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# CORRUPTION RISK ASSESSMENT ON LICENSE AND MONITORING OF MINING INDUSTRY IN INDONESIA





# **CORRUPTION RISK ASSESSMENT ON LICENSE AND MONITORING OF MINING INDUSTRY IN INDONESIA**



*TRANSPARENCY INTERNATIONAL INDONESIA*  
2023

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## GLOSSARY

AC	Academician
BPK	Badan Pemeriksa Keuangan
BPS	Badan Pusat Statistik
BUMN	State-Owned Company
Ditjen AHU	Directorate General of Common Law Administration
DPR	House of Representative
ESDM	Energi and Mineral Resources
FGD	<i>Focus Group Discussion</i>
ICW	<i>Indonesia Corruption Watch</i>
IUP	Mining industry License
IUPK	Special Mining industry License
JATAM	Jaringan Advokasi Tambang (Mining Advocacy Network)
Kemenko	Coordinating Ministry
KESDM	Ministry of Energy and Mineral Resources
KPK	Corruption Eradication Committee
MACRA	<i>Mining Award Corruption Risks Assessment</i>
MODI	<i>Minerba One Data Indonesia</i>
MOMI	<i>Mining One Map Indonesia</i>
MOMS	<i>Mineral Online Monitoring System</i>
MS	Civil Society
MVP	Sales Verification Module
OSS-RBA	<i>Online Single Submission-Risk Based Approach</i>
PADIATAPA	Prior Informed Consent Without Coercion
PBB	Property Tax
PDB	Gross Domestic Product
Permen	Ministry Regulation
PI	Primary Researcher
PM	Government
PP	Government Regulation
PPATK	Financial Transaction Reports and Analysis Center
PT	Limited Liability Company (Ltd)
PU	Business Actor

RKAB	Budget and Workplan
TII	<i>Transparency International Indonesia</i>
UU	Law
WIUP	Mining Permit Area
WIUPK	Special Mining Permit Area
WPR	People's Mining Area
WUP	Mining industry Area

## MAIN FINDINGS

This corruption risk assessment was conducted to the mining licences in Indonesia. All steps taken starting from the determination of mining area, business License approval, and monitoring of the business activity were tested and valued based on the institutional accountability that led to map of corruption risk with the purpose as a future reference for related stakeholders to mitigate corruption risk. This map was marked by gradient color from yellow to red on every point of decision making in the mining governance, portraying the impact value and probability of the corruption that was studied. In this case, the red color is portraying the high level of risk, orange as medium risk, and yellow as low risk. Based on those, there are 16 corruption risk that includes 6 contextual risk, and 10 gap and vulnerability risk, among them are:

**Table 1 : List of Corruption Risk Vulnerability**

No	Contextual Risk	Color
1.	High and excessive burden of integrity carried by Ministry of EMR in implementing governance of mining department after the authority centralisation based on 2020 Mining Law revision.	
2.	Visible and dominant profile of politician-businessman in playing their role as an elite without constituent in many decision making process, including many regulation and policy revision that took place after the 2020 Job Creation Bill.	
3.	The weakening of KPK's role in responding to corruption after the 2019 revision of KPK law has destroyed many spaces and opportunities of sharing role and movement in mitigating corruption risk.	
4.	The crucial position of mining industry in Indonesian economy, providing privileges for mining industry in policy implementation	
5.	Minimal capacity of monitoring and control, creating a big loop hole for illegal economy, adding to the law enforcement problems.	
6.	Shrinking public participation affected by the 2020 Job Creation Bill, meanwhile the criminalisation articles are continue to be used to silence activist and civil society that challenge the mining License accountability.	

No	Gap and Vulnerability Risk	
7.	Incomplete information on land and cadaster, geology asymmetric information, and the minimum coordination with other important sector that lead to the overlapping land use and control.	
8.	The decision in the integration of mining industry into the city planning are exclusively made by KESD against the Constitutional Court Decision.	
9.	The role of House of Representative in deciding the mining area in the implementation has potential in affecting the business practice.	
10	A tendency for lacking a procedural administrative flow and unclear criteria of decision making process within the regulation of WIUP action and the publication of IUP	
11	Chances of collusion in bid rigging, by choosing winner within themselves.	
12	No clear regulation from the local government in the special autonomy framework on the implementation of Licenses.	
13	Despite the existence of the regulation on information collection of beneficial owner and the prevention of conflict of interest, these information and procedures seems disconnected from realistic bureaucracy to protect the integrity of Licenses issuance process.	
14	The regulation on IUP Ownership limitation is easily manipulated by using different company	
15	Various prerequisites for carrying out the supervisory function are not available, led to lack of implementation in the mining monitoring activity after the 2020 Mining Law.	
16	Public is unable to score the accountability of the monitoring implementation with potential in adding problems and berpotensi menambah persoalan dan fraud in mining industry	
<b>Color code of the risk level:</b> <b>blue = very low; green = low; yellow = medium; orange-red=very high</b>		

Source of picture : rawpixel.com



**Image 1. List Corruption Risk Vulnerability**



High and excessive burden of integrity carried by Ministry of EMR in implementing governance of mining department after the authority centralisation based on 2020 Mining Law revision.



Visible and dominant profile of politician-businessman in playing their role as an elite without constituent in many decision making process, including many regulation and policy revision that took place after the 2020 Job Creation Bill.



The weakening of KPK's role in responding to corruption after the 2019 revision of KPK law has destroyed many spaces and opportunities of sharing role and movement in mitigating corruption risk.



The crucial position of mining business in Indonesian economy, providing privileges for mining business in policy implementation.



Minimal capacity of monitoring and control, creating a big loop hole for illegal economy, adding to the law enforcement problems.



Shrinking public participation affected by the 2020 Job Creation Bill, meanwhile the criminalisation articles are continue to be used to silence activist and civil society that challenge the mining License accountability.

## GAP & VULNERABILITY RISK



Incomplete information on land and cadaster, geology asymmetric information, and the minimum coordination with other important sector that lead to the overlapping land use and control.



No clear regulation from the local government in the special autonomy framework on the implementation of Licenses.



The decision in the integration of mining business into the city planning are exclusively made by KESD against the Constitutional Court Decision.



Despite the regulation on information collection of beneficial owner and the prevention of conflict of interest, these information and procedures seems disconnected from realistic beaureaucracy to protect the integrity of Licenses issuance process.



The role of House of Representative in deciding the mining area has potential in affecting the business practice.



The regulation on IUP Ownership limitation is easily manipulated by using different company.



The regulation on WIUP auction and the issuance of IUP tends to have poor procedural administrative flow and unclear criteria of decision making process.



Various precondition for carrying out the supervisory function are not available, led to lack of implementation in the monitoring activity after the 2020 Mining Law.



Chances of collusion in bid rigging, by choosing winner within themselves.



Public is unable to review the accountability of the implementation of monitoring with potential in adding problems and fraud in mining business.

## FOREWORD

One of the most basic findings from the corruption risk assessment of mining licenses issuance conducted by Transparency International Indonesia (TII) in 2017 is that the contextual issue of political economy, especially related to politic of decentralization and the election of head of a region, has become a significant contribution to the high risk of corruption. This phenomenon is common with a sign of the increasing number of mining license issuance (IUP) as reward and compensation from investment in political campaigns. Corruption cases in the mining sector, especially cases that are handled by The Corruption Eradication Committee (KPK) have confirmed that these contextual problems as enabling factors of corruption hand in hand with many weaknesses of regulation and effort to ensure the compliance in all steps of mining industry processes. This overall risk has created many institutionalized corruptive behaviours that is complex in various layers of governance process of mining industry.

Government has offered a simplified licensing and centralization through Law No.11 2020 on Job Creation, and Law No 4 2009 revision on Mineral and Coal Mining Law No.3 2020, however, as indicated with several corruption scandals that recently unfolded, it was proven that it does not automatically solve the problem of corruption risk in the mining governance. Criticism from civil society has noted that many of these regulations are creating more problems, this includes the conversion of contract regime business, elimination of certain penal articles, and the shrinking public space for accountability that represses integrity of the mining governance.

This research is conducted mainly to revisit the corruption risk after many regulation changes in the mining sector, hence the objective is to provide recommendations to the government and public to strengthen corruption mitigation risk instruments as a collective action. In this research, governance especially related to the mining Licenses and licensing will be identified and assessed on their corruption risk, including by looking at the contextual aspect of political economy and the vulnerability in the regulation and implementation.

This is a follow up research from the 2017 research conducted by Transparency International Indonesia (TII) and part of the Mining Program for Sustainable Development of Transparency International. Besides identifying the systemic vulnerabilities and assessing risk of corruption in mining Licenses issuance in Indonesia, this research also reviews the corruption risk within the business process in issuing the Mining industry License (IUP) (both exploration and operational production) for mineral (metal) mining or coal. As the previous research in 2017, this research was conducted using the same *Mining Award Corruption Risk Assessment (MACRA)*. This method is very helpful and proven effective to identify and assess the cause of corruption, and corruption risk in issuing license and License in the mining sector.

## A. Background

More than two thousand IUPs were revoked on 6 January 2022. President Joko Widodo said that these Licenses have been inactive for many years and limiting the use of natural resources that held people's welfare hostage. In another opportunity, responding to House of Representative (DPR)'s question in the Meeting between Commission VII on 13 January 2022, Ministry of Energy and Mineral Resources (ESDM) mentioned that the revocation of 2,078 Licenses was done because of since 2018, thousands companies have not submit their Action Plan and Budget (RKAB). In addition, there were 19 licenses problems that have exhausted their back up, 122 mineral and coal mining companies that do not have infrastructure or connection to the market, and 60 that have forest and social area dispute<sup>1</sup>.

