Legislative Corruption: Criticism of the Omnibus Law Policy in the Mineral and Mining Sector in Indonesia

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Abstract. The practice of state capture corruption (legislative corruption) commonly occurs when the process of drafting a law is very short, not transparent, lacks public participation, and violates a number of legal norms and formal and material principles. The process of drafting laws, which tends to be closed from public access, is often accompanied by the practice of abuse of power or transactions of legislative authority, leading to the poor quality of legislation products. In the mineral and coal mining sector, sectoral laws exposed to state capture corruption will open up space for corruption practices (administration corruption) by corporations or a handful of people by taking advantage of opportunities or material weaknesses or the articles in the law. This study examined the polemic of state capture corruption related to the material of Law No. 11/2020 on Job Creation, especially clusters of material related to the simplification of permits and investment requirements in the land sector and the abolition of the AMDAL obligation and opens up space for corruption practices. Also, it included the strategy of strengthening legislative policies to support the prevention of corruption in the mineral and coal mining sector. This research was normative-empirical, including: First, library research, identifying and analysing secondary data related to the polemic of legislative corruption on a number of materials on the Omnibus Law and other relevant sectoral regulations; Second, field research to obtain primary data by seeking expert opinion/legal expert through observation and in-depth interviews based on purposive sampling; Third, analysis of the results by identifying a number of polemics on corruption in the legislation on the work creation law based on the problem formulation. Finally, formulation of the right legislative policy (UU) rule model is necessary for supporting the prevention of corruption in the mineral and coal mining sector in Indonesia.

1 Research Background

The controversial discourse on the existence of the Job Creation Law, also known as the Omnibus Law, has surfaced since its initial submission to the DPR on February 12, 2020. The initial proposal was in the form of a bill at that time, using a scheme outside the

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platform for registering national legislation programs (Prolegnas), as stipulated in Article 23 paragraph (2) of Law No. 12/2011 regarding the formation of legislation.[1] On that basis, the President used his right of initiative to submit the Job Creation Bill with a number of considerations. Allegations of corruption in legislation are difficult to avoid in the process of formulating the Omnibus Law. Moreover, President Jokowi is targeting 100 working days so that the Job Creation Bill has been discussed and is ready to be promulgated. One hundred working days is a fairly short and unusual time to discuss law, considering that many bills can take years or even years to be finalized. Some groups consider that the formulation of the material in this law is still far from the spirit of Pancasila as the nation's philosophy, which requires priority to take sides with the public interest and social justice for the people. The process, which was closed, very short, had minimal socialization, and did not involve public participation, raised the question of whose benefit omnibus law was made.

In the Indonesian context, the Omnibus Law is problematic because it is very difficult to draft, limits the opportunity to debate and supervise, complicates the consultation process, and its implementation is also increasingly complex and adds to the complexity of the law. The perception that the sweeping universe law is more profitable for investment interests and ignores the protection of citizens' constitutional rights seems difficult to deny. One of the problem points that was highlighted was the material contained in the Articles of the Omnibus Law, which was considered prone to capitalization and opened up opportunities for corruption in legislation in the mining sector on a massive scale, such as eliminating the obligation for an Environmental Impact Analysis (AMDAL) for every mining corporation. Centralization of mining permits is regulated by the central government or the Ministry of Energy and Mineral Resources and a number of other crucial problems.

A sentence of 15 years in prison for the convict Nur Alam-Former, Governor of Southeast Sulawesi, named a suspect by the KPK in 2016, with a state loss of 4.3 trillion IDR (proven to be 1.5 trillion IDR). This shows that the trend of leakage of state money due to abuse of power and the practice of buying and selling mining permits is still significant. Likewise, the KPK named Supian Hadi, the former regent of East-Central Kotawaringin, in February 2019, with alleged state losses of 5.8 trillion IDR and US$ 711 thousand. The case of Supian Hadi is considered the biggest mega-corruption in the history of the KPK. The KPK statistics, as released by ICW, actually noted that the largest corruption cases in 2019 occurred in the Mining sector. This sector is still considered a soft spot for corruption crimes, with the primary modus operandi being an abuse of power in granting permits for mining activities. There are only a few corruption cases in the mining sector. But the value of the state losses it caused reached Rp 5.9 trillion, the largest compared to corruption in other sectors.[2]

As the main legal umbrella, the Omnibus Law reduces most of the material in the 79 sectoral laws relevant to the world of economy and investment. There are at least three government arguments behind the filing of the Job Creation Act. First, there is overlapping material and disharmony of a number of cross-sectoral laws such as the Agrarian Law, Mining Law, Agrarian Law, and Investment Law. Second is the difficulty of obtaining land or land for national strategic projects and investments, as read in the Academic Manuscript of the Job Creation Bill. Third, there must be legislative politics related to the simplification of sectoral regulations (deregulation), including efforts to cut the investment bureaucracy, which has been considered less effective (debureaucratization).

