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Inconsistency in the Formulation of Article 2 and Article 3 of Law No. 31 of Corrupt Practices Eradication Law and Disparity in Criminal Penalty for Mining Corruption in the Practice of Law Enforcement

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Abstract

This research discusses the transformation of understanding and law enforcement of the elements of Article 2 and Article 3 of the Corruption Eradication Law. The element against the law is Article 2 of the Corruption Eradication Law. In contrast, the element of abuse of authority is the core of the offense in Article 3 of the Corruption Eradication Law. Thus, it is inappropriate to indict the perpetrators of mining corruption with an alternative form of indictment between Article 2 and Article 3 of the Corruption Eradication Law. Inconsistencies in formulating the elements of the offense and the parameters of the article have resulted in disparities in punishment, errors in assessing the existence of abuse of authority by using unlawful parameters and mixing the application of the two articles. This can be viewed in several Supreme Court Decisions in mining corruption cases,

where the elements and subjects of the offense are interchangeable. This research aims to study the inconsistent formulation of the elements of the offense in Article 2 and Article 3 of the Corruption Eradication Law, which has led to disparities in punishment in mining corruption cases. This study is conducted by analyzing several Supreme Court Jurisprudence. This research employs normative research with a statutory approach, concept approach, and case approach. The results of this study aim to provide a recommendation on the concept of against the law and abuse of authority in the Corruption Eradication Law.

Keywords
Unlawful, Abuse of Authority, Mining Corruption.

Introduction

In law enforcement, proving the existence or absence of elements against the law and abuse of authority for state financial losses in corruption offenses is not as easy as expected. This raises problems in proof in judicial practice. The formulation of the elements of the offense in Articles 2 and 3 of the Corrupt Practices Eradication Law is inconsistent, resulting in disparities in imposing penalties in mining corruption cases.

The formulation of the elements of Article 2 and Article 3 of the Corrupt Practices Eradication Law is inconsistent, so it causes disparity in the imposition of punishment. It is motivated by 3 (three) problems: the juridical, philosophical, and sociological aspects.

The juridical aspect can be observed from the formulation of the elements of the offense in Article 2 and Article 3 of the Corrupt Practices Eradication Law, which are inconsistent. Inconsistencies in the formulation of the elements of the offense to enrich oneself, others, or corporations in Article 2 of Corrupt Practices Eradication Law and the elements to benefit oneself, others, or corporations in Article 3 of Corrupt Practices Eradication Law are interpreted as material offenses. Meanwhile, the element that may harm the state's finances or economy is a formal offense. This can lead to disparities in sentencing, as seen in several court decisions in corruption cases with the mode of elements of Article 2 and Article 3 of the Corrupt Practices Eradication Law.

At the philosophical level, the inconsistency in the formulation of Article 2 and Article 3 of the Corrupt Practices Eradication Law has led to disparities in the imposition of punishment. Philosophical studies are related to the realization of legal certainty based on justice as stated in Article 28 letter D of the 1945 Constitution of the Republic of Indonesia, which states that everyone is entitled to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law. However, in several court decisions in corruption cases with the mode of elements in Article 2 and Article 3 of Corrupt Practices Eradication of Corrupt Practices Eradication Law. It does not yet reflect legal certainty as there are differences in the criminal assessment.

Furthermore, sociological studies are related to the dissatisfaction of the justice-seeking community due to unequal treatment and inconsistencies in the formulation of offenses in Article 2 and Article 3 of the Law. In the implementation system, it can be seen in several court decisions in corruption cases that applying the elements of the offense in Article 2 and Article 3 of the Corrupt Practices Eradication Law has caused dissatisfaction among justice seekers due to the disparity in sentencing.

Regarding granting mining licenses, Canh Phuc Nguyen added that poor institutions, such as bureaucracy, regulatory discretion, rule of law, corruption, and a weak legal system would lead to tax evasion.[1] In this case, it can be exemplified by an official who has the authority to grant licenses in the mining sector but to obtain benefits, such as receiving bribes; then, in this case, the official has abused authority.

According to Tatiek Djatmiati, the function of permits is an applicable legal norm issued by the government that is very important for everyone who will carry out mining activities and is an instrument in administrative law that is needed to regulate community action.[2] Submission of mining licenses is carried out with incomplete requirements, and the perpetrator knows that the requirements are not

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[1] Canh Phuc Nguyen, Christophe Schinckus, and Binh Quang Nguyen, "Does Tourism Reduce the Shadow Economy? An International Evidence," *Heliyon* 9, no. 11 (2023): 3, https://doi.org/10.1016/j.heliyon.2023.e22399..

[2] Tatiek Sri Djatmiati, *Licensing as a Juridical Instrument in Public Service*, Inaugural Address for the Professorship in Administrative Law, Faculty of Law, Universitas Airlangga, November 24, 2007, 1–34.

met. However, because the authorized official has received a bribe, the official's actions are included in the abuse of authority. Lego Karjoko stated that illegal mining is part of the miners' resistance to the injustice of policy making and law enforcement, a form of community participation based on social justice in materializing sovereignty.[3] In this regard, Ahmad Regi irregularities and corruption cases occur due to the absence of supervision, control, and inspection, a weakness of an inadequate system.[4] The supervisory function in granting mining licenses is the government's main task, so if this function does not work, there is the potential for abuse of authority.

Ade Lutfi Prayogo stated that mining business activities will potentially affect environmental changes. Therefore, people's mining business actors must reclamation as stipulated in Article 96 letter (c) of the Mineral and Coal Law and Article 2 paragraph (1) of Government Regulation 78 of 2010 on Reclamation and Post-mining.[5] Regarding the obligation to carry out reclamation after mining business activities, in this case, business actors who do not carry out reclamation as required by the law can be categorized as abuse of authority because their actions have violated Article 96 of the Corrupt Practices Eradication Law.

Autonomy and discretion to manage the mining sector based on Law No. 4 of 2009 must be carried out transparently in decision-making and open with data and facts. As stated by Volpato, quoting Petropoulou Ionescu and Eliantonio, transparency is the availability of information and documents and their clarity for citizens. The notion of clarity is one of the fundamental elements of transparency.[6] The law's regulatory

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[3] Lego Karjoko, I Gusti Ayu Ketut Rachmi Handayani, and Willy Naresta Hanum, "Legal Policy of Old Wells Petroleum Mining Management Based on Social Justice in Realising Energy Sovereignty," *Sriwijaya Law Review* 6, no. 2 (2022): 297, https://doi.org/10.28946/slrev.Vol6.Iss2.1745.pp286-303.

