the Forestry Law.

a. Brazil

Brazil's environmental Law, as outlined in the Environmental Crime Law 1999, was passed in March 1998 and is considered one of the most modern and comprehensive legal texts[16]. However, along with the development of environmental regulations, several studies have revealed that many officials are involved or indicated to have committed crimes in the forestry sector.

Forestry regulations are regulated in the 1999 Environmental Crimes Law. Environmental[17]violations in the Environmental Crime Law are divided into Crimes against Fauna, contained in Chapter V Section I, and Crimes against Flora, regulated in Section III. Several vital provisions regulated in this Law are:

> *Art 2 –*
> *Whosoever, in any way, contributes to the practice of the crimes foreseen in this Law, incurs the stipulated penalties, to the extent of his culpability, as well as the director, the administrator, the member of a board or of a technical agency, the auditor, the manager, the agent or the mandatory of a legal entity who, knowing of the criminal conduct of another, fails to stop its practice, when he could act to avoid it.*
> *Article 66* mengatur secara eksplisit *Article 2* sebagai berikut : *Civil servants making a false or deceitful statements, omitting the truth, or withholding information or technical-scientific data in environmental authorization or licensing procedures.*
>
> *Penalty - one to three years imprisonment and a fine.*
>
> Meanwhile, Article 67 also determines it: *Civil servant granting license, authorization or permission contrary to environmental norms, for activities, works or services, the accomplishment of which depends on an authorization act from the Government. Penalty - detention of one to three years and a fine*

b. Australia

Restrictions and sanctions against officials in The Forestry Commission are outlined in The Forestry Regulation 2009[1], namely Reg 66. Regulations regarding sanctions for violations of orders or prohibitions relating to positions carried out by the forestry commission in The Forestry Regulation 2009, namely Reg 66, are as follows :[18]

> ***66 Officer trading in timber, products or forest materials***
> *An employee of the commission who, except with the prior written approval of the commission:*
> *(a) trades as principal or agent in timber, products or forest materials, or*

[1] *Forestry Regulation Act 2009*

(b) does any act under an interest held by the employee under a licence or agreement that authorises the taking, removal or sale of timber, products or forest materials,

is guilty of an offence.

Maximum penalty: 20 penalty units.

Observing the formulation of the article above, a lesson can be learned that Brazil and Australia have implemented the basic principles that apply to officials. If they fail to provide supervision over the compliance of the person responsible for business activities, the official concerned is qualified as having contributed to the violation that occurred.

3.3. Development of Sanction Arrangements for Official Involvement in Crimes in the Forestry Sector

The subsequent development was that on August 6 2013, Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction (UU P3H)[19]was issued and promulgated. This law revokes the forms of crime regulated in Article 50 and the sanctions in Article 78 of the Forestry Law in the P3 H Law, starting from Article 82 to Article 109. What is comforting is that the opportunity for crime that often occurs is the involvement of officials, which are not yet regulated in the Forestry Law are regulated in Article 105 of the P3H Law, which explicitly regulates granting permits not by their authority, contrary to statutory regulations, protecting perpetrators of illegal logging, evil conspiracy, participating or assisting, committing omissions against occurrence of illegal logging or illegal use of forest areas. For some of these acts, officials are threatened with imprisonment for a minimum of 1 (one) year and a maximum of 10 (ten) years, as well as a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 10,000,000,000.00. (ten billion rupiah). Thus, there are cases where officials are involved, so the judge should no longer use the Corruption Law but the P3H Law.

3.4. Mining, Mineral and Coal Law

Indonesia is one of the countries with the most significant natural wealth in the world. One of these natural resources is in the mining sector, especially in the mineral and coal sectors. Mining is one of the attractions for foreign investors who want to invest in Indonesia. The distribution of natural resources (SDA) from mining is spread throughout Indonesia. Mining is significant for the government because this sector is a resource that can potentially improve the welfare of the Indonesian people. So, the government, as a regulator, must be able to manage its mines well.

Mineral and coal mining, a cornerstone of the country's economy, necessitates the creation of weighty and just legislation. The Mining Law in Indonesia should be comprehensive, addressing all aspects of mining law and prescribing sanctions

for violators, thereby ensuring a level playing field that does not favour any particular group.

Indonesia established Law No. 11 of 1967 concerning Basic Mining Provisions to manage and regulate the mining sector. However, as post-reform thinking progressed, Law No. 11 of 1967 was deemed to be incompatible with the political-economic conditions of the government at that time, especially in the mining sector, so Law No. 4 of 2009 concerning Mineral and Coal Mining was enacted.