The revocation received positive feedback from the public, considering the indiscipline behavior towards regulation and land dispute that has been repeatedly found in mining governance. In 2014, Corruption Eradication Committee (KPK) in their study found violation of monetary obligation by the mining sector (KPK, 2014), the assessment on Financial Audit Body (BPK) in the second semester of 2021 found similar results with land tax obligated to the mining sector. Similar to the overlapping between forest area and business where the legal standing itself remains unknown (BPK, 2021). It is unclear if the illegal users of the forest do not have data on the special license, so they are unidentified, or if the problem is the non-integrated data and information within ministries and institutions.

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<sup>1</sup> Risalah dalam Rapat Kerja Komisi VII Dewan Perwakilan Rakyat dengan Menteri Energi dan Sumber Daya Mineral (Menteri ESDM) pada tanggal 13 Januari 2022. Diakses melalui <https://www.esdm.go.id/assets/media/content/content-laporan-kinerja-kementerian-esdm-tahun-2022.pdf>

During their meeting, the House of Representatives (DPR) appreciated government intention in their effort to address inequality, injustice, and environmental damage, although they also requested a legal clarity disciplinary process on the areas where mining Licenses were revoked. Meanwhile on the thousands of Licenses revocation, the Licenses politic after Law No. 3 2020 to revised Law No.4 2009 on Mineral and Coal ends decentralization of mining industry by putting the national government, in this case Ministry of Energy and Mineral Resources in a crucial position to ensure the integrity and accountability of mining governance. One of the assumptions underlying the recentralization approach on mineral and coal license, that previously was decentralized through Law no 4/2009, is that the challenge on governance can be addressed by putting authority back to the national government.

Addressing many problems inherited from the previous mining governance is not an easy task. The last report from Transparency International Indonesia (TII, 2017) underlines a close tie between governance and corruption risk in mining sector, mainly in relation with the License issuance vulnerability (54%) and within the process of the License issuance itself (20%). Civil society coalitions have been very vocal about these problems, for example by criticizing the drafting process of Mining Law and Job Creation Law that was developed by the Committee and Task Force affiliated with mining and industrial energy waste (Bersihkan Indonesia, 2020). This indication was also seen in the increasing number of corruption cases, and mining industry economic profile indicates that mining sector is prone to political corruption.

These phenomena provide evidence to the public the relevancy and the importance to revisit various corruption risks after the regulation changes in the mining sector. The questions are whether the regulation change created a better mining sector governance or made it worse, especially in the context of corruption prevention and action in the mining sector, and the types of situations that surround them. The answers to these questions are expected to identify and assess the corruption risk in the mining sector including analysing the contextual dimension of political and economy and the practical vulnerability of the regulation and implementation. Final objective of this research is to guide relevant stakeholders to participate in strengthening the corruption risk mitigation instruments as a collective action, especially government institutions and other policy makers.

**B. Research Framework:**  
**Mineral and Coal Mining Governance Flow and Legal Framework**

**R**egulation and policy of the mining sector government have always become public attention due to its contribution as the primary state income following oil and gas. In 2022 alone, the mining sector contributed 183 trillion rupiah as Non Tax State Income (PNBP). Various efforts to increase the economic value and the use of extractive mining resources have been conducted by the government including providing administrative convenience and subsidy.

Law no.3/2020 and Law no 11/2020 that revised Law no 4/2009 strengthen government efforts to increase the investment climate in the mining industry and to ensure a good mining principal implementation. In addition, after eleven years of the regional License regime introduced by 2009 Mining Law was revised by the 2020 Mining Law. The decentralization of License authorization for mining industry especially for mineral and coal mining are being retaken by the national government, leaving the local government with the authority over stone mining.

The revision was in line with the implementation of electronic base License system also known as Online Single Submission-Risk Based Approach (OSS-RBA) and implemented to the mining industry regulated in the Ministry of Energy and Mining Resources Regulation No. 5/2021 on Business Activity and Product Standard on Risk Based Approach Business License Issuance for Energy and Mineral Resources Sector and Government Regulation No 5/2021 on Risk Based Approach Business License Issuance (Rahayu,2021). With this implementation, government expects that business owner are able to benefit from legal clarity and business convenience (Indrajit dkk, 2020)

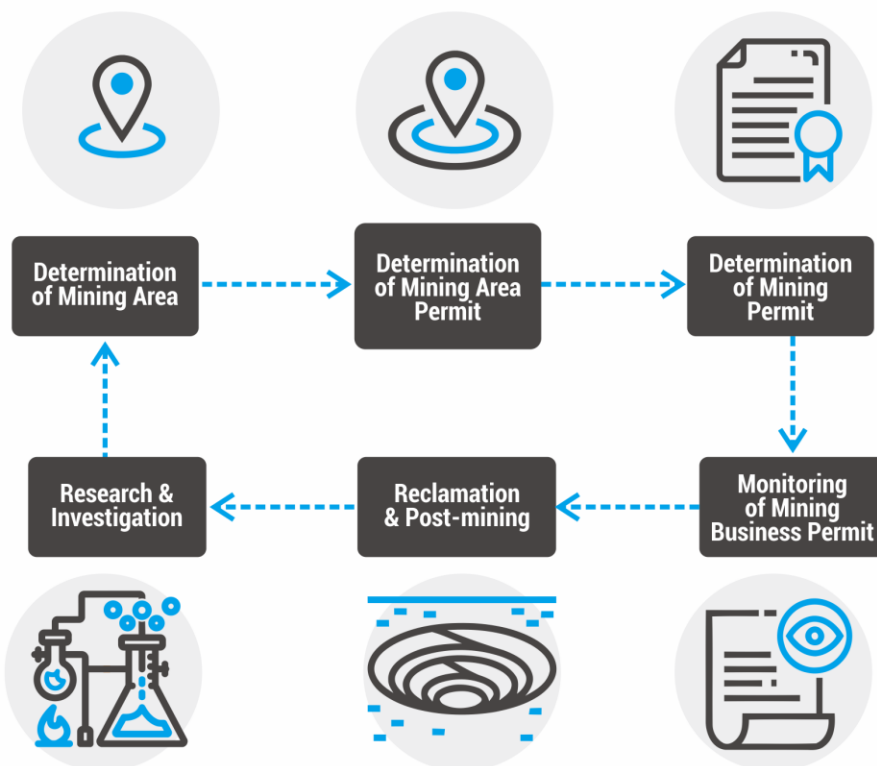


**Table 2. List of Regulation and Policies on Mining Licenses**

Law and Regulation	Substantive of the Regulation
Law no 4/2009 on Mineral and Coal Mining as revised by Law No 3/2020	After 2009 Mining Law introduced types of mining licence, the revision in 2020 Mining Law regulated conversion on contract holder in the form of Mining Licence (IUP) and issuance recentralization to the national government.
Law no 11/2020 on Job Creation	Issuance of 2020 Job Creation Law specifically provides 0% royalty incentive to mining industry actors that has increased their added value.
Government Regulation no 25/2025 on Mining Area	Implementing regulation following the 2020 Mining Law Revision and 2020 Job Creation Law regulates the administration of mining sector affairs especially related to the determination of mining areas.
Government Regulation No 96/2021 on Implementation of Mining Industry Activity	Implementing regulation following the 2020 Mining Law revision and Job Creation regulates mining industry implementation related to License issuance starting from planning, issuance of WIUP, and issuance of IUP.
Ministry of Energy and Mineral Resources Regulation no 7/2020 on the Procedures of Area Determination, License, and Activity Reporting of Mineral and Coal Mining industry as revised by the Ministry of Energy and Mineral Resources Regulation no 16/2021.	Implementing regulation on issuance of mining License before 2020 Mining Law , although it was later revised in 2021.
President Regulation No 55/2022 on Delegating Business License Issuance Authority for Mineral and Coal Mining Sector	Implementing regulation to implement article 8 of Government Regulation no 96/2021 on Mineral and Coal Mining industry Conduct in regulating Delegating Business License Issuance Authority for Mineral and Coal Mining Sector.

As appeared on the flow above, the policies related to the mining industry were developed in a research cycle with the intention to develop a mining area and mining activity that ends with post mining reclamation. Both in the 2009 Mining Law and in its revision in 2020, Mining License (IUP) will not be the end of the mining governance; the government still has authority to monitor and ensure that post-mining reclamation was done. Afterwards, evaluation on business activity, including all information as the outcome of the mining industry activity, will become a material to determine the mining area that can be industrialized. The licensing flow chart or the business process of the mining industry will be a baseline to revisit the risk of corruption that happens after the 2020 Mining Law revision and the 2020 Job Creation Law.

Image 2. Mining License Chart Flow



KOTAK POS : 4632/KBY

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## PENGUMUMAN

### RENCANA LELANG WILAYAH IZIN USAHA PERTAMBANGAN KHUSUS KEPADA BADAN USAHA SWASTA

Nomor: 21.Pm/30/DJB/2019

Panitia Lelang Wilayah Izin Usaha Pertambangan Khusus (WIUPK) pada Kementerian Energi dan Sumber Daya Mineral akan melaksanakan lelang WIUPK. Adapun informasi WIUPK yang akan dilelang adalah sebagai berikut:

WIUPK	Provinsi	Kabupaten	Komoditas	Luas (Ha)

## C. Research Scope

**B**ased on the background and the framework, this research observes the importance of focusing on corruption risk assessment within the process of issuing Mining industry Permit (both exploration and production operational) for mineral (metal) and coal mining. In this research, the process of business License licensing is not only focused on the License itself but more on the overall process, from the determination of mining area to the monitoring. Compared to other mining sectors, the mineral and coal mining sector have played a significant role especially within the economy, and its social and environmental impact has become an important factor in the determining arguments in choosing this mining sector.