[4] Ahmad Redi, "Responsive Law Enforcement in Preventing and Eradicating Illegal Mining in Indonesia," *Journal of Law and Sustainable Development* 11, no. 8 (2023): e1436, https://doi.org/10.55908/sdgs.v11i8.1436.

[5] Ade Lutfi Prayogo, "Tanggung Jawab Pelaku Usaha Pertambangan Rakyat dalam Reklamasi Gumuk Setelah Kegiatan Tambang," *Lentera Hukum* 5, no. 3 (2018): 451, https://doi.org/10.19184/ejlh.v5i3.8201.

[6] Annalisa Volpato, Mariolina Eliantonio, and Kathryn Wright, "Transparency and Participation in the Face of Scientific Uncertainty: Concluding Remarks,"

principles define the rights and responsibilities of the community in terms of fulfilling this role[7] and do not allow communities affected by the decision to be marginalized and disempowered.[8] Community involvement in decision-making requires open data and facts to understand them.[9] Furthermore, Goda Perlaviciute added that from the beginning, the community must be involved to determine the final decision.[10] The management of the mining licensing sector must be done according to the provisions in Article 35 of the Mining Law, including data/documents that must be transparent according to the permit application. In addition, it must include facts in the field involving community members by including accurate information. If this right is not exercised, there is the potential for abuse of authority.

According to Lutfi Prayogo, Law No. 23 of 2014 is prone to debate due to the overlapping authority of mining business licenses.[11] The optimization of mining permit management is very helpful for community groups in conducting mining businesses by good mining laws so as not to provide opportunities for irregularities and abuse of authority. Regulations in the field of mining governance must be carried out transparently. Weaknesses in this area result in state financial control

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European Journal of Risk Regulation 14, no. 2 (2023): 380, https://doi.org/10.1017/err.2023.34.

7 Rizky Nugraha M. Epakartika and Agung Budiono, "Peran Masyarakat Sipil dalam Pemberantasan Korupsi Sektor Sumber Daya Alam," *Jurnal Antikorupsi INTEGRITAS* 5, no. 2-2 (2022): 96, https://doi.org/10.32697/integritas.v5i2-2.485.

8 Victoria Palacin, Matti Nelimarkka, Pedro Reynolds-Cuéllar, and Christoph Becker, "The Design of Pseudo-Participation," in *Proceedings of the 2020 ACM Designing Interactive Systems Conference* (2020): 40–44, https://doi.org/10.1145/3384772.3385141.

9 Victoria Palacin, Matti Nelimarkka, Pedro Reynolds-Cuéllar, and Christoph Becker, "The Design of Pseudo-Participation," in *Proceedings of the 2020 ACM Designing Interactive Systems Conference* (2020): 40–44, https://doi.org/10.1145/3384772.3385141.

10 Goda Perlaviciute and Lorenzo Squintani, "Public Participation in Climate Policy Making: Toward Reconciling Public Preferences and Legal Frameworks," *One Earth* 2, no. 4 (2020): 341, https://doi.org/10.1016/j.oneear.2020.03.009.

11 Ade Lutfi Prayogo, *"Tanggung Jawab Pelaku Usaha Pertambangan Rakyat dalam Reklamasi Gumuk Setelah Kegiatan Tambang," Jurnal Lentera Hukum* 5, no. 3 (2018): 451, https://doi.org/10.19184/ejlh.v5i3.8201.

that cannot be done wisely. Overlapping regulations in mining licensing have the potential for abuse of authority if administrative officials use authority not for the purpose or contrary to the purpose of the permit in the Mining Law or other laws and regulations related to the mining sector.

The originality of the research is important, and therefore, in the writing Inconsistency in the Formulation of Article 2 and Article 3 of Corrupt Practices Eradication Law and Disparity in Criminal Penalty for Mining Corruption in the Practice of Law Enforcement, no one has ever written. However, several studies are related to corruption crimes, especially those involving abuse of authority in Article 3 of the PTP Law. Some previous studies with abuse of authority include:

Research conducted by Komariah Emong Sapardjaja, titled: "Ajaran Sifat Melawan Hukum Materiel Dalam Hukum Pidana Indonesia." This study discusses the doctrine of material law in the crime of corruption, which is a despicable act and harms society. The discussion is associated with the Jurisprudence of the Supreme Court of the Republic of Indonesia in case No. 257/K/Pid/1982, dated December 15, 1982.

Research conducted by Indriyanto Seno Adji, titled: "Korupsi Kebijakan Aparatur Negara & Hukum Pidana." This research is related to formal unlawful acts that are then experienced as a development interpreted materially. The use of Article 2 of the Corrupt Practices Eradication Law is limited to a material tort that functions negatively as a reason for eliminating punishment.

Research conducted by Nur Basuki Minarno, a dissertation entitled "Penyalahgunaan Wewenang dalam Pengelolaan Keuangan Daerah yang Berimplikasi pada Tindak Pidana Korupsi". This research is related to the abuse of authority in Article 3 of the Corrupt Practices Eradication Law. Including elements of Article 3 of the Corrupt Practices Eradication Law creates obstacles in law enforcement because these elements are administrative law concepts. Act No.31 of 1999 does not adequately explain abuse of authority because authority is an administrative law concept. Therefore, proving the abuse of authority in the crime of corruption in regional financial management is always related to the concepts and parameters that apply in administrative law.

Research conducted by Budi Parmono, titled: "Penyalahgunaan Wewenang dalam Tindak Pidana Korupsi di Indonesia." This research discusses the criteria for the core part of the offense of abuse of authority in the crime of corruption and the normative implications of the unlawful element in the act of corruption.

Discipline F. Manao had conducted the research. Doctor of Law Program, Postgraduate School, Parahyangan Catholic University, Bandung, 2017 entitled "Pertanggungjawaban Penyalahgunaan Wewenang Pejabat Pemerintahan Menurut Hukum Administrasi Negara dalam Kaitannya dengan Tindak Pidana Korupsi." This research is motivated by the issuance of Law Number 30 of 2014 on Government Administration, especially the existence of Article 21 regarding the legal settlement of elements of abuse of authority, which has eroded the authority in Article 3 of Corrupt Practices Eradication Law in realizing good governance and clean governance.