Strictly speaking, a lex specialis law is needed that is able to integrate all relevant sectoral laws using the Omnibus Law model. This includes how to facilitate the rate of licensing and investment in the mineral and coal mining sector. The researchers' preliminary study came to the following conclusions: First, the formulation of the Job Creation Act has the

potential to violate the main rules, the formal-material principles of the formation of good laws and regulations in accordance with the mandate of the P3 Law (UU No.12/2011). Second, the material contained in the Job Creation Bill has the potential to degrade national interests in realizing the prosperity and welfare of the people as guaranteed by the 1945 Constitution. Third, the Omnibus Law has the potential to favor private interests, investors, and foreign investment rather than the interests of the people. Fourth, in land management and provision, the material characteristics of the Omnibus Law do not place the principles of agrarian reform and land redistribution fairly for all people per the mandate of TAP No. IX/MPR/2001 on Agrarian Reform and Natural Resources Management.[3]

The identification of some of the problems above further strengthens the hypothesis that the formulation of the material for the Omnibus Law is full of legislative corruption practices. The crime of corruption usually begins with the existence of legal products that are deliberately weak due to the practice of corruption in legislation. Weak legal products become entry points, corrupt practices, gratification, or tribute traditions for bureaucrats behind every mining activity. The centralization of large-scale mining permits by the central government as well as the construction of the Omnibus Law, is apparently in line with the spirit of the post-revision Mineral & Coal Law, which was only ratified on May 13, 2020. This means that it potentially allows corrupt practices in the mining sector. The modus operandi that often occurs is usually related to the practice of abuse of office, the practice of administrative malls, or manipulation of licensing.

In some previous relevant research, for example, Ima Mayasari, in 2020, concluded that the Omnibus Law was present to resolve many overlapping multi-sectoral laws, especially aspects of regulation, licensing, and difficult bureaucratic systems, including investment in mineral and coal mining. Second, the research by Wicipto Setiadi 2020[4] and Ahmad Adi Purawan 2014[5] emphasizes the importance of philosophical, sociological, and juridical aspects in drafting laws and is obliged to obey the formal-material principles according to Law No. 12/2011. The practice of legislative corruption is still prone to occur after Law No. 12/2011. This research study focuses on three issues. First, the polemic of legislative corruption related to the material for the Omnibus Law in simplifying permits and investment requirements. Second, the polemic on corruption in legislation related to the Copyright Law in the land sector and the abolition of environmental permits and AMDAL obligations. Third, a strategy to strengthen legislative policies related to corruption prevention. It is a normative-empirical type of research to examine the polemic of legislative corruption in a number of materials on the Copyright Law that are relevant to the mineral and coal mining sector, with a statutory approach and analytical approach,[6] and segmented into three sections: library research to identify and analyze secondary data related to polemics on corruption in legislation on a number of relevant law materials, field research to obtain primary data by exploring the perspectives of experts through observations and interviews based on purposive sampling; Third, analysis of results with a qualitative descriptive pattern[7] to identify, process and analyze systematically, then formulate a rule model of appropriate legislation policy in preventing corruption in the mineral & coal mining sector in Indonesia

2 Discussions

2.1 Aspects of Corruption-Prone Investment Licensing and Requirements

The legal polemic of Law No.11/2020 on Job Creation has surfaced since the beginning of the submission on February 12, 2020. The Job Creation Act is directed to resolve a number of overlapping multi-sectoral laws, especially aspects of regulation, licensing, and difficult bureaucratic systems, including investment in mineral and coal mining.[8] KPK statistics show that the largest corruption cases from 2019 to 2020 occurred in the mining sector. The Transparency International Indonesia Institute (TII) results show that investment in mineral and coal mining is still very vulnerable to corrupt practices due to abuse of power, poor regulations, mall licensing practices, and gratification.

The politics of legislation in the mineral and coal mining sector is one manifestation of the fulfillment of the state's obligation to protect the entire Indonesian nation and the entire homeland of Indonesia, to promote public welfare, and to educate the nation's life as mandated by the Preamble to the 1945 Constitution. The provisions of Article 33 of the 1945 Constitution require that every natural resource management must be devoted as much as possible to the prosperity of the people. The KPK has been paying attention to eradicating corruption since 2008 in the natural resources (SDA) sector. The potential for corrupt practices is still quite high, especially in the mineral and coal sectors. As an embodiment of the Article 33 instruction, Law No. 11 of 1967 concerning Basic Mining Provisions was later replaced by Law No. 4 of 2009. Finally, it was revised again with Law No. 3 of 2020 and strengthened by several lex specialis requirements in the Omnibus Law.[9]

The practice of corruption in the mineral and coal mining sector is still a crucial problem in the governance of the mining world in Indonesia. The large profits of the mining business are often the justification for the capitalization of the material and provisions of the Articles for personal or group interests at the time of the formation of the Law. Corruption or white-collar crime is included in the "Extraordinary Crime." Corruption itself is not only defined as fraud in the financial sector or financial irregularities but also, according to Henry Campbell Black, "corruption" is the act of an official who unlawfully uses his position to obtain an advantage that is contrary to his obligations. [10]

