



## Corporate Responsibility Due to Nickel Mine Exploitation Activities

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### **ABSTRACT**

*This study aims to determine corporate responsibility for the impact of environmental pollution due to nickel mining activities. The research method used is the normative juridical method by collecting data sourced from literature studies, namely through a legal approach. In nickel mining exploitation activities it is known that it can cause environmental pollution, namely river, air, soil erosion, sedimentation of excavated remains. mining, decreased agricultural productivity around the mining areas, damage to flora and fauna, no health empowerment, no improvement in health infrastructure and changes in community behavior/norms around of the community around the mining areas. In addition, legal protection for the community must be enforced so that the rights of the community are not violated due to the exploitation of nickel mining that violates the provisions.*

**Keywords:** Corporation; Environmental Pollution; Legal Protection; Nickel Mining; Responsibility

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### **INTRODUCTION**

Along with the increasing number of population which is quite large, in the State of Indonesia, population growth is also happening rapidly, this will increase the country's dependence on agricultural products and especially mining, including those from the oil, coal, gold and gas mining industries which controlled by the state (Saleng, 2019), however, full control over Indonesia's abundant natural resources, all Indonesian people have legal rights to own these natural resources. So that it can be said that one of the ultimate goals of managing nature as much as possible is for the prosperity of the people themselves, not to misuse the use of state control power as a weapon (Marbun, 2020). So that the abundant wealth of Indonesia's natural resources can be utilized to improve the welfare of all the people and fulfill all aspects of life's needs. Because the earth, water and their contents are entirely under state sovereignty and are used for the greatest possible prosperity of the people, as stated in Article 33 paragraph 3 of the 1945 Constitution (Imai *et al.*, 2014). mining is indeed very important, so that it can be maximized to create a prosperous and prosperous society. As in Article 28 H paragraph (1) of the 1945 Constitution which reads, "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, to have a good and healthy environment, and to have the right to obtain health services", it is also stated that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment (Ranängen & Lindman, 2018). This law was made and enacted with the intention of ensuring legal clarity as part of preserving the entire environmental ecosystem and protecting the rights of everyone. As for environmental quality standards, environmental impact analysis (AMDAL), and environmental permits are only a small part of the policy tools in environmental management that are legitimized by this UU PPLH. Apart from operating in accordance with economic principles, such as maximizing profits, corporations in this case are legally required to comply with legal regulations that are used by the government to promote social welfare and social justice (Pradiatmika *et al.*, 2020)

During the process of modernization or development, corporations are expected to fulfill various obligations, including monitoring and promoting the preservation of the environment and natural resources. It is assumed that corporations that are not environmentally friendly will not be registered as "green companies" (Sampiang, 2022). The existence of corporations as entities or legal entities makes a real contribution to economic growth and national development, but in practice business actors sometimes commit criminal acts in the form of corporate crimes, which can be detrimental to the state and society. can be used to create the infrastructure needed in the current era, for now the Nickel (Ni) Industry, which

is the prima donna, so that every year it experiences rapid progress, and is the target of countries in the world. Industrial nickel (Ni) producers are scattered across small islands in North Maluku and Southeast Sulawesi, where some of the largest nickel mine deposits in the world are located. based on information from the Ministry of Mineral Resources and Energy (ESDM), at least 72 million tons of nickel (Ni) reserves, including Limonit<sup>1</sup>, or 52% of the 139,419,000 tons of total nickel reserves worldwide, are in Indonesia. As a result, this location, which has 90% of nickel resource reserves, is where most of the nickel mining operations in Indonesia are concentrated. The three provinces are Central Sulawesi, South Sulawesi and Southeast Sulawesi and one province of North Maluku which is located in Sulawesi. One of the natural resources that is the target of the area is the wealth of nickel resources. Several nickel mining operations are still developing and are being carried out to meet business needs as well as community development needs. Exploration and exploitation of natural resources, like the nickel mining industry, is a very profitable economic sector for the country because the nickel industry has very high sales and attractiveness in the international market. However, the environment and forest sustainability will be harmed by this mining activity, so mining is not permitted in forest areas. Mining operations have the potential to damage the environment through water, soil and air pollution. In addition, mining operations can change the topography and soil characteristics and soil impacts in a short time, which can change the balance of the surrounding biological system, the result is frequent landslides, mine explosions, mine collapses and earthquakes, then air and water pollution from dust and smoke, waste water, toxic tailings, mining waste, and noise from various mining heavy equipment used. and also not improving work safety, so that the local community is directly or indirectly affected by non-metal mineral mining, especially nickel (Suska, 2021). During the manufacturing process and business operations, there is often little attention to the impact on the environment, which results in significant pollution both in quantity and quality. A company's manufacturing procedures usually produce more pollution than its individual output. Pollution occurs when organisms or other elements contaminate resources, such as water, soil or air, to the point of interfering with the normal use of resources (Rahmadi, 2019). When living things, matter, energy, and/or other elements are introduced into the environment through human activities, it is referred to as environmental pollution. As a result, the quality of the environment is reduced to a certain extent, and it becomes not functioning properly (Erb *et al.*, 2021).