From the criminal and civil law perspective, the term against the law in Article 2 of Corrupt Practices Eradication Law means against the law. According to Komariah Emong Sapardjaja, the unlawful nature is used with the term *Onrechtmatigheid* or *wederrechttelijkheid*.[12] Nur Basuki Minarno questioned whether the element against the law, which has a material nature, which is the core part of the offense in Article 2 of Corrupt Practices Eradication Law and it can convict a person based on the element against the material law, is not contrary to the principle of legality.[13]

The material unlawful element is parameterized by the values that are active in society based on the values of propriety and justice, so according to Article 2 of the Corrupt Practices Eradication Law, the act can be classified as a corruption offense. The values of justice and community compliance must be carried out by interviewing local community leaders to determine whether the perpetrator's actions are in

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[12] Komariah Emong Sapardjaja, *Ajaran Sifat Melawan Hukum dalam Hukum Pidana Indonesia: Studi Kasus Tentang Penerapan dan Perkembangannya dalam Yurisprudensi* (Bandung: Alumni, 2010.

[13] Nur Basuki Winarno, *Penyalahgunaan Wewenang dalam Pengelolaan Keuangan Daerah yang Berimplikasi Tindak Pidana Korupsi* (disertasi, Program Doktor Ilmu Hukum, Universitas Islam Riau, 2006), 5.

line with the values and compliance in the community or not.[14] This is by Article 5 of Law No. 48/2009 and Article 10 Paragraph (1) of Law No. 48 of 2009.

After the Constitutional Court Decision Number 003/PUU-IV/2006 dated 25 July 2006. This can be viewed in the Decision of the Supreme Court of the Republic of Indonesia Number 2065 K/Pid/2006 dated 21 December 2006 on behalf of the defendant, Kuntjoro Hendrartono. The meaning of the act 'against the law' is based on the doctrine *sens-clair* (*la doctrine du senclair*), in which, in essence, the judge must make legal discoveries under Article 28 Paragraph (1) of Law No. 4 of 2004 (now read Law No. 48 of 2009) on Judicial Power.[15]

Andi Hamzah elaborates on criminal responsibility related to the act; it must be seen that the type of error includes the existence of intentionality and negligence, the absence of the basis for the elimination of criminalization that eliminates the accountability of an act to the maker.[16] Thus, if the actus *reus* and *mens rea* are fulfilled, the defendant can be sentenced. This can be viewed in Supreme Court Decision Number 43/Pid.Sus-TPK/2021/PN.Kdi, dated 14 February 2022, on behalf of Buhardiman, Head of the ESDM Office of Southeast Sulawesi Province, in considering the elements of Article 3 of Corrupt Practices Eradication Law on the Eradication of Corruption Crime. The judge stated that intent is one form of guilt known as the principle/adagium. *"actus non facit reum, nisi mens sit rea"* or in Dutch known as *"Geen straf zonder schuld"* or in Indonesia known as 'no punishment without guilt."[17] According to Pompe, the definition of intent is (*dolus, intent, opzet vorsatz*) contained in MvT (*Memorie van Toelichting*), which is defined as "desires and knows" (*willens en wetens*)[18].

The element of abuse of authority is one form or form of tort, both formal and material. Philipus M.Hadjon added that abuse of authority is

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[14] Ibid

[15] Supreme Court of the Republic of Indonesia, *Decision No. 2065 K/Pid/2006 in the name of the defendant Kuntjoro Hendrartono*, dated December 21, 2006, pp. 75–76.

[16] Ibid., h.18

[17] Kendari District Court, *Decision No. 43/Pid.Sus-TPK/2021/PN.Kdi*, February 14, 2022, p. 450.

[18] Ibid.

not due to an accident but is done consciously, namely diverting the objectives given to the authority.[19] Next, Philipus M.Hadjon stated that the application of the element of abuse of authority, which is an administrative law concept, in judicial practice is always associated with the concept of abuse of authority, *detournement de pouvoir*[20]. In measuring whether there has been an abuse of power, it must be proven factually that the official has used his authority for other purposes.[21] The use of the terms abuse of power, abuse of position/position, and abuse of authority appears to vary. Article 55, paragraph (1) 2 of the Criminal Code mentions the term abuse of power or dignity."[22] As a result, the application of the abuse of power in judicial practice is erroneous, and the elements of unlawfulness and abuse of power in judicial practice have been interchanged or mixed up.[23]

Including unlawful elements as part of the core offense in Article 2 and the abuse of authority as a core offense in Article 3 of the Corrupt Practices Eradication Law on Eradication of Corruption Crime is inconsistent. Inconsistency in the formulation of the offense results in disparity in the imposition of punishment due to the mistake of assessing the existence of abuse of authority by using the parameters against the law and mixing the application of the two articles. Therefore, it is inappropriate to indict perpetrators of mining corruption using an alternative indictment between Article 2 and Article 3 of the Corrupt Practices Eradication Law. This can be viewed in several Supreme Court Decisions in mining corruption cases; both the elements and subjects of the offenses are interchangeable.

From the explanation above, the central issue in this study is that the formulation of the elements of unlawful offenses and abuse of authority in the Corruption Law is inconsistent. Inconsistencies in formulating the elements of unlawful offenses and abuse of authority are

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[19] Philipus M. Hadjon, *Hukum Administrasi Dan Good Governance*, dalam *Kebutuhan akan Hukum Administrasi Umum* (Jakarta: Universitas Trisakti, 2010), 25.

[20] *Ibid.*

[21] *Ibid.*

[22] Moeljatno, *Kitab Undang-Undang Hukum Pidana* (10th edition, translated version, 1978).

[23] Andi Hamzah, *Asas-Asas Hukum Pidana* (Jakarta: Yaraif Watampone, 2005), 137.

interchangeable. This study is important in finding the elements of unlawful abuse of authority in corruption laws and court decisions. Through this study, it is very important to find the concept of unlawful abuse of authority in the Corruption Law and court decisions.

In administrative law, every grant of authority must be based on the conditions for issuing permits and the legal consequences that may arise from the refusal or granting of permits. The fundamental weakness of the licensing bureaucracy is the lack of certainty of time and clarity in issuing permits.[24] Furthermore, Grete K. Hovelsrud et al. (2021) explain licensing policies by looking at how local and national governments anticipate and respond to social, political, and environmental changes.[25]

Method

In this study, the method used is normative research using a state approach, a conceptual approach, and a case approach.[26] In normative research, the main focus of the study is based on the rules and norms in positive law.[27]

Including elements against the law and abuse of authority creates obstacles in law enforcement and errors in assessing the existence of abuse of authority by using unlawful or interchangeable parameters. This can be seen in several decisions of the Supreme Court of the Republic of Indonesia in mining corruption cases, where both the elements and the subject of the criminal act are interchangeable.

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[24] Alfon Octavianus Sitepu, Faisal Santiago, and Ricky Purwanto, "The Effectiveness of Licensing on Tourism Business Activity in the Area of the Toba Lake," in *Proceedings of the 2nd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2021)*, 605.Icblt (2021), 7, https://doi.org/10.2991/assehr.k.211203.002.