Some of the problems within this research are: (1) How does policy and regulation revision impact the administration change of mining licensing? (2) How big is the improvement of License governance and the impact of the corruption risk mitigation? (3) This research will also discuss corruption cases in the mining sector that unfolded as a verification method in the risk findings. In addition, this research also tried to understand the centralization process within the mining governance, and the role of regional governments that impacted the mining industry.

To answer all the research problems, researchers collected field data and data accessed through the Mining One Map Indonesia (MOMI). Based on the total number of Licenses released, 3 provinces were selected: Nangroe Aceh Darussalam, East Kalimantan, and Southeast Sulawesi, where at least 22 mining licenses have been released in these 3 provinces.



## **D. Data Collection Method**

**T**o collect data, this research use these following methods: (1) Literature study; (2) Focus Group Discussion; (3) In depth interview; (4) Consultation and Discussion with expert resource person.

### **1. Literature Study**

This research began by doing a literature study that consist of series of activities

Research begins with a series of literature study activities such as collecting data references, reading and registering, and processing research materials, especially secondary data related to the research topic. One of the main documents that was reviewed in this early stage was the TII research in 2017 that also used the same MACRA methodology. In addition, in this stage the researcher was also reviewing studies related to the politics of mining permit, corruption risk and corruption practice within mining and natural resources, and corruption in general in all 3 research locations. Other data that was reviewed in this stage was Mining Licenses that was released in 2018-2022 that was accessible through MODI. These data then compared to the data that was found in the area and other data that were identified as beneficial owners.

### **2. Focus Group Discussion**

Focus Group Discussion (FGD) conducted by inviting mining professionals, mining association, association of professionals of the mining industry, and civil society organization to brainstorm the initial scope limitation of the research, data collection related to mapping process and context of License issuance, and identifying and verifying risks, corruption possibility and impact that was caused by the poor mining governance in Indonesia. FGD was conducted in 4 cities: Jakarta, Samarinda, Aceh and Kendari.

Primary Investigator and research investigator were always present in all stages of discussion to take important notes and review all data appeared during FGD. To facilitate the discussion process, researchers prepared several key questions related to License process, distribution of mining product, monitoring of mining licenses, implementation of integrity due diligence, and the impact to social and environmental aspects from mining activity after the revision of the Mineral and Coal Mining Law. FGD participants are diverse in background as it creates an easier way to collect deeper data based on respondents' interaction, due to this richness of data, FGD is the most effective and efficient data collection method that is appropriate for this research.

### **3. In-depth Interview**

In order to collect more information from other respondents that were unable to participate in the FGD and to clarify some information from the previous discussion, an in-depth interview was conducted. This interview also conducted to collect more detailed data on key questions, including the process of License issuance, identifying process gaps between official regulation and its practices, to validate vulnerability, risk and impact of corruption.

### **4. Expert Resource-person**

Expert resource person is a person that is expert in Indonesian mining law, environmental law, and someone that has a vast experience working in extractive industry in Indonesia. In addition to inviting them to participate in the FGD process, researcher also did a more in-depth consultation with experts by conducting interview, especially on the early stage of the research to determine the research scope and indentifying risk of corruption that might happened due to many policies in mining sector.

## **E. MACRA Methodology**

Lack of transparency and accountability in License issuance is one of the root causes of corruption in the mining sector. Despite not only focusing entirely on License issuance, the Mining Award Corruption Risk Assessment (MACRA) tool was used by researchers to help identify, assess cause of corruption and risk of corruption in License issuance in the mining sector. MACRA was developed by Transparency International to provide a consistent, clear, and strong methodology to identify and assess risk of corruption in 20 countries that participated in the Program Mining for Sustainable Development (M4SD).

MACRA tool has the intention to improve transparency and accountability in License issuance in mining sector in every participating country by divide them into three phases, those are:

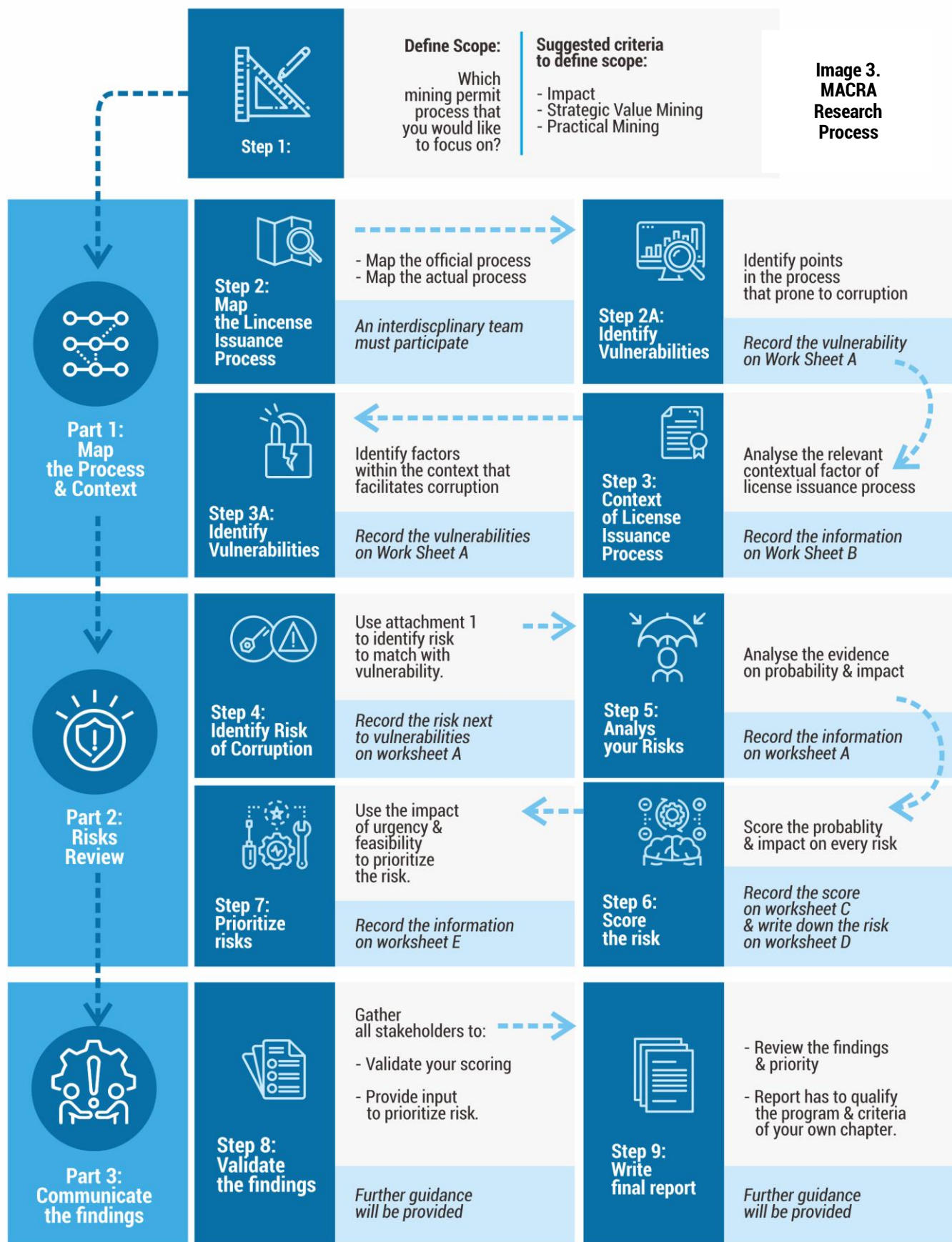
First Phase, started with data collection and analysis. It is also important to determine the scope of research during this phase. Researchers will focus on the scope by mapping and assessing the business process of Mining Licenses issuance (both exploration and production operational) for mineral (metal) and coal as regulated by law and official guidelines from the government. Researchers then collect information on implementing process practices and relevant contextual factors to further identify its vulnerability towards corruption in the process, practices, and context that was already analysed.

Second Phase, identification to see vulnerability and gaps in the process and practices of mining License issuance that prone to corruption. Afterwards, researchers will assess the analysis outcome of the identification in the form of profile risk. Researchers will create a new risk by adopting and modifying general risks that were found in the field. Researchers will then analyse every risk of corruption and evidence of risk and impact probability. Finally, determining priority from the risk of corruption for an effective transition from research to action in developing the anti-corruption strategy. Certainly, the risk determined as priority risk by TI Indonesia are risk of corruption that intended to be mitigated or managed by TI Indonesia

Third phase, delivering of research findings where experts from multilateral institutions, international and non-government organizations and departments of industry can provide feedback in developing the MACRA tool. This step is an important step to help TI Indonesia in following up the potential of collaboration between stakeholders based on the research findings.



**Image 3.**  
**MACRA**  
**Research**  
**Process**



*Freeport's Grasberg copper and gold mine site in Papua, Indonesia.  
Photo source: str/European Pressphoto Agency*



## RISK OF CORRUPTION AND POLITIC, SOCIAL & ECONOMIC CONTEXT OF MINING INDUSTRY IN INDONESIA

### A. Poor Monitoring, Patronage, and Centralisation

**T**he previous TII research using MACRA methodology shows that many contextual risk are related to the decentralisation process in the mining license (TII, 2017). It was stated that the decentralisation of authority together with the poor fiscal and institution capacity, and the cost of electoral politic in Indonesia are the contextual risk of corruption in the mining sector. For example, decentralisation encourage local government to put more effort in increasing the local income by sacrificing its accountability (Kis-Katos dkk, 2017). In the context of mining, efforts in increasing local income is easily translated as releasing as many IUP as possible, that eventually make local government losing in capability to monitor and control. Facts on the limitation and poor monitoring was proved or showed by the lack of solving governance problems and law violation that happened in the mining sector. This creates impunity and widespread discretion in mining monitoring and control. For example, for many years the problems of overlapping area between mining areas and forest areas have not yet been resolved.