Several acts that qualify as mining crimes are as follows:

1. Mining activities without a permit
2. Crime of Submitting False Information Report Data
3. Crime of Carrying out Production Operations at the Exploration Stage
4. Crime of Transferring a License to Another Person
5. The crime of not carrying out reclamation and post-mining

Meanwhile, for officials, it is formulated in Article 165 of the Minerba Law.

Article 165 of Law Number 4 of 2009 concerning Minerals and Coal: "Every person who issues an IUP, IPR, or IUPK which is contrary to this Law and abuses their authority will be given a criminal sanction of up to 2 (two) years in prison and a fine of up to IDR 200. 000,000.00 (two hundred million rupiah)". The provisions of this article can be interpreted as being directed at officials who, due to their duties and authority, issue IUPs, IPRs, and IUPKs without fulfilling the requirements. The interesting thing is related to Article 165 in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009[20], this provision was deleted.

With the disappearance of the provisions of Article 165, which is a special name for officials, the enforcement aspects have undergone significant changes. The new enforcement approach bears similarities to the Forestry Law. In other words, if there is official involvement in a mining crime, it will now be qualified as a corruption crime. This means that criminal acts committed by officials, including banking, tax, forestry, and mining crimes, will be charged under the Corruption Crime Law, thereby altering the legal landscape for mining regulation enforcement.

If we look closely at several cases of officials' involvement in natural resource crimes, they are always qualified as committing criminal acts of corruption. In this case, Prof. Indiarto Senoaji classifies the Forestry Law and Mineral and Coal Law as legislative products, which are products of Administrative Criminal Law with criminal sanctions. Administrative Law is public Law, as is Criminal Law. Administrative Penal Law emerged due to developments between Administrative Law and Criminal Law; in the end, these two laws entered the "grey area". In the context of this "grey area" it is interesting what Manohara explained:

> "In essence, as public law, State Administrative Law has a very broad scope so that its scope cannot be clearly defined. However, Ridwan HR quotes Philipus

M. Hadjon as trying to formulate the scope of HAN as follows: (1) Means (instruments) for the authorities to regulate, balance and control the various interests of society; (2) Regulate the means of community participation in the preparation and control process including policy determination; (3) Legal protection for community members; (4) Developing the basis for implementing good governance. Not different from HAN, according to Simons, criminal law also regulates the relationship between individuals and society/state and is carried out in the interests of society. This happens because these two laws are public law."[21]

In connection with the existence of this "grey area", violations committed by officials in their capacity to implement and oversee the enactment of the Forestry Law and Mineral and Coal Law as Special Criminal Law Extra Criminal Regulations do not necessarily qualify as criminal acts of corruption. This needs to be understood because applying the principle of systematic specificity is necessary. It is understood that every law has norms that it wants to protect, meaning that every legal regulation, which has its character and dimensions, cannot be confused with one another. The principle of systematic specialization or systematische specialities is stated in Article 14 of Law Number 20 of 2001[22]. The meaning contained in this article is that the Corruption Law applies if an act is declared as a criminal act of corruption which is regulated strictly and clearly, as formulated in Article 14: "Any person who violates the provisions of the Law which expressly states that violation of the provisions of the Law is a criminal act of corruption, the provisions regulated in this Law apply." Therefore, a particular vocabulary is needed in the Forestry Law, namely a formulation for officials who violate obligations and prohibitions as officials in the Ministry of Forestry. Otherwise, it will make the Corruption Law an "al embracing act" which can cover all actions of officials who violate all laws.

Meanwhile, the deletion of Article 165 in the Mineral and Coal Law can be interpreted. If there are indications that officials are violating the Mineral and Coal Law, then the Corruption Eradication Law will be applied. This makes the law an "all-embracing act." However, Jatam states another meaning, which considers that this deletion is a form of protection for state officials who issue problematic mining permits[23].

Furthermore, several articles in the Mining and Coal Law are "loopholes" that can act as criminogenic factors for violations to occur. For example, Article 100, paragraph (2) and paragraph (3). Article 100 paragraph (2) Law no. 4 of 2009:

(1) IUP and IUPK holders are required to provide reclamation guarantee funds and post-mining guarantee funds.

(2) The Minister, governor, or regent/mayor, by their authority, may appoint a third party to reclamation and post-mining with guarantee funds as intended in paragraph (1).

(3) The provisions as intended in paragraph (2) apply if the IUP or IUPK holder does not carry out reclamation and post-mining by the approved plan.