Corruption can also be interpreted as immoral acts such as embezzling money, accepting bribes, and so on. The simplification of the one-stop licensing system through the “Online Single Submission (OSS)” program is still ineffective in reducing corruption in the licensing sector. Opportunities for corruption in the licensing sector still occur because not all licensing bureaucracies can be reached through the OSS system, for example, an analysis of environmental impacts (AMDAL) and licensing aspects related to spatial planning and land use. Including exploration permits and reclamation permits, investors still have to deal with lengthy bureaucracy in managing technical permits.[11]

The Employment Creation Law aims to create jobs by facilitating, protecting, and empowering micro, small, and medium enterprises, improving the investment ecosystem, facilitating business and central Government investment, and accelerating national strategic projects. A total of 11 clusters of issues are regulated, namely: (a) simplification of licensing and investment requirements, (b) employment; (c) convenience, (d) empowerment and protection of micro, small and medium enterprises (MSMEs); (e) ease of doing business, (f) research and innovation support, (g) government administration, (h) imposition of sanctions, (i) land acquisition, (j) government investments and projects, and (k)

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economic zones. The flow of the omnibus law regulation of job creation based on the explanation of the Coordinating Ministry for Economic Affairs can be described as follows:

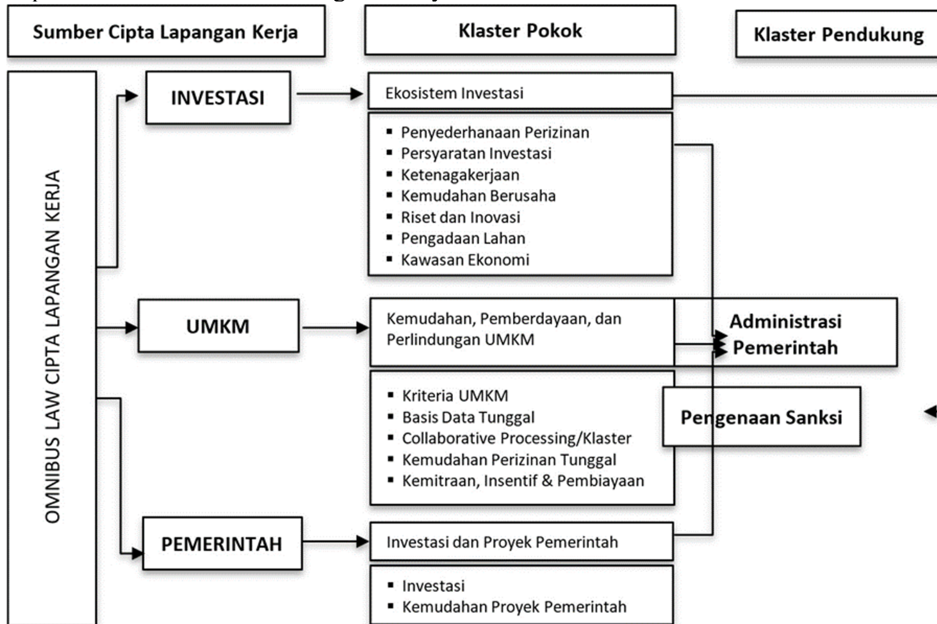

Figure 1. The Flow of Omnibus Law

Based on the above picture, investment is expected to be a source that creates jobs. With regard to investment in the main cluster, efforts are made to organize the investment ecosystem. Structuring the investment ecosystem includes: First, simplification of licensing. Second, investment requirements. Third, employment. Fourth, ease of doing business. Fifth, research and innovation. Sixth, land acquisition. Lastly, Seventh, economic zone.[12]

The mineral and coal mining licensing and investment system is still unable to answer legal problems and needs in mineral and coal management in accordance with the rules for establishing appropriate regulations. This includes the mechanisms and requirements for establishing a processing and/or refining industry, protecting affected communities, transparency and accountability for mining data, and strengthening sanctions. The existing mining contract or permit system based on Law No.11/1967 includes (a) Contracts of Work, (b) Coal Mining Work Agreement (PKP2B), (c) Mining Authorization Permit (KP), and (d) People's Mining Permit (IPR). Meanwhile, the form of mining permits after Law No. 4/2009 concerning Mineral & Coal Mining includes: (a) People's Mining Permits (IPR), (b) Mining Business Permits (IUP), and (c) Special Mining Business Permits (IUPK).

Basically, the clause setting material regarding the mineral and coal mining sector in the Omnibus Law has not undergone significant changes because it has been previously regulated in Law 3/2020 on minerals and coal as a revision of Law 4/2009. In general, the majority of clusters of material on the Omnibus Law have strengthened the two Mineral & Coal Laws. It's just that there are some limited revisions. Referring to Article 129 paragraph (5) of the Employment Creation Law, the main control or centralization of mineral and coal mining permits from the initial sharing between the central government and regional governments has now shifted to the central government. The capacity of local governments is limited to technical-operational coordination unless the licensing authority is delegated to local governments. This provision also violates the principle of decentralization of regional

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autonomy (Law No.23/204), in which local governments should also be given the maximum role and authority in mineral and coal mining management.