[25] Grete K. Hovelsrud, Siri Veland, Bjørn Kaltenborn, Julia Olsen, and Halvor Dannevig, "Sustainable Tourism in Svalbard: Balancing Economic Growth, Sustainability, and Environmental Governance," *Polar Record* 57 (2021): 1, https://doi.org/10.1017/S0032247421000668.

[26] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group), 3.

[27] Jhony Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayu Media Publishing, 2011), 295.

Including elements of unlawfulness and abuse of authority creates obstacles in law enforcement and errors in assessing the existence of abuse of authority by using parameters of unlawfulness or being interchangeable. This can be seen in several Supreme Court Decisions of the Republic of Indonesia in mining corruption cases; the crime's elements and subjects are interchangeable. This study used court decisions on corruption cases (mining) as analysis material. Recommendations based on the results of this study relate to the concept of unlawfulness and abuse of authority in the Corruption Eradication Law and the decisions of the Supreme Court of the Republic of Indonesia.

This study aims to discuss the elements in Article 2 and Article 3 of the Corrupt Practices Eradication Law on Eradication of Corruption Crime, which are used to charge perpetrators of mining corruption using alternative charges between Article 2 and Article 3 of the Corrupt Practices Eradication Law and causing inconsistencies in law enforcement. Inconsistencies in formulating the elements of unlawfulness and abuse cause disparities in the imposition of criminal penalties. Unlawful and mixed up the application of the two articles.

The first step is to look for the concepts of unlawfulness and abuse of power in the PTPK Law. Based on the theories and opinions of criminal law experts and administrative law experts. Abuse of authority is an administrative law concept, so the study of administrative law concepts related to the principle of legality and the principle of specialty, as well as the general principles of good governance that apply in administrative law. This principle can be used to assess the actions of public officials or employees in committing against the law or abuse of authority in mining corruption cases. After recognizing the inconsistencies in the formulation of Article 2 and Article 3 of the Corrupt Practices Eradication Law, the next step is to analyze several court decisions in corruption cases related to the unlawful mode and abuse of authority.

The purpose of this research is to provide a recommendation on the concept of against the law and abuse of authority in the PTPK Law, which, in its formulation, is inconsistent. This creates obstacles in law enforcement, as viewed in several court decisions that cause disparities in the imposition of punishment.

Including elements of unlawfulness and abuse of authority creates obstacles in law enforcement and errors in assessing the existence of abuse of authority by using parameters of unlawfulness or being interchangeable. This can be viewed in several Supreme Court decisions of the Republic of Indonesia in mining corruption cases, where the elements and the subjects of the crime are interchangeable. This study used court decisions on corruption cases (mining) as analysis material. Recommendations based on the results of this study relate to the concept of unlawfulness and abuse of authority in the Corruption Eradication Law and the decisions of the Supreme Court of the Republic of Indonesia.

Result and Discussion

A. Elements of Unlawful Offenses and Abuse of Authority in the PTPK Law and Court Decisions in Mining Corruption Cases

In Article 2 of the Corrupt Practices Eradication Law, the element of unlawfulness is a core part of the crime, including the aim of enriching oneself, others, or corporations, and can harm state finance and economics. For example, in the Supreme Court decision Number 32/Pid.Sus-TPK/2023/PN Jkt Pst, dated August 21, 2023, unlawfulness includes violations of the law, both formal and material. The legislation does not regulate such matters, but the act can be punished if it is considered reprehensible or not by a sense of justice or social norms. After the Constitutional Court Decision Number 003/PUU-IV/2006 dated July 25, 2006, what is meant by unlawfully is limited to only violating formal law.

According to Wantjiik Saleh, the typical elements of the crime of corruption compared to the Criminal Code are: "enriching or benefiting oneself or another person or an agency and abusing one's position or position and harming state finances. The component of enriching oneself, another person, or a corporation has a causal relationship with the unlawful act because there must be evidence that the defendant or another person or a corporation has obtained a certain amount of money or property illegally. Supreme Court Decision Number 18/Pid/B/1992/PN/TNG, which was stipulated after the decision of the Supreme Court of the Republic of Indonesia Number 570

K/Pid/1993 dated September 4, 1993, shows that "enriching" means making someone who is already rich richer or making someone who is not yet rich richer. This element is an alternative, whether enriching oneself, someone else, or a corporation if only one of these sub-elements is proven.

The element of every person in Article 2 of the Corrupt Practices Eradication Law is the subject of the crime. The subject of the crime in Article 2 on Eradication of Corruption Crime is formulated as every person, including individuals and corporations, both legal entities and non-legal entities. An example of applying the unlawful element to a corporation as the subject of the crime of the President Director of PT Pertamina (Persero) is viewed in the Supreme Court decision Number 41/Pid.Sus-TPK/2024/PT. An example of an individual decision is seen in the Supreme Court Decision Number 34/Pid.Sus-TPK/2020/PN.Jkt.Pst, on behalf of the defendant, Joko Hartono.

The elements in Article 2 of the Corrupt Practices Eradication Law, the subject of which is everyone currently developing a legal entity/corporation, are included. According to Nur Basuki Winarno, accepting corporations as subjects of criminal law raises problems, especially regarding responsibility and error. For example, based on Law Number 3 of 2020 on Amendments to Law No. 4 of 2009 on Mineral and Coal Mining it provides regional authority and flexibility to manage mining business permits. Violation of the provisions of Article 35 of the Mining Law is evident in the Supreme Court decision Number 35/Pid.B/LH/2023/PN.Unh. Chen Fu as Director of PT. HANA FUKU TRADING was declared legally and convincingly proven guilty of committing the crime of participating in mining without permission from the central government. The same thing can be viewed in the Supreme Court decision Number 45/Pid.Sus-LH/2024/PN. Ttn, on behalf of the defendant Khalik Izmi. In his verdict, the judge stated that the defendant was proven legally and convincingly guilty of mining without a permit.

In the Mineral and Coal Mining Law, the authority and flexibility in managing finances starting from the licensing stage, the implementation stage, and supervision of mining businesses, including in terms of drafting cooperation contracts, the government always adheres to the principles of good faith and openness. In terms of

implementation, mining corruption occurs due to overlapping mining sector licensing regulations and the failure of the supervisory function. The Mining Law gives regional governments the authority to have flexibility in managing mining without being based on supervision, control, and inspection, which is prone to abuse of authority.