*Tumpang Pitu Gold Mine, Banyuwangi.  
Photo source: pmiisaintekws.org*



On the other side, weakened monitoring and general governance have been allegedly repeating caused by conflict of interest, clientele culture, and/or patronizing practices that all of them are very critical in Indonesia. The process of mining license issuance are very vulnerable to the practices of conflict of interests, since local officials are easily influenced by personal or political relation with mining company. This resulted to the issuance of License for companies that are not eligible or do not have the necessary social and environmental protection. "State" seems to be powerless, controlled by certain groups that are corrupt and serving in the best interest of themselves. Corruption cases of mining license that involves Nur Alam, the former governor of Southeast Sulawesi is an example of the overlapping interests, politician-business owner alliance, electoral politics, patronage, and mining License decentralization as a fertile ground for corruption (Warburton, 2014).

As if to solve these problems, the 2020 Mining Law highlights one of the important revisions is on the centralization of the mining Licenses. The revision stated that all mining Licenses will be issued by the National Government, not provincial or local government. However, the national government eventually will be able to delegate its authority to the local government. <sup>[1]</sup> Recentralisation is normally considered to strengthen the mining governance, by limiting the potential of corruption and interest seeking at the local level. However, it's important to note that centralisation means bringing back a significant burden of mining governance back to the national government, including its monitoring function. At this point where other problems arise. Based on the interviews that were conducted in three research locations shows that the poor monitoring after the Job Creation Law is followed by the decreasing public participation in decision making process. There is almost no space for public participation to express objections to any mining regulation or policy issued by the national government.

Besides that, the shifting of License issuance authority to central does not necessarily solve the problem of conflict of interest. Strong relationship between government, politician, mining industry business owner – even sometimes overlapping, not only happens in local politics. Investigative study conducted by civil society coalition shows that there are 18 profiles from legislative and executive that are involved in the drafting of 2020 Job Creation law that also have interest in mining and gross energy business (Bersihkan Indonesia, 2020). Even one of them, Mardani Maming, one of the local elite in South Kalimantan, was proven guilty of mining corruption when he served as Regent of Tanah Bumbu (Tempo, 2023).

The high dependency of business owner on government regulation and License is closely related to politic and politician, pushing further the significant indicator of conflict of interest in mining governance structure in Indonesia. Mining industry owner also realized that companies with License are dominated by corporation that has good relationship and closeness to power and authority holder in politic and government (Saure(ed.), 2020). The expensive cost of politic made politician trying to find ways to subsidize their politic cost that they spent for campaign and election. Mining industry owner realize that by giving donatin to politician, they will receive a reward through Licenses issued by politician that elected in executive or legislative seat (Aspinall & Berenschot, 2019).

In broader political space, the public also raised questions on the accountability of national legislation to 2019 KPK Law revision. The Corruption Eradication Committee (KPK) is an institution in Indonesia that plays important roles within the mining sector both as law enforcement for the head of local government and providing research as guidance to improve mining governance. This study also mentioned the weakening of KPK political position and legal standing after the 2019 KPK Law revision. Among them is the losing independence of KPK that led to the loss of public faith in the corruption eradication agenda and progress in Indonesia. Despite the harsh criticism from many layers of civil society in Indonesia due to the portrayal of the law in weakening KPK power and independence, in 2019 the government ratifies the KPK law revision (ICW,2022).



*Nickel mine in Southeast Sulawesi, Indonesia  
(Image Source: Ian Morsevia via: chinadialogue.net)*

## **B. Contribution of Mining industry to National Income and Illegal Interest from Mining industry**

Indonesia is home to the biggest nickel, coal, gold, and other significant minerals in the world. The mining industry in this country was pushed by large demands from other developing country markets that has pushed investment and growth in the mining sector. Mining sector is an important contributor to Indonesia's economy, around 9% from PBD and has employed more than 95 thousand people (BPS, 2022). In the LKPP record that was analysed by Fitra in 2020, PNPB of mineral and coal reached 34 trillion rupiah (Fitra and PWYP, 2021). This big economic potential of the mining industry in Indonesia has encouraged foreign investment in a significant amount that is being welcomed by the government by simplifying the License issuance process and offering tax incentives for mining companies.

The problem is the investments that are being facilitated by many privileges were not resulting in any benefit to the public. Not to mention that many mining activities run illegally. JATAM East Borneo record shows that at least 168 points of mining activity are illegal in East Kalimantan between 2018-2022 (JATAM, 2022). Ministry of Energy and Mineral Resources mentioned that in 2023, it was found at least more than two thousand illegal mines, that will produce illegal economic circulation (ESDM, 2022). Publish What You Pay Indonesia has recorded that illicit financial flow from the mining sector at least reach 23,9 trillion rupiah (Saputra dkk, 2015). The newest data of nickel trade balance difference between Indonesia and China shows the significant gap of 5 million tons (Kompas, 2023).

For civil society, the existence of illegal or legal mining is not much different when the principles of protecting the environment and public participation that are supposed to be a provision for the mining industry are often violated. These violations resulted in social burden due to its impact on the public's productive land and land grabbing. Many cases were found where these social burdens were not able to be claimed as a financial loss and avoid accountability. On the contrary, the mining industry owner often received large benefits, without having to pay or internalize the social burden cost. Research shows that the success of reclamation of post mining in forest areas only reaches 4% from all License locations in East Kalimantan (Subarudi dkk, 2018).

To reduce the public burden on environmental damage caused by mining industry, 2020 Mining Law also regulates offense regarding compliance with obligations to protect the environment in mining industries through post-mining reclamation and reclamation guarantee fund allocation. According to Article 161 B any business actor that does not carry out reclamation activity to manage environment damage will be punishable by law. However, similar to other offenses in this Law, this article relies on the administrative compliance of business actors. Hence, the control over the crimes will rely on the government capacity to monitor mining industry administration.

Even with many benefits offered or with the high economic value of mining, the biggest cost that missed to be counted is the heavy public burden that will subsidize the impact of mining industry in the form of environmental damage and violation of rights. Burden subsidy, negative externality, and facility from the states to mining industry actors are generally diversifying the real benefit that the public should enjoy to interest seekers. Instead of evaluating the burden-benefit of the mining regulation, new regulations keep emerging and provide new benefits and facilities to mining industry actors. For example, the 2020 Job Creation Law is providing fiscal incentive for mining business actors that develop down streaming.

With the high trade balance difference, this space for illegal interest becomes an incentive for apparatus to be involved in interest seeking (Saleh and Perdana, 2019). At the end of 2022, former chief of Samarinda Police Resort, Ismail Bolong, in a confession video mentioned that he had sent an amount of money from illegal mining activity to chiefs in the police force (Kompas, 2022). Newest data from Centre for Financial Transaction Report and Analysis (PPATK) confirmed these several illegal financial flows and stated that these flows were from illegal mining, logging, and fishing that estimated to cost trillions of rupiah (PPATK, 2023).

Even Though it was denied, several research shows that these illegal funds also pay for national and local elections. One of the previous research findings mentioned that mining companies do not hesitate in paying survey agencies and consultants to find politicians with high electability (Warburton, 2016). Another phenomenon that emerged from this situation is to differentiate a profile of a business actor from a public official. From the owners' profile it was easy to find many mining industry actors that eventually have "part time jobs" as public officials and vice versa (Bersihkan Indonesia, 2020). Including, Ismail Bolong, former Chief of Samarinda Police Resort that confessed of depositing funds to chiefs of police forces, until now still recorded as the majority shareholders of mining company PT Anugera Kemilau Indonesia that acquired a Mining License in 2021. [\[1\]](#)

One of the biggest public attentions from the 2020 Mining Law is the norm on License extension guarantee for the expired contract holder. This provision drastically changed mining politic regulation that previously regulated adjustment for mining industry after contract expires (ICW, 2022). Specifically, this law (see Article 169 A) also regulates the Minister's authority, in this case Minister of Energy and Mineral Resources to determine the area and national income that will become the contract holder's contribution. In East Kalimantan, it seems that this provision has been implemented to PT Kideco Jaya Agung owned by Agus Lasmono Swudikatmono and PT Multi Harapan Utama owned by Yoga Susilo, where both acquired their Special Mining License (IUPK) once their contract expires in 2020.

### C. Social Burden of Mining industry for Society and Shrinking Space for Public Participation

Immediately after the revision of the 2020 Mineral and Coal Mining Law was issued, civil society filed a judicial review of the law at the Constitutional Court. Some civil society coalition argues that this revision consists of unconstitutional norms and will negatively impact the environment, local community, and indigenous group. One of the main issues raised in the judicial review is the centralisation of mining License, that based on the principle can lead to poor transparency and accountability in the License issuance process. Poor transparency and accountability among them are caused by the burden is doubling down to the society impacted by mining industry that lived far away from where decisions were made.