Even though the management of natural resources has been spelled out in the regulations contained in the law, there are still imbalances and violations when Indonesia's natural resource wealth is explored and exploited on a large scale. This incident in the nickel mining sector is one of them. The company's operations, which include human and business activities, have the potential to cause environmental pollution or a decrease in the carrying capacity of the environment. Therefore, it is very important to legally protect society by imposing criminal penalties on those who commit environmental crimes (Marbun, 2020). This is necessary to resolve human law issues and business law issues, or what is often referred to as corporate criminal responsibility. The President of the Republic of Indonesia and the House of Representatives decided and enacted Law Number 32 of 2009 concerning Environmental Protection and Management. Based on these facts, it can be said that the inclusion of corporations in criminal law has complicated issues related to criminal liability for corporations. Three steps form the process that shapes criminal law policy, namely:

- Legislative/formulative policy stage,
- The judicial/applicative policy stage and
- Executive / administrative policy stage.

Enforcement of criminal law in three stages of policy, and based on three powers that are entrusted to determine or enforce what actions can be punished in connection with the main issues in criminal law including violations, criminal guilt/responsibility, and sanctions that can be imposed. Judicial power/applicable is the power of the apparatus law enforcers or courts to enforce criminal law, and administrative/executive powers of criminal implementers or executors. In accordance with the three stages of law enforcement policy that have been described previously, crime prevention is always centered on the welfare of the community, and criminal policies or efforts are essentially an important part of efforts to protect society (*social defence*) and creating social welfare (*social welfare*). Industrialization and modernization will encourage changes in social processes in line with the growth of contemporary society in the face of globalization.

## **METHOD**

The research methodology used is normative juridical used to collect data from literature studies, especially laws and regulations in the field of mining and the environment as the main legal materials, as well as literature such as books and journals that are relevant to the topic, articles, magazines, and written information in mass media

## **RESULT AND DISCUSSION**

Some jurists have started using the phrase "*physical*" and has a lot of hold. In this case, a corporation is any group or organization that is recognized by law as having legal status, such as a person, and which is required to have legal rights that can be exercised or, at least, are not violated by any action. Against it (Wahyuni, 2021). A corporation is a type of legal entity of persons capable of having legal rights and obligations (legal subject). As a rule of law, corporations carry out all activities related to economic principles, namely getting large profits and spending little. In addition, to implement all legal regulations also have requirements that the government uses in the economic field to create, social justice and prosperity for the whole community. The business community is expected to play a number of roles at this stage of development, including emphasizing and nurturing natural resource and environmental capabilities. Economic activities, and often also the behavior of officials or entrepreneurs who fail to fulfill or ignore commitments related to environmental management. Corporations are thus considered as individuals who are capable of carrying out all legal actions against the assets resulting from these legal actions. The goals of a company formed by a group of people will be achieved jointly among its members. It can also be interpreted that the company has rights and obligations as a legal subject, which are also found in the legal subject of individuals.

Business entity (*corporation*) in charge of managing nickel mines must provide accountability, which can be in the form of civil liability according to Article 1365 of the Civil Code for exploitation activities that pollute the environment and impact the environment where nickel mining is carried out. Environmental Protection and Management to file a lawsuit or demand compensation from the party responsible for the damage (corporation). This also provides a legal basis for the community to demand accountability from other parties, in accordance with Article 3 of Ministerial Regulation Number 13 of 2011 concerning Compensation for Environmental Pollution and/or Damage. Regarding criminal responsibility, namely by closing businesses, which results in loss of income derived from these prohibited activities, and fines for those who commit environmental crimes. Everything has been stated in Articles 116 to 120 of the PPLH Law which regulate corporate criminal responsibility. in Article 79 UUPPLH which regulates administrative responsibility and contains provisions for written warnings, government pressure, freezing of environmental permits, and their revocation. The classification of various types of losses due to environmental pollution and or damage is based on the Regulation of the Minister of Environment of the Republic of Indonesia Number 7 of 2014 concerning Environmental Losses if there has been a violation of environmental pollution and or damage. Legal entities, unlike humans, are not living things that can act alone, and in their own name, but on behalf of legal entities and under their obligations. According to Article 1655 of the Civil Code, legal entities can carry out various activities through their intermediaries, but also cannot enter into agreements between the giver and the management. As often happens, there are several persons represented by other people, because the activities and management of an ordinary representative or representative with a power of attorney cannot be compared. Because a business entity is a legal subject that has rights and obligations related to law.