If not executed properly, the government's primary task of monitoring mining permits will lead to deviations. Permits are preventive instruments and legal means for the government when someone carries out certain activities, and applicable legal provisions must do them. According to Tatiek Sri Djatmiati, permits are preventive instruments to prevent deviant behavior from the community. The issue of mining permits is not only a source of regional income/revenue in mining management. Still, it must also be able to provide economic and social impacts for the community.[28] Furthermore, Tatiek Sri Djatmiati stated that in our government system, almost all activities carried out always involve state intervention; this is a consequence of the welfare state, which is carried out by imposing restrictions on citizen activities in the form of permits; this is done to control the activities of its citizens.[29]

The intervention of states in all activities, according to Suparto, state administrative law emphasizes the existence of a state that is running (*staat in beweging*), the need for government discretion as a logical consequence of efforts to implement the idea of a welfare state which requires a more active state presence in efforts to improve the social welfare of its people.[30] According to Philipus M. Hadjon, the granting of mining business management permits remains in favor of the community by the applicable legal provisions in Article 35 of the Mining Law. Mining permits are a legal means of the government because the use

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[28] Tatik Sri Djatmiati, *Prinsip Izin Usaha Industri di Indonesia* (Dissertation, Graduate Program, Universitas Airlangga, 2004), 63.

[29] Ibid

[30] Suparto Suparto, Fadhel Arjuna Adinda, Azamat Esirgapovich Esanov, and Zamira Esanova Normurotovna, "Administrative Discretion in Indonesia & Netherland Administrative Court: Authorities and Regulations," *Journal of Human Rights, Culture and Legal System* 4, no. 1 (2024): 76, https://doi.org/10.53955/jhcls.v4i1.189.

of power is based on the principle of legality (*rechmatigheid*).[31] As stated by David Boto-García (2023), as the number of illegal operators decreases, consumers prefer properties with operational permits and tend to choose legal properties, if available, considering the level of market demand in each period, which therefore increases the observed gap between legal and illegal properties.[32]

The crime of abuse of authority in Article 3 of Law No.31 of 1999 on Eradication of Corruption Crime includes the intention to benefit oneself, others, or corporations and harm the country's finances or economy. The existence of the inclusion of abuse of authority in Article 3 of Corrupt Practices Eradication Law is an administrative law concept at the implementation level that will create obstacles in its law enforcement as the corruption Law does not explain abuse of authority. This can be seen in the Supreme Court decision Number 87/Pid.Sus/TPK/2023, dated November 28, 2023. The existence of the element of abuse, according to E. Utrecht-Moh. Saleh Djindang is always associated with a person's position/position. A position is a permanent work environment (*kring van vaste werkzaamheden*) that is held and carried out for the interests of the state/public interest or is connected to the highest social organization, which is called the state. A permanent work environment can be stated as much as possible with precision and accuracy (*zo veel mogelijke nauwkeurig onscreen*), which is "*duurzaam*" or cannot be changed just like that.[33]

Nur Basuki Minarno had an opinion that the use of elements of unlawfulness or abuse of authority as charges against officials or civil servants must choose Article 3 of the Corrupt Practices Eradication Law as both are in principle the same or *in heren*, only differing in the subject of the crime.[34] For example, the Public Prosecutor's indictment uses

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[31] Philipus M. Hadjon, *Hukum Administrasi dan Good Governance dalam Hukum Administrasi sebagai Instrumen Hukum untuk Mewujudkan Good Governance* (Jakarta: Trisakti, 2010), 10.

[32] David Boto-García and Roberto Balado-Naves, "Consumers' Demand for Operational Licencing: Evidence from Airbnb in Paris," *Annals of Tourism Research* 100 (2023): 9, https://doi.org/10.1016/j.annals.2023.103566.

[33] Supreme Court of the Republic of Indonesia, *Decision No. 87/Pid.Sus/TPK/2023 in the name of the defendant Syahrina*, dated November 28, 2023, p. 126.

[34] Nur Basuki Winarno, Op cit., h.84

alternative charges of Article 2 and Article 3 of Law No.31 of 1999 on Eradication of Corruption Crime as viewed in case Number 3/Pid.Sus-TPK/2019/PN Bgl on behalf of the defendant PT LianSuasa, who was charged primarily with Article 2 paragraph (1) in conjunction with Article 20 in conjunction with Article 18 of the Corruption Law and the First Subsidiary Charge of Article 3 of Law No.31 of 1999 on Eradication of Corruption Crime and the Crime of Money Laundering.

Subject to civil servant crime, the definition of Civil Servants is stated in Article 17 paragraph (1) of Law No. 43 of 1999 on Amendments to Law No. 8 of 1974 on the Principles of Civil Servants and Law No. 5 of 2014 on State Civil Apparatus. The position is related to the position that shows the duties, responsibilities, authority, and rights of a civil servant in a state organizational unit. Positions in the government bureaucracy are career positions, including structural and functional positions. Thus, the definition of the element of abuse in Article 3 of Law No.31 of 1999 on Eradication of Corruption Crime on the subject of the crime, then the definition of position is only used for civil servants as perpetrators of corruption who hold a position, both structural positions and functional positions.[35]

About the term position or position, Soedarto stated that the term "position" in addition to the word "position" is doubtful. This position is interpreted as "function" in general, so a private bank director also has a "position."[36]. This complies with Article 52 of the Criminal Code, which violates the special obligations of his position or at the time of committing a crime using the power, opportunity, or means given to him because of his position. Therefore, the judge concluded that those who can commit corruption are not limited to officials because, according to the judge, the meaning of the position can be held by civil servants, non-civil servants, or private individuals.[37]

This aligns with the Supreme Court Decision dated 18 December 1984 No. 892K/Pid/1983, which, in its legal considerations, stated that Defendant I and Defendant II abused the opportunity because of their

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[35] Supreme Court of the Republic of Indonesia, *Decision No. 87/Pid.Sus/TPK/2023*, dated November 28, 2023, Loc. cit.

[36] Ibid

[37] Ibid

respective positions as Director of CV and the executor of CV have been proven to have committed the crime of corruption as referred to in Article 1 Paragraph (1) letter b of Law No.7 of 1971 on Eradication of Corruption Crime, emphasizing: a). Those who can commit the crime of corruption by "abusing the authority, opportunity or means available because of the position or position" are civil servants; b). Perpetrators of the crime of corruption who are not civil servants or private individuals can only commit the crime of corruption by abusing the opportunity or means available in their position.[38]

About the element of abuse of authority, R. Wiyono stated that authority is a series of rights attached to the position/status of the perpetrator to take the necessary actions so that his/her work duties can be carried out properly. Opportunity is a chance the perpetrator can utilize according to the rules in the work procedures related to their position. The definition of means is a method of work connected to the position or status of the perpetrator.[39]

Thus, authority is only held by the legal subject of an individual and cannot be used for a legal entity or corporation. Authority is always related to the position held by a person. This means that the legal subject of this person does not apply to everyone but only to people with a certain position or people with certain personal qualities. A person with a position has the authority or right to carry out certain actions in terms of and to carry out his duties.