This concern is valid since the ratification of the 2020 Mining Law revision is accompanied by the legalization of 2020 Job Creation Law with the justification of business License privilege that will weaken civil society's role in maintaining governance accountability (Sembiring dkk, 2020). Among them is by deleting several criterias related to society scope in the analysis of environmental impact on business activity. Besides that, the electronic License issuance process is not accompanied by strengthening transparency on the information of decision making. The currently running Online Single Submission System does not provide information and channels for the public to provide input on the decision made related to the mining License policy. It is important to note that nevertheless, the Ministry of Energy and Mineral Resources has open information on mining industry actors through Mining One Map Indonesia (MOMI) tool and Mining One Data Indonesia (MODI) that are publicly available.

This research underlines the critical situation of public awareness in the decision-making process in the mining industry. For example, the License police transitions are often used by apparatus as a loophole in issuing License or upgrading the licensing status that usually will be facilitated. The research result from PSA IPB and UNTAD State Administration Program explained that implementing policy without public monitoring is highly vulnerable to cause high social burden such as conflict and environmental damage. Taking an example from the case of Governor of Central Sulawesi that issued Operational Production IUP of PT Trio Kencana on 28 August 2020, that impacted to the water sources turbidity for farmer that resulted in crop failures in the region. Public protest was ignored for years and caused conflict to erupt in the sub-district of South Tinombo in Parigi Moutung Regency.

Various policies keep shrinking public participation space to test the License licensing accountability and protecting public rights to the environment. Somehow, mining rejects are often considered as a problem for the government. Instead of protecting people's rights, activist and civil society that voiced their rejection towards mining projects or other environmental threats are often faced with intimidation, threats, violence, and even arrest. Tirta (2022) records at least 20 people are threatened to be criminalized between 2020 – 2022, three of them have entered trial stage. Many civil societies are criminalized with various laws, not only by article “obstruct mining industry”, but includes articles on communism, disorderly conduct, and even defamation. Nevertheless, during interviews with experts, these articles are somehow less popular to be used than other articles found in different laws and regulations.

Criminal act on “obstructing mining industry” regulated on Article 169 of 2009 mining law and maintained in the 2020 version is repeatedly used to criminalize the mining rejection activities. Mining rejection both by public and civil society organization are often seen as a threat to economic development. Meanwhile, the Law that was ratified in 2009 accompanied by the Law Number 32/2009 on Protection and Management of Environment and Biodiversity regulates a specific article that guarantees legal protection for people and effort to protect a healthy environment. As if not caring about the impact of criminalizing civil society, the Work Committee Chief of the Draft of Mining Law welcomed civil society to submit a constitutional test on the Draft of Mining Law.

One of the most recent criminalisation cases on mining rejection happened to Wasrin Peantok, resident of Bosanyo Bunta, Banggai Regency, Central Sulawesi. After rejecting mining activity of PT Koninis Fajar Mineral and PT Aneka Nusantara International in his village, Peantok is named as suspect and arrested by Banggai Police Resort using Article 162 of 2020 Mining Law. During the demonstration Wasrin demanded that payment for the land acquisition be made immediately (Metro Sulteng, 2022). Instead of providing a platform to facilitate civil society concern, state apparatus chose to criminalize their people using many “rubber” laws. TI Indonesia MACRA research previously has recommended that the Ministry of Energy and Mineral Resources provide a reporting platform for civil society (TII, 2017).

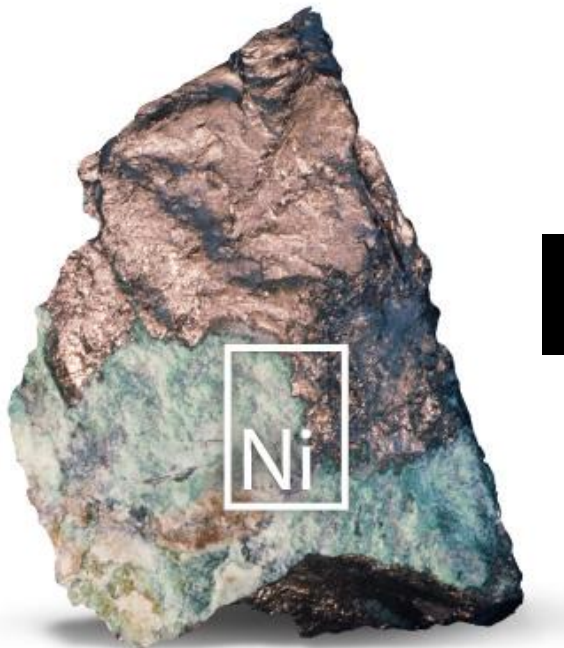


*Photo Source : pxhere.com*

## CORRUPTION RISK IN VULNERABILITY & GAP IN THE GOVERNANCE OF MINING LICENSE

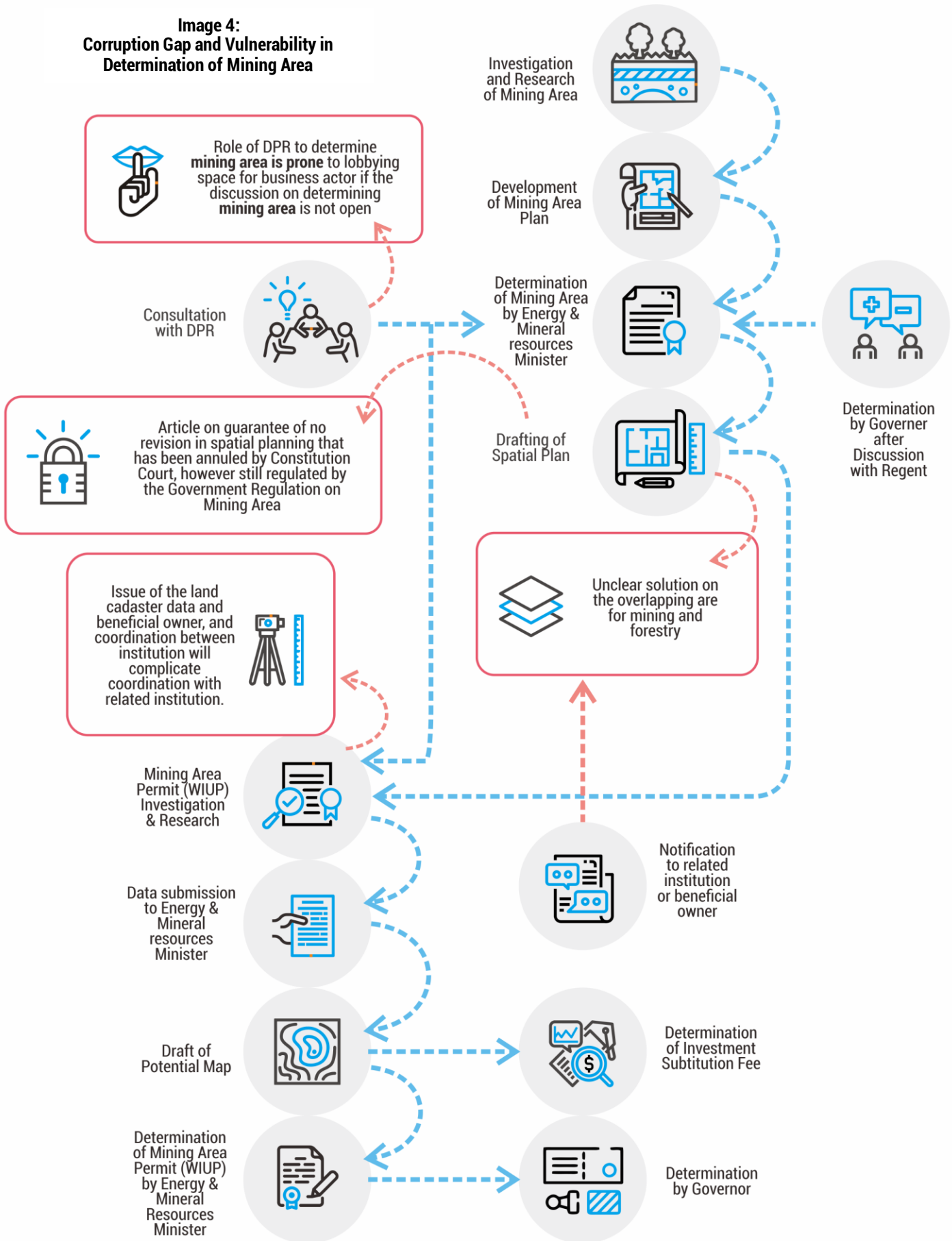
### A. Determination of Mining Area

All procedures related to the determination of mining Area is currently regulated in the newly published law of Government Regulation Number 25/2024 on Mining Area. Mining area determination to become Mining License Area (WIUP) and will be auctioned begins with research and investigation activity that can be delegated to both private and state-owned research institution and/or company. The determination of the mining area is important since not only this will become the basis of License parcel, but also as consideration in developing the spatial planning in the region. Hence, in every decision of determination, the Governor and Regent/Mayor must be involved in determining WUP and WIUP.



*Nickel Ore.*  
*Photo Source : millops.community.uaf.edu*

**Image 4:**  
**Corruption Gap and Vulnerability in**  
**Determination of Mining Area**



2023 Government Regulation (PP) on Mining Area specifically also regulates the importance of WIUP monitoring and investigation to discuss the preparation plan to related institutions, for example if the location is inside forest area to discuss with forestry department, or with the land rights holder. MACRA research mentioned that this is not an easy thing to do considering the lack of land cadastre management and poor coordination on national level. Both problems caused challenges in the verification process for status, rights, and limitation (TII, 2017). Upon looking into those conditions, this research does not see significant changes since the previous research, however various initiatives to improve mapping and data systems on a national scale have been implemented. In 2021, Coordinating Ministry of Economic Affairs published mapping information that recorded the overlapping use of space that mismatch with the mining License in 5,2 million acres of forest area. From that number, 4,2 million acres potentially problematic due to lack of Rent License or the company name in the License did not match (Coordinating Ministry of Economic Affairs, 2021).