One of the human activities is mining, there is nothing else to exploit natural resources that already exist. The advantages obtained from mining activities are indeed very many, especially in terms of the economy. However, from the benefits that have been obtained, of course there will be more losses, if they are ignored and without efforts to repair them, they will cause damage. Mining activities have significantly improved the quality of life around the world. Coal, oil, gas and nickel mines, among others, supply sources of energy, and for the needs of the mineral mining industry various raw materials. When mining minerals are used, the places where former mining excavations are found will experience very significant changes in the shape of the land as well as large environmental impacts. In addition to the impact and results of the cessation of mining operations, socio-economic changes in the community also occur. When mining operations stop, both positive and negative changes occur; However, once mining operations stopped, the negative changes that occurred turned into positive changes. Most people today mourn the death of the mining sector or the end of mining operations. Large tracts of land are required for mining activities, which are filled by displacing inhabited and managed areas. The ability of local people

to produce their own commodities and needs can be seriously hampered by the loss of sources of production (land and natural resources). The stagnation of the manufacturing system has increased people's dependence on imported goods and services. They are far from economic slavery in terms of their daily needs. Again, this leads to increased unemployment.

Criminal sanctions in the Criminal Code are divided into two categories, namely principal punishment and additional punishment, as stipulated in Article 10 of the Criminal Code. Because the Criminal Code still adheres to the criminal justice system which must create a deterrent effect for the makers, this article includes the main offense, while the additional punishment is more in the form of a warning to the makers. To realize a harmonious relationship between humans and their environment, the use of corporate sanctions in environmental laws and regulations is associated with fundamental issues (Suparto Wijoyo, 2018). Law enforcement can run effectively if there are parties who have no interest in the statements in the article. Civil law, which deals with interpersonal interactions between individuals and legal entities, can be used to impose penalties for environmental violations. These actions can cause other people to suffer or lose something, which allows that person to file a claim for damages. Since it is known that some actions can cause damage and pollution that endanger the balance of ecosystems, the relationship between environmental management and civil law is the civic satisfaction of individual needs. Parties who are harmed by violations of the corporate environment can file lawsuits against them. These provisions are regulated in articles 1365 and 1366 of the Civil Code, and the loss in question was caused intentionally or was done carelessly and carelessly. Article 87 paragraphs 1, 2, 3 and 4 UUPPLH which is a form of embodiment of environmental principles also regulates corporate responsibility in the context of civil punishment. Corporate criminal responsibility for environmental crimes is based on UUPPLH provisions Article 116 paragraph (1) and paragraph (2). In addition, subject to the provisions in UUPPLH Article 119 which regulates criminal sanctions and further criminal sanctions in the form of order and order.

If the corporation violates the law while the corporation is also a legal entity, it can face additional penalties as disciplinary sanctions. The punishment can be in the form of dissolving the same corporation or making the good name of the corporation bad in the eyes of the public, according to the court's decision at the time the case was heard. In essence, in addition to the death penalty, the government has the authority to punish corporations by suspending their ability to do business. and stop doing business, the state can also take over the corporation, place it under its control, and seize the corporation by appointing a different state-owned enterprise to temporarily run it until the confiscation expires and the confiscation is lifted.