The overlapping management and exploitation of mineral and coal mining sectors related to licensing aspects and the complexity of investment requirements are triggers for corrupt practices in the mining sector. Contextually, aspects of mineral and coal licensing that are prone to corrupt practices include:

- A Mining Business Permit, hereinafter referred to as IUP, is a permit to carry out a mining business.
- Exploration IUP is a business license granted to carry out the stages of the general investigation, exploration, and feasibility studies.
- Production Operation IUP is a business license granted after the completion of the Exploration IUP to carry out the stages of production operation activities.
- People's Mining Permit, hereinafter referred to as IPR, is a permit to carry out mining business in a people's mining area with a limited area and investment.
- A Special Mining Business Permit hereinafter referred to as IUPK, is a permit to carry out mining business in the area of a special mining business permit.
- Exploration IUPK is a business license granted to carry out the stages of the general investigation, exploration, and feasibility studies activities in the area of special mining business permits.
- Production Operation IUPK is a business permit granted after the completion of the Exploration IUPK implementation to carry out the stages of production operation activities in the special mining business permit area.

Licensing is part of the field of State Administrative Law (HAN). The licensing sector is closely related to public services because licensing is an important aspect of public services. Basically, a permit is a decision of an authorized state administrative official/body, and a permit (vergunning) is an approval from the authorities based on a law or government regulation. The function of granting the permit itself is as a function of order and as a regulatory function.[13] By giving permission, the authorities allow the person to perform certain actions that are actually prohibited for the sake of paying attention to the public interest, which requires supervision. In practice, the permits granted often do not meet or comply with predetermined conditions, such as granting a Mining Business Permit (IUP). The mining management system in Indonesia is pluralistic due to the various existing mining contracts or permits.[14]

One of the problems that will arise is the extension of the Contract of Work (KK) and the Coal Mining Concession Work Agreement (PKP2B) without going through a transparent auction process. KK and PKP2B are guaranteed the automatic renewal of 2 x 10 years without having to reduce their area expansion. The area must normally be returned to the state every time the contract expires and be re-auctioned. On the other hand, the legal mining area is expanded to include all land and sea space, including space within the earth as a single territorial unit, namely the Indonesian archipelago, land underwaters, and continental shelf. With a Rock Mining Permit (SIPB), corporations can even mine in rivers with a maximum area of 100 hectares.[15] This provision clearly contradicts the principle of environmentally sound development and the spirit of Article 33 of the 1945 Constitution because it provides a monopoly space for mining exploitation permits on a large scale without considering the impact of environmental damage.

On the other hand, the provisions of Article 128A paragraph (2) of the Omnibus Law emphasize: "The provision of certain treatment to the obligation of state revenues as referred to in paragraph (1) for activities to increase the added value of coal can be in the form of imposition of royalties of 0% (zero percent)." Procedurally, further provisions regarding certain treatment as referred to will be further regulated in PP (Article 128A

Paragraph (3). There is preferential treatment (privilege rights) of the Omnibus Law in the form of incentives in the form of imposition of Zero Percent royalties for corporations or mining entrepreneurs. It is considered to have increased the added value of coal, has the potential to open up corrupt criminal practices. If this clause is not followed by strict legal supervision, business actors in the coal mining sector can maximize profit. So far, royalties are usually part of the source of state revenue that every coal mining corporation must pay. Part of the royalty proceeds is part of regional income under the Profit Fund (DBH) scheme as recommended by the Regional Government Law (UU No. 23/ 2014) and the Central Regional Financial Balance Act.

In addition, the clause of Article 162 of the Omnibus Law reaffirms the clause of Article 162 of Law No.3 of 2020 (copying back) regarding the threat of punishment: "Anyone who hinders or interferes with mining business activities from IUP, IUPK, IPR or SIPB holders shall be punished with imprisonment a maximum of 1 (one) year or a maximum fine of 100,000,000 IDR (one hundred million rupiahs). This article has the potential to criminalize the protest attitude of community groups or residents affected by environmental damage or other negative impacts due to mineral & coal mining activities. The poor quality of legislative products related to the mining sector has become an entry point for large-scale mining corruption crimes. By taking advantage of the weakness of the law, the practice of paying tribute related to the renegotiation of contracts of work (KK) or granting mining permits (IUP/IUPK) will very easily occur. Likewise, the gratification practice occurs behind the violation of good mining practices or non-compliance with the implementation of mining corporation obligations.

The identification of the problems above further strengthens the hypothesis that the formulation of the Omnibus Law is prone to be manipulated by the interests of a handful of groups who try to take advantage of power and opportunities for pragmatic purposes. The crime of corruption usually begins with the existence of legal products that are deliberately weak due to the practice of corruption in legislation. Weak legal products become entry points, corrupt practices, gratification, or tribute traditions for bureaucrats behind every mining activity. The centralization of large-scale mining permits by the central government as well as the construction of the Omnibus Law, is apparently in line with the spirit of the post-revision Minerba Law, which was only ratified on May 13, 2020. It opens the door to potential corrupt practices in the mining sector. The modus operandi that often occurs is usually related to the practice of abuse of office, the practice of administrative malls, or manipulation of licensing.[16]