Adami Chazawi provides a note related to the use of the term authority, stating that a person who has a position or position also has the means or tools that he uses to carry out his duties as well as possible. The act of abusing authority means because of a position or position occurs when someone uses the means that he has because of a position for other purposes outside the purposes related to the work duties that are his obligation.[40] Furthermore, Adami Chazawi stated that there must be a causal relationship between the existence of authority, opportunity,

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[38] Ibid

[39] R. Wiyono, *Pembahasan UU Pememberantasan Tindak Pidana Korupsi* (Jakarta: Sinar Grafika, 2009), 46.

[40] Adami Chazawi, *Hukum Pidana Korupsi di Indonesia* (Jakarta: Rajawali Pers, 2016), 60.

and means and position or status.[41] Therefore, because a person has a position or status, that person has the authority, opportunity, and means that arise from that position. If that position or status is lost, authority, opportunity, and means are also lost. Thus, there can't be any abuse of authority, opportunity, or means because of a position or position that he no longer has. Abusing the authority, opportunity, or means that he has because of his position.[42]

Corruption occurs due to the illegal use of authority to gain personal gain by taking state funds that are carried out unlawfully or abuse of authority related to public interests involving public officials or civil servants. Jeramy Pope argues that corruption will cause a conflict of interest between public interests and personal or group interests involving officials or civil servants enriching themselves unlawfully or abusing the authority or power entrusted to them.[43]

Efforts to make mining licensing transparent are carried out through licensing policies as a preventive instrument. Several provisions, namely Government Regulation No. 25 of 2024, are amendments to Government Regulation No. 96 of 2021 on implementing Mining Business Activities. Government Regulation No. 25 of 2024 is the implementation of mining principles in the context of a national downstream program that is implemented properly to provide legal certainty for investment through regulations in the mineral and coal sectors. The Government Regulation also regulates several changes and adds provisions previously regulated in PP No. 96 of 2021 and Law Number 3 of 2020, which provides authority to reposition the downstream program.

B. Inconsistent Formulation of Article 2 and Article 3 of Law No.31 of 1999 on Eradication of Corruption Crime in Judicial Practice Causes Disparity in Sentencing

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41 Ibid.

42 Ibid

43 Jeramy Pope, *Strategi Memberantas Korupsi: Elemen Sistem Integritas Nasional* (Jakarta: Transparency International Indonesia dan Yayasan Obor Indonesia, 2003), 6–7.

The inconsistency in the formulation of Article 2 and Article 3 of Corrupt Practices Eradication Law, according to Nur Basuki Minarno can be seen in the formulation of the offense in Article 2 of Law No.31 of 1999 on Eradication of Corruption Crime where one element of the offense is formulated as a material offense by enriching oneself, another person or a corporation, while the other element is formulated as a formal offense that can harm state finances or the state economy, similarly, in the formulation of the elements of the offense in Article 3 of the Corrupt Practices Eradication Law. Inconsistencies occur where the offense element benefits oneself, another person, or a corporation, and the other element is formulated as a formal offense that can harm state finances or the economy. Inconsistencies in the formulation of Article 2 and Article 3 of the Corrupt Practices Eradication Law lead to disparities in the imposition of punishment.

The judicial practice of inconsistency in the formulation of the offense causes disparity in the imposition of punishment where the formulation of the offense is in Article 3 of the Corrupt Practices Eradication Law. The inconsistency of one element is formulated as a material offense, while the other is formulated as a formal offense. This can be viewed in 2 (two) decisions of the Supreme Court of the Republic of Indonesia, making disparities in sentencing.

For example, in Supreme Court Decision Number 17/Pid.Sus.TPK/2022/PN.Jkt.Pst, the judge referred to the Constitutional Court Decision in Decision Number 003/PUU-IV/2006, dated July 25, 2006. The provisions in Article 2 of Law No.31 of 1999 on Eradication of Corruption Crime formulate the offense element against the law, which has a positive and negative function. The jurisprudence of the Supreme Court of the Republic of Indonesia adheres to the material law that functions negatively, as for the element against the law in essence states, the elucidation of Article 2 Paragraph (1) of Law No.31 of 1999 on Eradication of Corruption Crime along the phrase that reads "what is meant by unlawfully" in this article includes unlawful acts in the formal sense and the material sense. Even though the act is not regulated in the legislation, if it is considered reprehensible as it does not comply with the sense of justice or the norms of social life in society, then the act can be punished" is declared contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force. So what is meant by "against

the law" according to the Explanation of Article 2 paragraph (1) of the Corrupt Practices Eradication Law after the Constitutional Court Decision, the definition of against the law is limited to only against formal law.[44]

Another example can be viewed in the decision of the Supreme Court of the Republic of Indonesia. Number 5/Pid.Sus-TPK/2024/PN.Plk dated May 27, 2024, in its decision, it was proven legally and convincingly that the defendant's actions were an abuse of power in violation of regulations related to the quantity and quality of coal as outlined in the procedures for determining quality and quantity: UPBJ/SMT.B.4.12 dated December 11, 2013, and work instructions to help determine the quantity and check the quality of coal PT. Number HPI: HPI.P.PBB.IKA.01.00 dated March 30, 2016. The Supreme Court decision number 43/Pid found the same thing.Sus-TPK/2021/PN.Kdi dated February 14, 2022, on behalf of Buhardiman, Head of ESDM of Southeast Sulawesi Province, and Supreme Court decision number 1/Pid.Sus-/TPK/2021/PN.Mnk dated June 8, 2021, on behalf of the defendant Wiliem Pieter Major.

Based on the example of the decision of the Indonesian Supreme Court, it can be seen that the use of the elements of illegality or abuse of authority as charges against government officials or employees must choose Article 3 of the Corrupt Practices Eradication Law as it covers both identical principles or essentially different only in the object of the offense.[45] Regarding the Supreme Court's decision, it appears that there was a mistake in assessing the existence of abuse of power by using parameters related to substantive law in terms of unlawful acts and abuse of power with different concepts and parameters.

The subjects of the crime of abuse of power, as referred to in Article 3 of the Corrupt Practices Eradication Law, are civil servants and civil servants who hold public office. Thus, individuals and corporations can commit criminal acts of corruption. Unlike the United States, corporations, as a subject of criminal law, rely on the Penal Code (MPC) method, which states that the punishment imposed on a person against

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[44] Central Jakarta District Court, *Decision No. 17/Pid.Sus.TPK/2022/PN.Jkt.Pst*, p. 66.