Based on the 1945 Constitution, it is clear that the state is responsible for protecting human rights for every citizen. In this case, it is already concrete in a concept that the Indonesian state is a legal state that can carry out, strive for, and will always provide legal protection for every citizen (Aksa, 2019). Protection is considered legal protection if it includes the following components:

- The government provides protection for its citizens.
- Guaranteed legal certainty
- About the rights of citizens
- Those who ignore it will face the consequences.

witnesses and victims will be given a sense of security with legal protection covering all actions taken to uphold rights and provide support. In other words, legal protection can be seen as a separate picture of the role played by law, which is understood to be responsible for advancing peace, justice and order in society. To promote security and prosperity so that humans can become human beings with dignity, because the authorities act arbitrarily and not in accordance with the rule of law. So that legal protection is needed or efforts to protect the community. The libertarian school of thought, which rejects the theory of the economic approach, sees pollution and environmental destruction only as a product of inefficiency and injustice in the distribution of natural resources when it comes to implementing environmental protection laws. However, the libertarian point of view argues that destroying and polluting the environment is a violation of human and material rights. Therefore, the law must provide protection by obliging business actors to make compensation if their nickel mining activities are carried out due to environmental damage and pollution. The obligation to compensate, in the introduction to law, is seen as a legal effort to protect and provide balance between business actors in nickel mining activities and members of the community who are victims of environmental pollution. Therefore, compensation for victims of damage and environmental pollution in nickel mining exploration activities is very important

to be regulated in positive law, so that justice in the social life of the community is always realized. Because, if the obligation of compensation is not regulated in positive law it could result in a negative reaction from members of the public, so that the public interest cannot be maintained. In this regard, members of the public who are affected by losses due to environmental damage and pollution can ask for compensation to business actors in nickel mining activities. This is as stipulated in Article 87 Paragraph (1) UUPPLH which states that "as the person in charge of a business and/or activity that commits an unlawful act in the form of environmental pollution and/or damage that causes harm to other people or the environment is obliged to pay compensation and/or take certain actions". The same thing is also regulated through Article 1365 KHUPerdata which states that "any unlawful act that causes harm to another person, obliges the person who because of his fault caused the loss, to compensate for the loss". The provisions above explain that the person in charge of nickel mining activities is obliged to make compensation to members of the community affected by environmental damage and pollution. And if this is not complied with by the person in charge of nickel mining activities, then the government is obliged to receive compensation whatever happens in the community. The economic, social and environmental impacts on the local community are caused by environmental pollution as a result of exploitation activities carried out by business entities as managers of nickel mining. As a result of pollution caused by business actors who act as mine managers, so that in conditions like this the community needs legal protection. The community can file a lawsuit because the nickel mining business is contrary to the rules set by the corporation as a form of legal protection. Depending on the circumstances, cases may be filed either during or out of court. Communities who experience losses due to environmental pollution due to exploitation activities can file a lawsuit *class action* to protect individual interests and or the interests of society. If the requirements are met, namely events, legal basis, and category of lawsuit between group representatives and similar group members, a lawsuit can be filed.

The government's desire to use the issue of switching from energy to renewable energy to become the world's largest nickel producer has had a number of negative impacts on society and the environment, including deforestation, environmental pollution, and deprivation of living space for indigenous peoples and local communities living in in and around the forest. Various socio-ecological disasters for society and the environment have been caused by the nickel mining industry. The government's aim is to capitalize on the current political hot topic of energy transition to become the world's largest nickel producer. In East Luwu, the loss of forest function has triggered an ecological disaster due to the proliferation of new mining permits in an effort to increase nickel production. reduced biodiversity of the area, leading to loss of habitat for indigenous peoples, and local communities who live in and around forests and depend on healthy forest ecosystems. The government's desire to become the largest battery producer in the world, which then encourages the growth of Indonesia's nickel mining sector, is concerned with environmental sustainability and defending human rights. Concerns have been raised about how mining might affect Sulawesi's rainforests and the rights of indigenous and local communities. To protect the lives of millions of people who directly or indirectly benefit from the ecological functions of tropical rain forests, we must work together to save them. Old, young, women and men from all over the world should join. Losses caused by mining until the end of 2021 are clear evidence that the government must immediately stop issuing new licenses to mining companies. Mining permits issued must also be reviewed by the government. restoring the environment and seeing that community rights are upheld. National and local governments must now work to conserve and maintain forest landscapes and areas that support life. The impacts and risks of environmental degradation, loss of tropical rain forests, human rights violations, and people's suffering, especially women, due to the growth of the nickel mining sector are real and cannot be ignored anymore. By stopping the spread of nickel mining on a large scale. The time has come to act to protect landscapes and ensure that indigenous peoples' rights are respected and protected.