This provision can be interpreted as meaning that the important thing is that the permit holder has allocated funds for reclamation; if the permit holder does not carry out his reclamation obligations, it should be the obligation of the permit giver (Minister, Governor, Regent/Mayor who can appoint a third party to carry out reclamation and post-mining. With this formulation, normatively, there is no binding obligation for permit holders to carry out reclamation. So it is natural that, on the ground, every corporation that completes mining activities leaves behind 2 (two) excavated holes from activities[24].

From the perspective of the licensing official, the phrase "can" certainly means there is no obligation for the official to hand over the reclamation to a third party. Many holes have been excavated from mines at the field level but cannot be enforced because the permit holder has provided reclamation funds to the designated bank. To overcome this, "can" should be replaced with "must" because it could be that the reclamation guarantee funds are "utilized" by officials. At the same time, the holes remain open, which can be physically and environmentally dangerous. Apart from that, this creates obstacles in the field, namely: Article 100 paragraph (2) of Law No. 4 of 2009 amended in Law 3 of 2020, namely: *The Minister **can appoint** a third party to carry out Reclamation and Post-mining with guarantee funds as intended in paragraph (1).*

Currently, the central government/Ministry is responsible for issuing permits. The local government, on the other hand, is not the permit provider but is tasked with monitoring the compliance of permit holders. However, the implementation of government policies is still influenced by sectoral egos. President Djoko Widodo has pointed out that regional, district/city, provincial, and central governments often operate independently, driven by their own egos[25].

In connection with the formulation of Article 104 paragraph (2) as a trigger for the emergence of sectoral egos, it is interesting that Kartodihardjo stated that "*.....sectoral egos are the biological children of the government whose birth is regrettable. However, year after year, the unfortunate child is only encouraged to change his behaviour without changing the cause*[26].

3.5. Lessons to be Learned from Australia and Malaysia

a. Australia

Mining regulations in Australia have also made officials the target of criminal threats. The Mining Act 1992 New South Wales Consolidated Acts regulates it in Part 17—about Offenses Enforcement and Undertaking and About Contraventions.

> **Division 1 - Offences**
>
> *378EA Aiding and abetting commission of offence :*
>
> A person who--
> (a) causes or permits the commission of an offence against this Act or the regulations, or
> (b) aids, abets, counsels or procures another person to commit an offence against this Act or the regulations, or
> (c) attempts to commit an offence against this Act or the regulations, or
> (d) conspires to commit an offence against this Act or the regulations,
> is guilty of that offence and liable to the penalty prescribed by this Act or the regulations in relation to that offence.

The formulation above is aimed at the officials implied in the phrase: causing or permitting the violation of the provisions regulated in the Law.

b. Malaysia

Mining regulations are regulated in the Mineral Development Act 1994[27] As at 1 January 2013

> Part V Enforcement, Investigation, Evidence, Offences and Penalties
> Chapter 3 — Offences and Penalties
> **Abuse of power** . Any person who, in purported exercise of the powers under this Act, vexatiously and unnecessarily seizes or detains any mineral, mineral product, conveyance, equipment, book, document or other thing shall be guilty of an offence.

The Mineral Development Act 1994 specifically regulates misuse by officials. Thus, this law has special norms, while the existing ones were removed in the Minerba Law no. 3 of 2020.

The government can refer to what can be regulated in Australia, especially Malaysia. The phrase "abuse of power" can be formulated explicitly in the Forestry Law and Mineral and Coal Law or in a formulation that shows that officials in the two Ministries are violating their duties and authority. This is what is mandated by the Corruption Law. Arrangements must be made immediately because law enforcement in Indonesia is underway, and prioritizing the value of legal certainty is more prominent[28]. In addition to that, law enforcement officers always think in formal legalistic terms. Satjipto believes that one of the causes of the decline in the performance and quality of law enforcement in Indonesia is the dominance of the positivism paradigm with its inherent formality.[29].

IV. CONCLUSION

The analysis results conclude that the Forestry Law no longer requires special regulations for officials because it is regulated in the Law on the Prevention and Eradication of Forest Destruction. Meanwhile, the Mining, Mineral and Coal Law needs to be reformulated with special norms for officials so that criminal acts that violate specific laws do not always qualify as corruptive acts. Thus, the Corruption Eradication Law does not become an "all-embracing act". It is necessary to reformulate sanctions for officials because they were already in Law Number 4 of 2009 but were deleted in Law Number 3 of 2020.

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