2.1.1 The Polemic of Legislative Corruption on the Material for the Job Creation Act

2.1.1.1 Land Sector Polemic

Several crucial points indicate the occurrence of corrupt practices in legislation related to the regulation of the material for the Omnibus Law in the field of "Land." First, there was a violation of the philosophical spirit, objectives, and principles of the Basic Agrarian Law (UUPA) No. 5 of 1960. It also contradicts the Constitution (UUD 9145) and denies the instructions of TAP MPR RI No. IX/MPR/2001 on Agrarian Reform and Natural Resource Management. The spirit of the provisions of Article 33 of the 1945 Constitution and the social function of land in the UUPA are not used as guidelines for the Omnibus Law. It is read in the material in the land sector as stipulated in Article 125-147 in “Chapter VIII, Part Four of the Omnibus Law.” In this chapter, it is indicated that the makers of the Omnibus Law only copied the substance formulation in the 2019 Land Bill, which has been delayed until now, as a result of the large number of materials in the Land Bill, which are considered to ignore the basic principles in UUPA.

The State's Right to Control (HMN) over land resources should not only be prioritized for economic interests. There should be no monopoly on land functions. The Omnibus Law places land as limited to an economic commodity, an object of development and mining investment. Land as a community identity that contains magical spiritual meaning and the social function of land according to the BAL principles are not an integral part of the material for the Omnibus Law.

The philosophy of Article 33 of the 1945 Constitution gives legitimacy to the state to control the all-natural wealth of natural resources in the bowels of the earth. However, the state should not be arbitrary in making legal policies. The HMN contains conditional constitutional obligations. The right to control the state (HMN) must be used to maximize the prosperity of the people. This means there is no justification for the existence of regulatory material related to national land that ignores the socio-communalistic rights of the people to the land. There is no prohibition. A law that regulates the ease of licensing in the control of land resources by investors in the mineral & coal mining investment sector, as long as it does not cause harm to the national interest and the affected people.

Referring to the substance of the Constitutional Court Decision No. 3/PUUVIII/ 2010, the legitimacy of HMN includes: as a controller (stabilizer), regulator-policy maker, implementer, and monitoring how the state (government) is responsible, controls and utilizes land, water and natural resources for the greatest prosperity of the people, how to make regulations that do not open up the practice of corruption in legislation by abiding by the philosophy of Pancasila and the UUPA. How is the integrity of the law-making elite who are not easily influenced by buying and selling authority? What are the aspects of transparency and the level of people's participation in the discussion and preparation of legislation (UU)? The goal is to avoid creating opportunities to smuggle articles by a handful of groups full of pragmatic interests.

Second, the establishment of a “Land Bank Agency (BBT)” or Land Bank (BT). Referring to the clause in Article 125 of the Omnibus Law, BBT is constructed as a special agency tasked with managing land. BBT's wealth is separated by state assets but not SOEs. Its main function is to carry out planning, acquisition, procurement, management, utilization, and distribution of land. Article 126 emphasizes that BBT aims to ensure the availability of land in the framework of a just economy. The concept of an equitable economy is absurd and tends to only facilitate the convenience of investors and national strategic projects. Why is that? Because the Land Bank is a delayed agenda of the 2015-2019 Medium Term Development Plan (RPJMN). In addition, several clauses in the provisions of the article in "Chapter VIII Part Four of the Omnibus Law" have no clear meaning. In the “Explanation” section of the Omnibus Law, it is also incomplete to define the mission of the Land Bank Agency and the use of categorization of the concept of a just economy associated with:

- Social interests,
- The interests of national development,
- Land consolidation,
- Public interest,
- Economic equity, and
- Agrarian Reform.

The presence of the Land Bank Agency (BT) is a government policy strategy to facilitate investors to easily obtain investment land, including in the mineral & coal mining sector in Indonesia. In fact, Article 126 of the Omnibus Law states that, for the sake of Agrarian Reform (RA), the Land Bank is given the authority to be able to control 30% of state land. This condition is exacerbated by the absence of an article clause or an explanation of the scope of what state land types or objects can be controlled, managed, and

utilized by the Land Bank. Is the state land in question limited to abandoned lands, land that was ex-cultivation rights (HGU)? In fact, the ex-HGU land is also included in the Agrarian Reform Object (TORA) land. Or also reach out to customary lands or customary forests, if needed, for investment in the name of the public interest? In fact, the definition of public interest is still absurd and even strengthens the "definition of public interest" version of Law No. 2/2012. The non-regulation of the Land Bank's commitment regarding the priority of land or land use for the benefit of the people or the public interest raises its own suspicions. The spirit and philosophy of the presence of the Land Bank (BT) are different and contrast with the ideology of "Agrarian Reform," which prioritizes the social function of land and the allocation of state land for small people and agriculture. Which thing is firm, regulated in Presidential Regulation No. 86 of 2018 concerning Agrarian reform.

2.1.1.2 Elimination of Environmental Permits and AMDAL

Through the Omnibus Law, Environmental Impact Analysis (AMDAL) is no longer an obligation for companies with a high risk of environmental damage. Corporate activities that have a high risk of environmental damage simply fulfill or get the so-called "Business Identification Number (NIB)" and approval (permit) from the Central Government as a form of legal-formalistic recognition (Article 10 of the Omnibus Law). The activities of Mineral and Coal mining companies in Indonesia fall into this category. Mine exploitation and exploration have a high impact on pollution and environmental damage. On the other hand, the Employment Creation Law changes the provisions of the business licensing system from what was originally based on the "Environmental Permit" version of the PPLH Law to one based on the "Risk and Business Scale." For low-risk business or business activities, the aspect of business licensing is quite required through the issuance of NIB in accordance with the provisions of Article 8 of the Omnibus Law. For medium-risk business or business activities, in addition to the NIB, the central government issues the fulfillment of a "standard certificate" (Article 9 of the Omnibus Law).