However, if a corporation is found to have committed an unlawful act, it must first be established that corporate crime, also known as the functional theory of crime or discovery theory, serves as the theoretical basis for establishing wrongdoing. entity. This is important given the understanding of conventional criminal law which is still relevant today and is inspired by the principle that "people may not violate the law", so that a corporation cannot be accused of lacking compassion. After that, the criminal act of a legal entity must be against the law, and no justification can make otherwise. However, if it is determined that a legal entity is involved in an unlawful or improper act the idea is that the corporation is not morally responsible for its actions because people are not breaking the law. According to Mardjono Reksodiputro, the company's management mistakes were inherited or transferred to the

company's own responsibility. Despite the fact that operational and managerial failures of corporations are associated with corporations, the content of the problem differs from matters of civil law. The accusations against the corporation are based on the fact that it does not fully fulfill its social responsibilities. From the point of view of corporate society, he is not doing his job well. As a result, the law requires companies to carry out their social duties effectively and, as far as possible, refrain from engaging in illegal activities. In other words, even though a company "can do other things" apart from engaging in illegal activities, this assumption rests on its rules and methods of operation. For companies, the judgment of wrongdoing depends on how the company carries out its social function, so that when a crime occurs, it "can be blamed"

## CONCLUSION

Corporations must be held responsible for environmental pollution that disturbs the natural order, degrades the quality of the environment to a certain extent, and prevents ecosystems from functioning as they should. That everyone who does pollution and or damaging the environment must carry out the restoration of environmental functions as appropriate. Administrative Legal Liability is in the form of a warning to business actors who misuse the Management Permit, so that party deserves a Reprimand and sanction due to the waste/waste it produces. In addition, Criminal Legal Liability takes the form companies that pollute the environment which has been mentioned in Article 98 UU PPLH. Apart from being imposed in Article 98, Article 100 of the PPLH Law can also be used, namely a Corporation will receive administrative sanctions from the government for a longer period of time. According to Article 1365 of the Civil Code and Article 87 of Law Number 32 of 2009 concerning Environmental Protection and Management, for civil law liability the concept that can be used by the general public is to file a lawsuit or hold a party responsible for losses with the intention of the corporation. This is a legal basis that gives the community the ability to take legal action against the responsible party to avoid losses, this is stated in Article 3 of Ministerial Regulation No. 13 of 2011 concerning Compensation Due to Pollution and/or Environmental Damage.

## REFERENCES

- Aksa, Y. (2019). *Tinjauan pustaka tentang perlindungan hukum, hak atas tanah barat dan hak milik*. 39–64. Retrieved from [http://repository.unpas.ac.id/27342/4/Bab 2.pdf](http://repository.unpas.ac.id/27342/4/Bab%202.pdf)
- Erb, M., Mucek, A. E., & Robinson, K. (2021). Exploring a social geology approach in eastern Indonesia: What are mining territories?. *The Extractive Industries and Society*, 8(1), 89-103.
- Imai, S., Maheandiran, B., & Crystal, V. (2014). Access to justice and corporate accountability: A legal case study of HudBay in Guatemala. *Canadian Journal of Development Studies/Revue canadienne d'études du développement*, 35(2), 285-303.
- Marbun, A. N. (2020). Pertanggungjawaban Tindak Pidana Korporasi. *Jurnal MaPPI FHUI*, 2(3), 2.
- Pradiatmika, P. P., Widiati, I. A. P., & Karma, N. M. S. (2020). Perlindungan Hukum Terhadap Masyarakat di Daerah Pertambangan. *Jurnal Analogi Hukum*, 2(2), 252-257.
- Rahmadi, T. (2019). *Hukum Lingkungan Di Indonesia*. Depok: Pt. Raja Grafindo Persada.
- Ranängen, H., & Lindman, Å. (2018). Exploring corporate social responsibility practice versus stakeholder interests in Nordic mining. *Journal of Cleaner Production*, 197, 668-677.
- Saleng, A. (2007). Risiko-Risiko Dalam Eksplorasi Dan Eksploitasi Pertambangan Serta Perlindungan Hukum Terhadap Para Pihak Dari Prespektif Hukum Pertambangan. *Jurnal Hukum Bisnis*, 26(2).
- Sampiang, A. S. T. (2022). *Penegakan Hukum Administrasi Pada Pengelolaan Lingkungan Hidup Di Provinsi Sulawesi Tenggara*. 27–28.
- Suska, M. (2021). Environmental Corporate Social Responsibility (ECSR) on the Example of Polish Champion Oil, Gas and Mining Companies. *Sustainability*, 13(11), 6179.
- Wahyuni, S. (2021). *Kebijakan Hukum Pidana Dalam Memberikan Perlindungan Hukum Terhadap Korban Tindak Pidana Kejahatan Peradilan Pidana Di Indonesia*. 10.