The regulation on 2023 Government Regulation on Mining Area does not provide detail in explaining the procedure in determining WUP and WIUP or the follow up delegation process. For example, the regulation does not explain the issue of potential overlapping determination of land use for mining or forest area, and with other areas. In this case, the situation that happened in Mulawarman Village and Parigi Muotong, Central Sulawesi, shows the overlapping use of land between mining area and food land area. The research from PSA IPB and UNTAD State Administration Department shows that there are 15,725 acres of IUP Operating Production land of PT Trio Kencana that overlaps with 2,167 acres of rice field. Although the rice field was acknowledged as food sustainability land (LP2B).

Not only in relation to function but also the economic value, since the license to use requires interest for the forest area usage by the mining industry. This study could not find actual sample from the research area, however during the discussion with local institution in different provinces, this issue is often mentioned as a challenge for business actor to do mining industry in the determined area. This issue is used as a justification for mining industry actors not submitting RKAB approval.

Another issue that was found is the regulation of guarantee in not changing spatial planning after the determination of the mining area can become a problem if the space determination needed in the province is no longer possible to accommodate mining activity. Despite the aim of this regulation on guarantee is to provide business assurance, it creates problem and removing local government authority in deciding their spatial allocation. In the lawsuit to the Constitutional Court, articles that carry the basis of this spatial planning guarantee have been declared unconstitutional in verdict No 37/PUU-XIX/2021. Panel of judges in its verdict also mentioned related to the Applicant's argument that questioning the constitutionality of norm in Article 172B point (2) Law no. 3/2020 that determine the guarantee of not changing spatial use on WIUP, WIUPK, or WPR that has been granted License as it's eliminating periodic observation aspect as mentioned in Spatial Planning Law, and not in line with the fulfillment of substantive aspect in the rights to healthy environment. This verdict seems to be taken for granted, hence the government still issued Government Regulation on Mining Area that has the similar substantive from 2020 Mining Law before Constitutional Court's review.

The previous MACRA research also found 2023 Government Regulation on Mining Area regulates House of Representative (DPR) in determining mining area. The research portrays the risk of corruption by giving an example of influential trade practices carried out by members of DPR to ensure the areas submitted by applicants are included in the determined area. Considering the mining information is dominated by business actors, the negotiation and decision-making process will be likely in favor of business actor interests (TII, 2017).

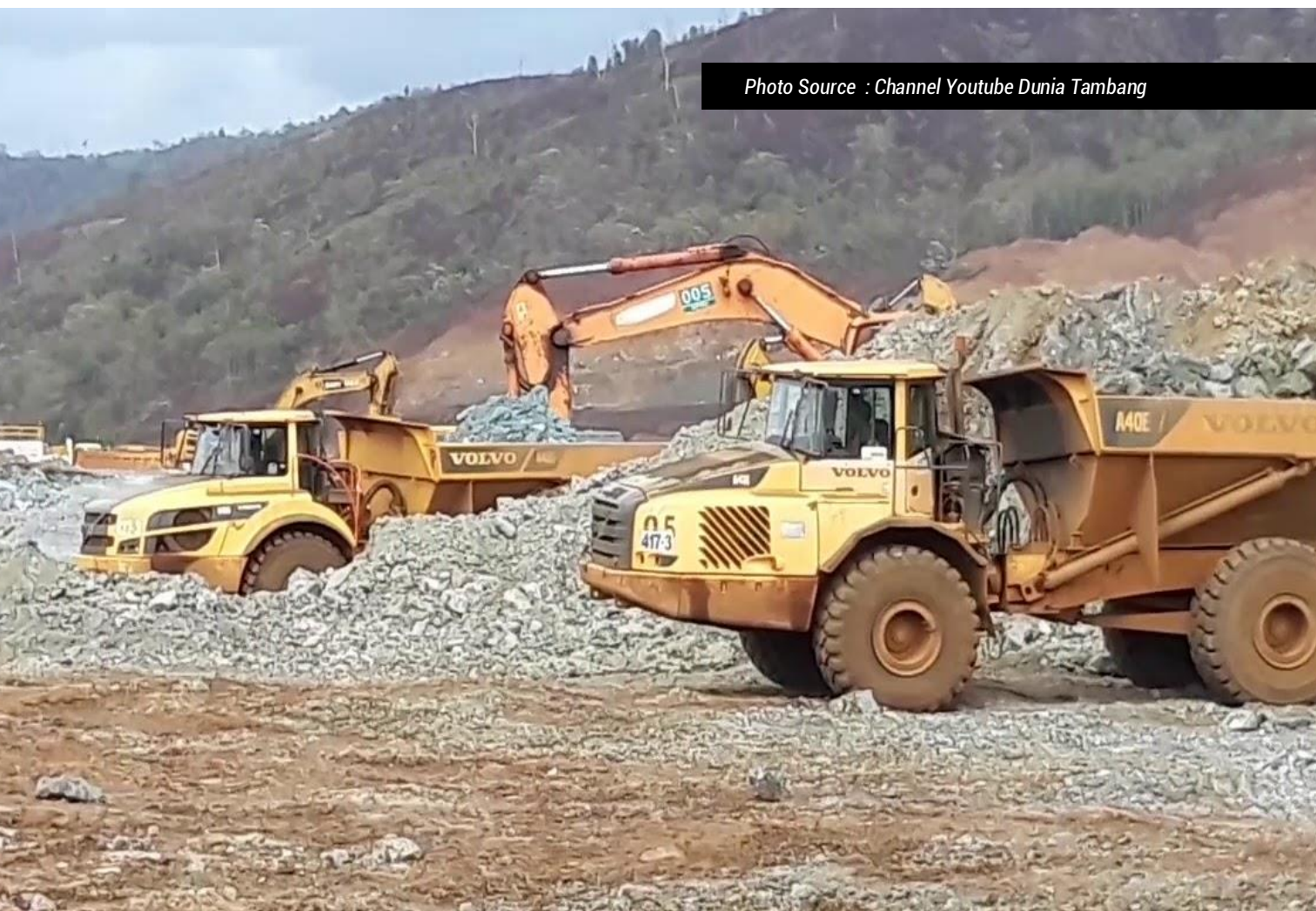


Trucks carrying coal in the mining area of PT Adaro Indonesia in Tabalong, South Kalimantan.  
Photo Source: Antara

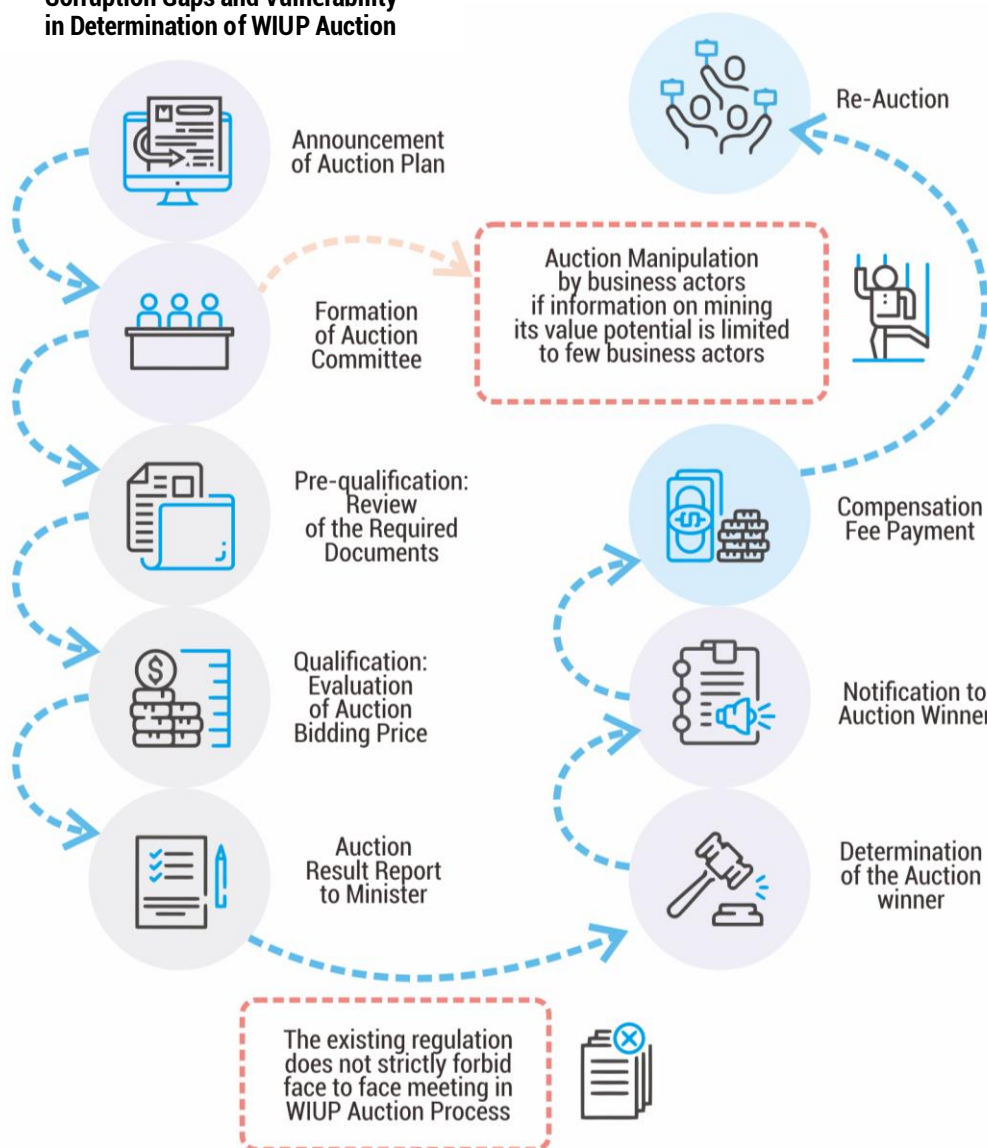
## B. Issuance of Mining License

**A**s regulated by 2021 Government Regulation on Mining License, IUP can only be issued to the rights owner of WIUP auctioned. The auction of WIUP is carried out to provide opportunities for business actors that are not directly involved in the preliminary study and investigation by paying a compensation fee to the government. The overall process, after the 2020 Mining Law, is carried out and becomes the authority of the Ministry of Energy and Mineral Resources. Similar to the previous WIUP flow, the Government Regulation on Mining License also regulates the auction process in two stages; the pre-qualification where the assessment carried on the technical requirement that shows credibility and capacity of business owner in mining sector and the qualification stage where the negotiation of the bidding price is valued. After receiving the WIUP rights, the winning bidder must pay the compensation based on their bid within 7 working days after the announcement.