In another clause, the significant role of AMDAL is replaced by an item called "Environmental approval," as stipulated in Article 23 of the Omnibus Law. This is done in the name of facilitating investment licensing because AMDAL is considered to be one of the barrier factors so far. In fact, the AMDAL is prepared with complete feasibility studies and detailed and strict academic standards to ensure that mining corporations do not violate their obligations to preserve environmental ecology. The policy stimulus in the investment sector, in eliminating AMDAL obligations, has the potential to cause environmental damage due to the exploitation of mineral & coal mines in Indonesia. Moreover, the aspects of supervision and law enforcement are weak. Mining exploitation that does not heed the potential for environmental damage will disrupt the survival and livelihoods of the mining circle community. This provision violates the right of access to a sustainable and quality environment as a "human right" for the community, guaranteed in the 1945 Constitution.

The Omnibus Law also reduces community participation in the mining business licensing process. Only residents who are victims or directly affected by mining activities are involved in the AMDAL preparation process. This concept differs from the PPLH Law or Law No. 32/ 2009 on Environmental Protection and Management. In the PPLH Law, in addition to the victims who are directly affected, all residents in the mining circle and environmental activists or NGOs must be involved in the AMDAL preparation process. In addition, the provisions of Article 26 of the Omnibus Law also limit the use of "objection efforts" for residents who are victims or affected by environmental damage as a result of mineral & coal mining activities related to AMDAL documents, which are considered problematic. This is different from the previous provisions of Article 26 of the PPLH Law,

which gave the wider community "right of objection" (especially victims) to AMDAL if deemed problematic and had a significant impact on environmental damage.

Table 1. Comparison of UUPLH with the Omnibus Law: AMDAL

Regulated subjects	PPLH Act	Omnibus Law
AMDAL	Article 25 letter c The AMDAL document contains: c. suggestions for input and community responses to business plans and/or activities;	Article 25 letter c The AMDAL document contains: c. suggestions, inputs, and responses from the directly affected community that are relevant to the business and/or activity plan;
	Article 26	Article 26
	(1) The AMDAL document, as referred to in Article 22, is prepared by the initiator by involving the community. (2) Community involvement must be carried out based on the principle of providing transparent and complete information and being notified before activities are carried out. (3) The community, as referred to in paragraph (1), includes: a. those who are directly affected; b. environmentalists; and/or c. affected by all forms of decisions in the AMDAL process. (4) The community, as referred to in paragraph (1), may file an objection to the AMDAL document.	(1) The AMDAL document, as referred to in Article 22, is prepared by the initiator by involving the community. (2) The preparation of the AMDAL document is carried out by involving the community who are directly affected by the planned business and/or activity. (3) Further provisions regarding the process of community involvement as referred to in paragraph (2) shall be regulated by a Government.
	Article 32 (1) The government and regional governments shall assist in the preparation of the AMDAL for businesses and/or activities of the economically weak groups that have an important impact on the environment.	Article 32 (1) The Central Government and Regional Governments assist in the preparation of AMDAL for Micro and Small Enterprises and/or activities that have an important impact on the environment

Through the legitimacy of Article 26A, the Omnibus Law does not prohibit (allow) mineral & coal mining corporations to dispose of hazardous and toxic (B3) waste management into rivers or oceans and/or to put them into the ground, as long as they have obtained a permit from the government. Ironically, any permit requirements or procedures are not regulated in detail in the Omnibus Law. This requirement is very vague and too risky. Disposal of toxic and hazardous waste not only destroys environmental ecosystems massively but can have an impact on the death of humans, animals, plants, and other marine life. This is clearly contrary to the principles of environmentally sound development and

the protection of human rights values in the environmental field in the 1945 Constitution, the Human Rights Law, as well as international covenants that have been ratified.

Table 2. Comparison of the UUPLH and Omnibus Law - Toxic Waste and Corporate Strict Liability

Regulated Subjects	PPLH Act	Omnibus Law
Dumping B3 waste	Provisions regarding the disposal of B3 waste are not regulated in the PPLH Act.	Article 61A In the event that the person in charge of the business and/or activity: a. Produce, transport, circulate, store, utilize, and/or process B3; b. Generate, transport, store, collect, utilize, process, and/or store B3 waste; c. Disposal of wastewater into the sea; d. Disposal of wastewater to water sources; e. Emit emissions into the air; and/or f. Utilize wastewater for application to soil, which is part of business activity. The management is stated in the AMDAL or UKL-UPL.
Corporate Strict Liability	Article 88 Every people whose actions, business, and/or activities use B3, generates and/or manages B3 waste, and/or poses a serious threat to the environment is absolutely responsible for the losses that occur without the need to prove the error element.	Corporate Strict Liability Every people whose actions, business and/or activities use B3, generates and/or manages B3 waste, and/or poses a serious threat to the environment is absolutely responsible for the losses that occur from his business and/or activities.