[45] Ibid., h.84

another person is based on the company's profits. This complies with bringing profit to oneself, others, or the company (corporation) as an element that constitutes a criminal offense in the Corruption Law.[46]

Abuse of power in corruption cases occurs because the use of power over the deprivation of state finances is carried out by abusing the power of the person committing the crime of corruption. The subjects of the criminal offense referred to in this article include civil servants and state employees. Initially, the subject of the criminal offense in Article 59 of the Criminal Code concerned individuals, but later, it developed to involve not only individuals but also corporations. This raises its problems, especially related to the issue of responsibility and guilt.

Abuse of authority is an element in Article 3 of Law No.31 of the Corrupt Practices Eradication Law, and the subject of the offense is related to public officials or employees as holders of public authority in the form of rights attached to positions or positions to take actions necessary so that their work duties can be carried out properly. Therefore, government officials must exercise their authority based on statutory regulations and the General Principles of Good Governance (AUPB). However, the elements of the offense in Article 3 of the Corrupt Practices Eradication Law are an obstacle in law enforcement, considering that this concept is an administrative law concept that does not adequately explain the elements of the offense of abuse of authority.

The existence of Article 3 of the Corrupt Practices Eradication Law at the implementation level is not applied absolutely because it is considered contrary to the provisions in the legislation in Article 2 of the Corruption Law. The article is still relevant, but an evaluation must be carried out to provide space to optimize both elements against the law and abuse of authority. This makes corruption law unclear in terms of concepts and parameters. In several court decisions, the principle of propriety is used to assess abuse of authority. Therefore, it is relevant to discuss the ratio legis of the formation of Article 3 of the Corrupt Practices Eradication Law. For example, the implementation of policy freedom is used as the basis for punishment, but in the decision, the parameters used to determine the existence of abuse of authority are not based on the

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[46] Razananda Skandiva, "Urgensi Penerapan Foreign Bribery dalam Konvensi Antikorupsi di Indonesia," *Jurnal INTEGRITAS* 7, no. 2, p. 256.

general principles of good governance but use the parameters of unlawful acts.

As Nur Basuki Minarno said, the existence of the elements against the law and abuse of authority in the corruption law are interchangeable, so it becomes an obstacle in the application of the law. The element against the law is used to assess abuse of authority. This is because in Act No.31 of 1999, there is no adequate explanation of the element of abuse of authority. The element of abuse of authority in the management of mining licenses with implications for corruption based on the results of a study of several court decisions appears that the application of the elements against the law and abuse of authority shows differences in interpretation and interchangeability. In addition, proving abuse of authority is difficult because it is related to something factual. In addition, authority is an administrative law concept, thus proving the elements of abuse of authority in corruption crimes cannot be separated from the models and parameters that apply to administrative law. At the implementation level, this will cause problems in law enforcement.

Corruption in mining business management, especially in mining licensing, indicates the discretion in managing state money through licensing. The government has made several changes to the licensing arrangements for the mining sector related to the authority of local governments in regulating, fostering, and supervising spatial planning and the implementation of spatial planning for the local government's tourism sector strategic area. In the context of supervision through licenses, it is said that "Many activities are the subject of some of the governmental licensing control. Although this is usually to seek to enforce or maintain standards, in some cases, the main purpose may be to raise revenue or perhaps just to regulate the number of persons engaged in the activity."[47] Furthermore, Spelt and Ten Berge stated regarding this matter, "The permit is one of the *mest gebruuikt* instruments in administrative law. The administration uses the permit as a legal tool to guide citizens.[48]

The management of the mining business without being based on good supervision, control, and inspection has the potential for abuse of

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[47] Brian John and Katrine Thompson, in Tatiek Sri Djatmiati, *Hukum Administrasi Sebuah Bunga Rampai* (Jakarta: Laksabang Ustisia, 2021), p. 103.

[48] Ten Berge, B.J.B.M., Ibid

authority. Therefore, the management of the mining business, in its consistency with the general principles of good governance (AAUPB) or the principles of good governance, will achieve the efficient use of state money for the prosperity of the Indonesian people as stated in Article 33 of the 1945 Constitution after the amendment.

The weakness of supervision in the process of granting mining business licenses causes irregularities in the form of both against the law and abuse of authority as an offense in Act No. 31 of 1999. Therefore, optimal supervision is needed in order to achieve the efficiency of state income and prosperity for the people of Indonesia, as stated in Article 33 of the 1945 Constitution. Deviations in the granting of mining license authority indicate a weakness in the supervision and examination of the management of the mining sector. Arnold Heidenheimer and Michael Johnston define irregularities in the granting of mining licenses as an expansion of corruption crimes that can cause damage to integrity in the implementation of public obligations, for example, bribery and the like due to weaknesses in control, supervision, and inspection of the management of mining licenses.[49]

C. Comparison of Criminal Offenses in Malaysia and Indonesia

Based on the provisions of the law on corruption, the elements of unlawfulness and abuse of authority in Article 2 and Article 3 of the Corrupt Practices Eradication Law are always associated with state losses. The element against the law is the core part of the offense in Article 2, while the element of abuse of authority is the core part of the offense in Article 3. Therefore, it is not appropriate to indict the perpetrators of mining corruption using an alternative form of indictment between Article 2 and Article 33. Inconsistencies in the formulation of the elements of the offense and the parameters of the article have resulted in disparities in sentencing, mistakes in assessing the existence of abuse of authority by using unlawful parameters and mixing the application of the two articles. This can be viewed in several Supreme Court Decisions in mining corruption cases, both the elements and subjects of the offense are interchangeable. The formulation of the offense elements of Article 2 and

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[49] Arnold J. Heidenheimer and Michael Johnston, *Political Corruption: Concepts and Context* (New Brunswick: Transaction Publishers, 2007), p. 6.

Article 33 of the Corrupt Practices Eradication Law is inconsistent, resulting in disparities in the criminalization of mining corruption cases.

In contrast to the regulation of corruption in Malaysia, which uses the term corruption or *rasuah*. The crime of corruption or *rasuah* in Malaysian terms is defined as an act committed by any person who requests, accepts or agrees to commit any form of corruption committed by himself or in a group for personal or group interests, which is not justified, including giving promises or rewards as stipulated in the Act of Suruhanjaya Pencegahan Rasuah Malaysia 2009 (Akta 694).[50]

The regulation of corruption offenses in Malaysia is no different from Indonesia in the provisions of the Corruption Law. The subject of the offense in the Corruption Law in Indonesia is formulated as any person, referring to private individuals and legal entities / corporations. This is different from that in Malaysia where the elements of unlawfulness and abuse of authority are not recognized. In the provisions of Article 3 of Law No.313 of the Corrupt Practices Eradication Law, it refers to public officials or employees who abuse their power or position, including members of the administration, public officials, or members of parliament. Based on Law 694 Suruhanjaya Pencegahan Rasuah Malaysia 2009 which regulates corruption offenses in Malaysia.