*Photo Source : Channel Youtube Dunia Tambang*

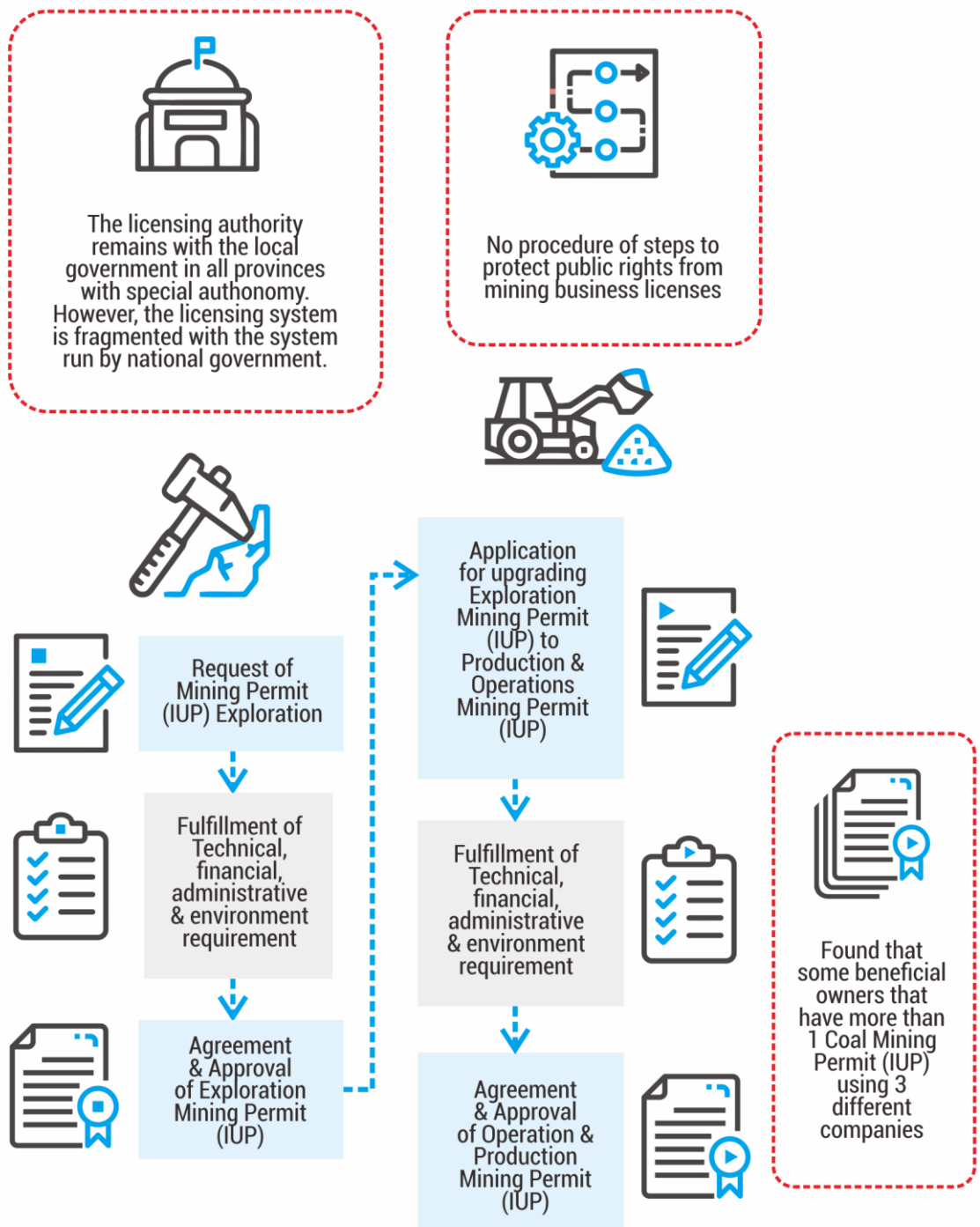


**Image 5.**  
**Corruption Gaps and Vulnerability**  
**in Determination of WIUP Auction**



This research could not find the auction process practices after the 2020 Mining Law is implemented due to the current administration process in the mining sector being in a moratorium stage. However, referring to the previous MACRA research, two problems still likely to happen such as the risk of corruption from auction manipulation and face to face process, both are still relevant to be discussed (TII, 2017). Although the majority of the licensing process is electronic based, regulations such as 2021 Government Regulation on Mining does not explicitly regulate the auction procedure, and one of them is to reduce the intensity of face to face process. Face to face process seems inevitable in some cases including during the field survey stage in the auction qualification process.

**Image 6. Corruption gap and vulnerability in the issuance of mining licenses**



IUP requests must be submitted immediately by the auction winner within 10 working days. If within that timeframe and the winner has not applied, it is assumed that they have withdrawn and the 10% fund from the total amount of the compensation agreed as guarantee fund will be kept by the state and will be considered as state's income instead of tax. The winner withdrawal can cause re-auction if the second in line of the bidder does not agree with the previous compensation fee. There's no clear explanation if the review of financial, administration, and technical requirements also needs certain verification that requires a meeting with a business actor. Despite regulating the IUP request timeframe, there is no regulation on the timeframe of the licensing issuance itself. The standard service in 2021 Ministry Regulation on Energy and Mineral Resources Business Standard only mentioned that all requirements must be completed in 30 working days. In many cases, the ambiguity of decision-making criteria and the standard service time have created opportunities for the risk of corruption.

There are other regulations that are relevant to be discussed related to the limitation of IUP ownership. This regulation was mentioned in the 2020 Mining Law although not in the 2021 Government Regulation on Mining, where it stated that private entities can only hold 1 IUP of metal mineral and coal commodity. The search on MOMI and MODI data found that beneficial owner control 3 companies with 3 IUP for coal commodities in East Kalimantan. Similar situation was found in Aceh province (See Table 3). The norm stated in 2020 Mining Law itself was not regulated based on the company controller, but to the company as an entity. However, if the goal of the limitation is to open opportunity to different business actor to do a mining industry, then it's proven that this regulation is easily manipulated.



*Coal mining hole in East Kalimantan since 2011 until now has killed 24 children. East Kalimantan also declares itself as Province of Green Development. Is it possible?  
Photo Source: Jatam*

**Table 3. List of Mineral and Coal Mining Licenses in East Kalimantan and Southeast Sulawesi issued between 2020-2022**

Date	Year	Commodity	Activity	Beneficiary
<b>PT Sarana Sandmas Jaya Sakti</b>				
1137/1/IUP/PMDN/2022	2022	Coal	Operational Production	Daeng Sandrang
<b>PT Jaya Mineral</b>				
1135/1/IUP/PMDN/2022	2022	Coal	Operational Production	1) Karimah, 2) Lukman Hakim
<b>PT Tambang Mulia</b>				
1052/1/IUP/PMDN/2022	2022	Coal	Operational Production	1) Karimah, 2) Lukman Hakim
<b>PT Soko Joyo Makmur</b>				
1040/1/IUP/PMDN/2022	2022	Coal	Operational Production	Widianta
<b>PT Alam Surya</b>				
949/1/IUP/PMDN/2022	2022	Coal	Operational Production	Syahrani
<b>PT Bumi Muller Kalteng</b>				
940/1/IUP/PMDN/2022	2022	Coal	Operational Production	1) Karimah, 2) Lukman Hakim
<b>PT Manyoi Mandiri</b>				
25/1/IUP/PMDN/2023	2023	Nickel	Operational Production	Amirullah Abbas

After the enactment of 2020 Job Creation Law and 2020 Government Regulation on Risk Based Licensing, all mining industry license procedures were moved to an electronic based process that was managed by the Ministry of Investment/ One-Stop Integrated Investment and Licensing Coordinating Board. In that system all process of review request and license issuance are carried out electronically. However, especially for Aceh Province, this research found that IUP issuance are still carried out by local government. With the special autonomy, even though Mining Law eradicates the attributive authority to local government, the One Stop Integrated Investment and Licensing Coordinating Board in Aceh province found at least 10 mining licenses after the revision of Mining Law. Among these licenses, the license issued for former Aceh Governor, Abdullah Puteh, that was caught in corruption cases was found. During the FGD, members of civil society and house of representative also questioned the criteria in issuing those permits and the profile of business actor that considered has no credibility to carry out mining industry. After being reviewed, all that mining data is not registered in MODI.