The Omnibus Law also amends the previous provisions of Law No. 32/2009 regarding the application of the principle of strict liability for companies, including mining corporations. Article 88 of the PPLH Law affirms: “Everyone whose actions, business, and/or activities use B3, generates and/or manages B3 waste, and/or poses a serious threat to the environment, is absolutely responsible for the losses that occur without the need for proof of error elements.”

This principle can be applied without proving the element of error as long as the element of loss can be proven. Through the Omnibus Law, mineral & coal mining corporations that pollute B3 waste or cause serious environmental damage are exempted from absolute criminal responsibility. The revised version of Article 88 of the Omnibus Law reads: "Everyone whose actions, business, and/or activities use B3, generates and/or manages B3 waste, and/or who poses a serious threat to the environment, is absolutely responsible for the losses that occur from its business and/or activities”. The phrase "losses that occur without the need to prove an element of guilt" is changed to "losses from the business or activity." The legal implication is that corporate responsibility for environmental crimes can only be processed criminally after the verification process has been carried out to ascertain whether or not there was an element of the error made by the corporation.

The makers of the Omnibus Law should distinguish the "Environmental Permit" version of the PPLH Law Number 32 of 2009 with the new nomenclature, namely "Environmental Approval" (Article 21 of the Omnibus Law). The fact is that the Omnibus Law actually abolishes Article 36 of the PPLH Law regarding the "Environmental Permit" provision. The legal norm of Article 22 of the Omnibus Law, which revises several provisions in the PPLH Law in particular, in Article 1 number 35 and Article 36 affirms: "Environmental Approval is an Environmental Feasibility Decision or Statement of Environmental Management Ability that has obtained approval from the central government or local government." In the perspective of environmental conservation, the existence of provisions related to the abolition of the "Environmental Permit" clause clearly has a significant impact on the concept of environmental feasibility studies, including the UKL-UPL model. It should be noted that the principle of "Environmental Management Efforts and Environmental Monitoring Efforts" is an integral part of the AMDAL process.

Table 3. Comparison between UUPLH and Omnibus Law: UKL-UPL and Environmental Permit

Regulated Subjects	PPLH Act	Omnibus Law
UKL-UPL (Effort in Managing Environment and Environmental Monitoring)	Article 34, paragraph (1) (1) Every business and/or activity that is not included in the mandatory AMDAL criteria as referred to in Article 23 paragraph (1) must have UKL-UPL.	Article 34, paragraph (1) (1) Every business and/or activity that does not have a significant impact on the environment must comply with UKL-UPL standards.
Environmental Permits	Article 36 (1) Every business and/or activity that is required to have an AMDAL or UKL-UPL must have an environmental permit. (2) The environmental permit, as referred to in paragraph (1), is issued based on a decision on environmental feasibility as referred to in Article 31 or a UKL-UPL recommendation. (3) The environmental permit, as referred to in paragraph (1), must include the requirements contained in the environmental feasibility decision or UKL-UPL recommendation. (4) Environmental permits are issued by the Minister, governors, or regents/mayors in accordance with their respective authorities.	Article 36 is negated

In the field of state administrative law (HAN), the authority to grant the "Environmental Permit" version of the PPLH Law is included in the category of "administrative actions or decisions (beschikking) that can become the object of a State Administrative dispute (TUN)". This is in stark contrast to the "Approval" regime in the version of the Omnibus Law, which falls within the corridor of special "Discretion" authority. Thus, the legal implications are not the same. The "Environmental Approval" scheme has an impact on the absence of constitutional rights for community victims of

Mineral and Coal mining activities to claim administrative compensation for companies in the TUN court.
The urgency of “Environmental Approval” will easily become a complementary requirement that is not imperative for mineral & coal mining companies and is not as strict as the requirements of “Environmental Permit”. In the AMDAL regime, “Environmental Permits is one of a series of requirements in the preparation of the AMDAL. This condition has been exacerbated by the abolition of the “Commission for EIA Assessment,” and it has been transferred to a full assessment by the central government, without mentioning what institutions and criteria such as those representing the central government are intended. Thus, the spirit of eliminating AMDAL by the Omnibus Law clearly and unequivocally violates the principles of environmentally sound development. This principle is an integral part of sustainable development, which is mandatory by law to be complied with and carried out by every mineral & coal mining corporation in Indonesia.

2.2 Legislation Policy Strategy for Corruption Prevention in the Mineral & Coal Sector

The crime of corruption in the mineral & coal mining sector can start when the drafting of a law deviates from the rules of legal norms, does not comply with formal-material principles, or corruption in legislation (legislation corruption). The practice of corruption, can be in the form of "Administrative Corruption," which is a real act of corrupt behavior in a systematic, legal-formal, and deliberate manner. The goal is to inhibit or take advantage of conditions or take advantage of the implementation of policies, decisions, or material weaknesses of legislation with a certain vested interset motive. It can also be “State Capture” in the form of “affirmative action” from each individual, group, or corporation. This includes the formation of violating laws and penetration of decisions or policies for the greatest benefit.