In Act 694, the crime of corruption (rasuah) is classified into several acts of corruption which include the following:

1. bribery corruption group (regulated in section 16);
2. group corruption by businessmen or business agents who give or receive bribes (regulated in section 17);
3. group corruption by the agent himself by giving a bribe (regulated in section 18);
4. group corruption by withdrawing tenders (regulated in section 20),
5. group of corruption committed by employees of foreign entities by giving bribes to employees of public entities (regulated in sec. 21 to sec. 23);

In the provisions of the Malaysian Anti-Corruption Act 2009 (sekyen 24, Akta 694) which stipulates the criminal sanctions for the

[50] Suci Nurlaeli, "Analisis Perbandingan Pengaturan Hukum Tindak Pidana Korupsi di Indonesia dan Malaysia," *Lex Jurnalica* 20, no. 2 (2023): 203.

various acts of corruption mentioned above, the maximum imprisonment is 20 years and/or a minimum fine of 5 times the amount of money corrupted (if the act of corruption is committed with money), or a minimum of ten ringgit, which depends on the act committed by the perpetrator of corruption. This criminal provision applies to all those who commit corruption offenses as stipulated in the Act.

In the provisions of Sekyen 24 Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 (sekyen 24 Akta 694):

(1) Any person who commits an offense under sections 16, 17, 20, 21, 22 and 23 when convicted may—
   a) imprisoned for a term not exceeding twenty years; and
   b) shall be fined not less than five times the amount or value of the bribe which is the subject matter of the misconduct if the bribe can be valued or is in the form of money, or ten thousand ringgits, whichever is higher.

(2) Any person who commits an offense under section 18 when convicted may —
   a) imprisoned for a term not exceeding twenty years; and
   b) shall be fined not less than five times the amount or value of the false or misleading item if the false or misleading item can be valued or is in the form of money, or ten thousand ringgits, whichever is higher.

Thus, Malaysia's regulation of corruption offenses is grouped into 5 parts. Whereas in Indonesia it is grouped into 7 parts, the regulation, and definition of corruption in Malaysia is broader, not only the limitation of unlawful or abuse of authority but is broadly regulated related to bribery which can ensnare anyone, both private and public. There is no specialization between civilians and officials.

Regarding the reverse proof of corruption in Malaysia, the burden of proof is almost the same as in Indonesia by using the reverse burden of proof, where the perpetrator must prove. Still, in Malaysia, it is limited, that only bribery cases can be subject to the reverse proof system.

In corruption cases in Indonesia and Malaysia, both have specialized institutions, namely the Corruption Eradication Commission (Indonesia), and Suruhanjaya Pencegahan Rasuah Malaysia (Malaysia). In the assignment of Law Enforcement Officials, the KPK has the authority to conduct investigations, prosecution, and prevention efforts, while

SPRM has the authority for investigations and prevention efforts. Another crucial difference lies in prosecutorial authority; in Indonesia, not only prosecutors can carry out prosecutions, but the KPK can also do so. In contrast, in Malaysia, the prosecutorial authority rests with the Attorney General.

The element of abuse of authority in Article 3 of the Corrupt Practices Eradication Law is the core part of the offense. Meanwhile, the element against the law is the core of the offense in Article 23 of the Corrupt Practices Eradication Law.

Corruption Crime Corruption is the most difficult crime in the effort to prevent corruption. The development of efforts to prevent corruption crimes has not been able to prevent the occurrence of corruption crimes, because it is a crime phenomenon that is committed jointly to gain instant benefits that hinder national development. This togetherness in committing corruption crimes is also a challenge for law enforcement officials as it will be increasingly difficult for law enforcement officials to find evidence to identify corruption crimes that occur. Efforts to eradicate corruption are as difficult as finding a definite definition of corruption because it depends on the perspective used. The corruption law does not provide an understanding or definition of the crime of corruption in its general provisions, body, and explanation. The crime of corruption emphasizes the existence of actions aimed at obtaining personal gain by taking advantage of opportunities. Corruption is an act that aims to provide benefits that are not in accordance with the obligations and rights of other parties or to obtain benefits that are contrary to the position of the government.

The granting of broad authority needs to be evaluated by conducting supervision or control needs to be improved. Poor supervisory functions from the Government without realizing supervision, control, and examination have the potential for abuse of authority. The Mining Law authorizes the government to manage finances from the licensing stage to the implementation and supervision of the mining sector, including in the preparation of cooperation contracts, and the government always adheres to the principles of good faith and transparency.

Conclusion

The discretion in granting mining licenses as stated in Article 35 of the Mining Law without being based on good supervision, control, and inspection in the management of mining business sector licenses has the potential for abuse of authority which has the potential for criminal acts of corruption.

The elements of the offense in Article 2 and Article 3 of Corrupt Practices Eradication Law are inconsistent as one element is formulated as a material offense and the other is formulated as a formal offense. As a result, at the level of law enforcement, there is a disparity in the imposition of punishment.

In addition, the inclusion of elements against the law and abuse of authority in the Corruption Law are interchangeable regarding the subject and elements of the offense. This is because the element of abuse of authority is an administrative law concept and Article 3 of the Corrupt Practices Eradication Law does not provide an adequate explanation, causing difficulties in its proof.

Suggestion

The management of mining business licenses must be based on good supervision, control and inspection to avoid irregularities that cause abuse of authority. The Mining Law gives authority and discretion to the central government and local governments to manage mining licenses.

The authority and discretion of the government in managing mining sector licenses need to be evaluated in order to be precise in determining locations as strategic areas in organizing spatial planning and managing regional assets for mining development and management in order to serve the public interest in the mining sector business sector.

The elements of the Corruption Law against the law and abuse of authority are inconsistent in formulating the offense, so there will be a disparity in the imposition of punishment, leading to evidence. Therefore, the author recommends that the abuse of authority, which is the core of the offense in Article 3 of Law No.31 of 1999 on Eradication of Corruption Crime, be deleted.

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We hereby declare that the scientific work entitled 'Inconsistency in the Formulation of Article 2 and Article 3 of Law No. 31 of 1999 on Eradication of Corruption Crime and Disparity in Criminal Penalty for Mining Corruption in the Practice of Law Enforcement' is original and has never been published anywhere. In addition, the sources cited in this article refer to the basis of correct scientific citation.