Several determinant factors cause natural resource management problems, including mineral & coal mining in Indonesia. First, the important position of natural resources in the nation's economy encourages the creation of a condition known as regulatory corruption (regulatory capture). This situation occurs when a regulatory body established to serve the public interest only advances the interests of certain groups, which in the end creates legislation with strong sectoral interests and does not favor society and nature conservation. Second, there are overlapping and incomplete regulations caused by corruption in the formation process and too many regulations (hyper-regulations) issued by the state, both in the form of laws and in the form of delegation regulations. This condition can create corruption vulnerabilities in the natural resources sector, non-optimal law enforcement, and a convoluted licensing process.

Third, the issue of agrarian reform to overhaul the structure of control and ownership of land in Indonesia to eligible citizens is still far from expectations. Until now, conflicts that have resulted in the expropriation of customary forests and community lands due to investment policies are still happening. Meanwhile, the regulations established in the management of natural resources are only oriented toward strengthening the “right to control the state,” with almost all of them referring to Article 33 paragraph (3) of the 1945 Constitution. Still, the underlying spirit is short-term investment growth, which ignores equity.[17]

In order to minimize the practice and prevent corruption in the mineral & coal mining, there are several strategic steps of legislative political policies related to the review of the Omnibus Law that are relevant to the regulation of materials in the mining sector, as follows:

- In the context of a political review, it is necessary to re-orient the legal paradigm in the preparation of the Omnibus Law. The legal paradigm based on the liberal-capitalist economic ideology shifts to the Pancasila economic law paradigm, which is based on national interests and the people's economy.
- Pancasila is the state ideology and way of life of the nation. Therefore, every material on the formation of the Omnibus Law and derivative legal products must animate and integrate the noble values of the five Pancasila Precepts. The target of economic growth and various facilities, regulations, ease of licensing, and investment requirements are the responsibility of the government. However, it must not ignore the principle of social justice, damaging the environment, social function of land, public interest, and utilization of all-natural resources (SDA) for the greatest prosperity of the people;
- A number of controversial materials related to mineral & coal mining investment, namely: (a) The multi-sectoral polemic of mining permits; (b) a state land monopoly of at least 30 percent through the establishment of a Land Bank Agency (BBT) with all its legal implications; and (c) the abolition of controversial Environmental Permits and AMDAL, should be removed immediately. Apart from not having a strong philosophical foundation, the arrangement of this material will only open the potential for corrupt practices in the mineral & coal mining world in Indonesia;
- Controversial materials in several clusters of the CHAPTER of the Omnibus Law, ideally, synchronization and harmonization are carried out so that they are in line with the formal-material aspects or the rules for establishing laws and regulations (UU No.12/2011); the essence of the noble values of Pancasila; Article 33 of the 1945 Constitution; BAL; MPR RI Decree No. IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management; and the Constitutional Court Decision No. 3/PUUVIII/ 2010.
- The revised material must also be supported by research data or feasibility studies, comprehensive academic texts, and principles of sustainable or environmentally sound development;

Legislative corruption is a form of corruption by trading authority in drafting a regulatory norm. The KPK, for example, in a study on corruption in the DPR, indicated that corruption in the DPR occurs not only in the budget and oversight functions but also in the legislative function. This fact surprised many people because, so far, the locus of corruption is more often in the budget function. This condition must be watched out for so that no smuggled articles will benefit some people or groups and lead to corruption. There are efforts from certain parties so that legal products are in accordance with certain interests. As a result, corruptively designed legal products lead to ongoing corruption due to the loss of state revenue. For this reason, it is necessary to look at the omnibus law from the perspective of preventing corruption since prevention is much better than cure.

Natural resource management should be viewed with a sustainable perspective instead of a short-term investment or economic need. Economic needs and the continuity of sustainable environmental ecosystems in managing natural resources, such as the need for good soil, maintained water sources, good energy needs, and good air requirements, are also important to consider.

3 Conclusions

The government hopes that the Omnibus Law will become a tool for economic transformation to avoid the middle-income trap in order to reach a Golden Indonesia before

2045. This law will become a legal instrument, bringing Indonesia as a country with the fifth economic power in the world. The establishment of the Omnibus Law (UU No.11/2020) is a prestigious legislative political project but prone to corruption and full of controversy. It is projected that there will be an improvement in the investment climate by simplifying the business licensing system and material revisions of a number of sectoral laws, including mineral & coal mining in Indonesia, which are considered to be factors hindering the pace of investment. Using the Omnibus Law method, 79 sectoral laws are reduced and united in one law book. The Omnibus Law will have dozens of implementing regulations, mainly in the form of PPs and Presidential Regulations. Unfortunately, the simplification process of the Omnibus Law is not based on a comprehensive academic study and has the potential to violate the philosophical, sociological, and juridical aspects as well as normative principles in the formation of the Act as regulated in Law No. 12/2011. The lack of prudential principles, transparency, public participation, and strong academic studies in the process of forming the Omnibus Law are some of the crucial points that the Omnibus Law exposed to legislative corruption practices.

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