The 2020 Mining Law, and its implementing law such as the 2021 Government Regulation on Mining License, also does not regulate the harmonization of mining governance in regard to special autonomy region that carry out their own license issuance.

**Table 4. List of Mining industry Issued in Aceh in 2022**

Decision	Date	Comodity	Activity	Beneficiary
<b>PT Tambang Alam Bersaudara</b>				
545/DPMPTSP/1376/IUP-EKS./2022 540/175/KDESDM/2022	16 June 2022	iron	Exploration	Mulyadi
<b>PT Rindang Jaya Resources</b>				
545/DPMPTSP/1124/IUP-EKS./2022 540/148/KDESDM.2022	11 May 2022	Iron ore	Exploration	Saipul Bahri
<b>PT Mineral Agam Prima</b>				
545/DPMPTSP/1908/IUP-EKS./2022 540/261/KDESDM/2022	8 September 2022	Iron Ore	Exploration	G. Slamet Riadi
<b>PT Pegasus Mineral Nusantara</b>				
540/DPMPTSP/664/IUP-EKS./2022 540/088/KDESDM/2022	17 March 2022	Gold	Exploration	Benjamin Johan Oktavianus
<b>PT Draba Mineral Internasional</b>				
545/DPMPTSP/1377/IUP-EKS./2022 540/185/KDESDM/2022	15 June 2022	Gold	Exploration	Coki Yudhistira
<b>PT Selatan Aceh Emas</b>				
545/DPMPTSP/1957/IUP-EKS./2022 540/253/KDESDM/2022	15 September 2022	Gold	Exploration	1. HJ. Latifah Hanum 2. IR. H. Abdullah Puteh
<b>PT Longsunindo Perkasa</b>				
545/DPMPTSP/1732/IUP-EKS./2022 540/232/KDESDM/2022	15 August 2022	Coal	Exploration	Chang Jui Fang
<b>PT Mas Putih Aneka Tambang</b>				
545/DPMPTSP/1580/IUP-EKS./2022 540/212/KDESDM/2022	13 July 2022	Coal	Exploration	Chang Jui Fang
<b>PT Sarana Graha Metropolitan</b>				
545/DPMPTSP/1544/IUP-EKS./2022 540/213/KDESDM/2022	6 July 2022	Coal	Exploration	Yang Chih Hua

Some profiles that were found in this research are supporting many other research that have been conducted on many influential public officials and politicians or politically exposed person (PEP) are involved in mining industry (ICW,2022). In fact, although regulation on collecting information of beneficiaries and prevention of conflict of interest exist (regulated in the Ministry of Energy, Mineral Resources Regulation No 46/2016), the information and procedures do not seem in line with the effort in maintaining the integrity of the license issuance process. For example, the regulation on auction committees, how to interact with PEP and not specifically become part of realistic bureaucracy in licensing. Besides, there are various other substantive weakness that led to the ineffectiveness in mitigating the risk in becoming a real corruption problem, such as no regulation of cooling-off period for retired government officials or private company that will be recruited by Ministry of Energy and Mineral Resources (ICW and TII, 2023).

Beside dealing with the conflict of interest, other important efforts that can be made by the Ministry of Energy and Mineral Resources to improve the integrity of mining sector governance is by rejecting the mining industry dominated or controlled by actors that have been convicted of corruption, especially mining corruption. The Ministry of Energy and Mineral Resources can take the example from the Ministry of State-Owned Enterprises that rejects former corruption convicts to hold senior positions in state-owned enterprises. Ministry of State-Owned Enterprises regulate requirements for prospective commissioners of state-owned enterprise subsidiaries under the Ministry of State-Owned Enterprises Regulation Number Per-03/MBU/2012 on Guidelines for the Appointment of Members of the Board of Directors and Members of the Board of Commissioners of State-Owned Enterprise Subsidiaries, as revised by Ministry of State-Owned Enterprises Regulation Number PER-04/MBU/06/2020. In this research, researchers found that several license issuances on companies where the lead or executive have a history of corruption was often found. For example, PT Aceh Emas is owned and led by Abdullah Puteh in Aceh and PT Multi Harapan Utama in East Kalimantan that reported Emir Moeis, convicted of corruption in the electric steam power plant project auction case, as their commissioner.

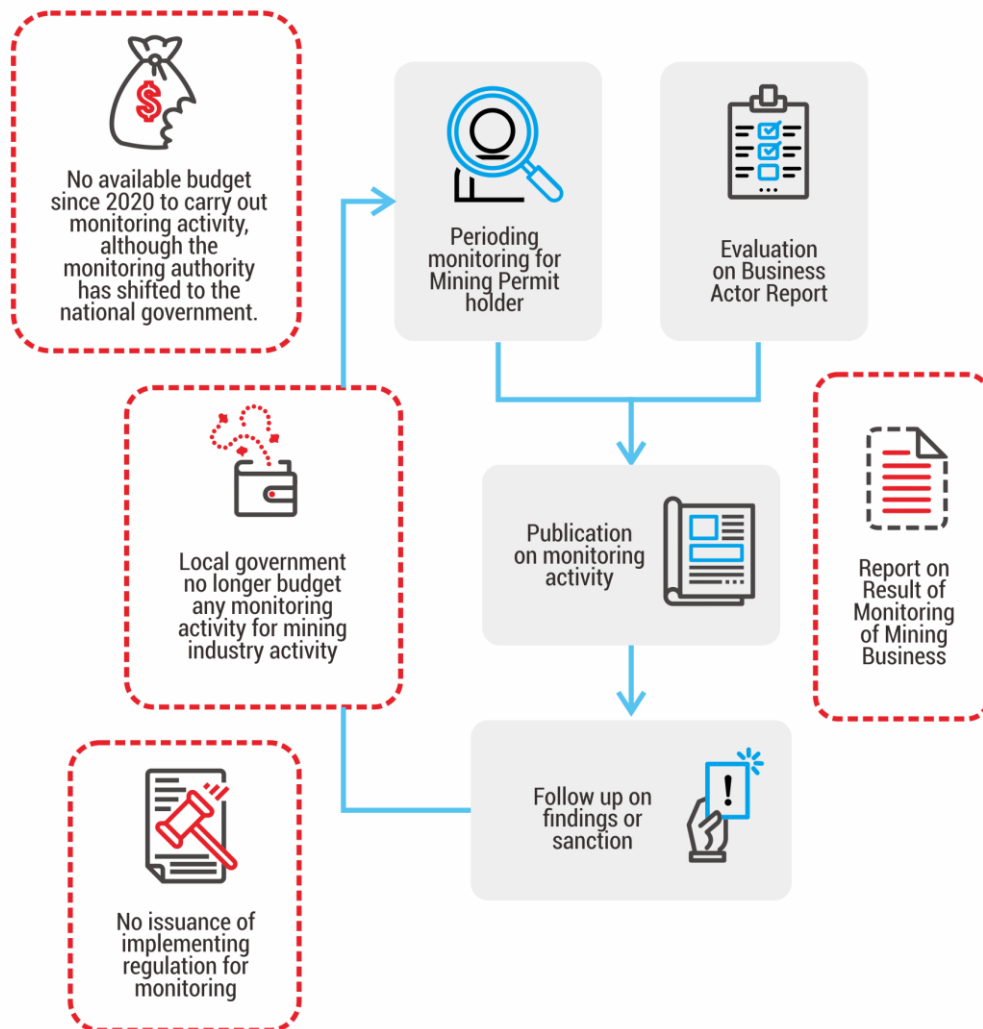


*Aerial image shows illegal gold mining digging sides in Sungai Mas Sub-district, West Aceh Regency, Aceh.  
Photo: Junaidi Hanafiah/ Mongabay Indonesia*

### C. Monitoring on Business Activity

The monitoring of mining industry activity is regulated under the 2021 Government Regulation on Mining License. This regulation stated that the enforcement and monitoring are carried out by the Minister, and can be delegated to the Governor representing the national government. The same regulation does not explain how the monitoring will be carried out, instead regulating several requirements for the IUP holder and administrative section if those requirements are violated. Several requirements, such as Budget and Work Plan (RKAB), will require administrative approval, and many others, related to environmental damage and community development.

**Image 7. Corruption Gap and Vulnerability in the Monitoring of Mining Activity**



Before the enactment of the regulation, the Ministry of Energy and Mineral Resources regulated monitoring of the mining sector under the Ministry of Energy and Mineral Resources Regulation Number 26/2018 on the Implementation of Good Mining Principal Monitoring of Mineral and Coal Mining. In this Ministry regulation, there are three contents that are regulated; a) Implementation of good mining principle; b) monitoring on mining industry management and operational procedure, and c) monitoring of mining industry activity. To carry out the monitoring on business activity and implementation of good mining principle, the 2018 Ministry of Energy and Mineral Resources Regulation on Monitoring gave power to the Mining Inspectorate to conduct administrative law enforcement action.

However, it is predicted that since the process of the 2020 Mining Law revision, there is no monitoring activity to business actors being carried out. The consideration is that until now the implementer regulation that regulates the monitoring of mining activity requested by Article 141A of 202 Mining Law is not available, meanwhile various provisions on monitoring have changed after the 2020 Mining Law. The failure of the supervisory function indicated by the budget allocated to the mineral and coal mining monitoring by the Ministry of Energy and Mineral Resources. In the 2023 Budget and Work Plan Document and the previous year since 2020 published by the Ministry of Energy and Mineral Resources, not even one budget unit allocated for monitoring activity in the General Directorate of Mining and Coal.<sup>2</sup> Different from other directorates that allocated budget to conduct monitoring activity. Hence, until this research is completed, researchers believe there won't be any report of monitoring that will be easily available for the public.

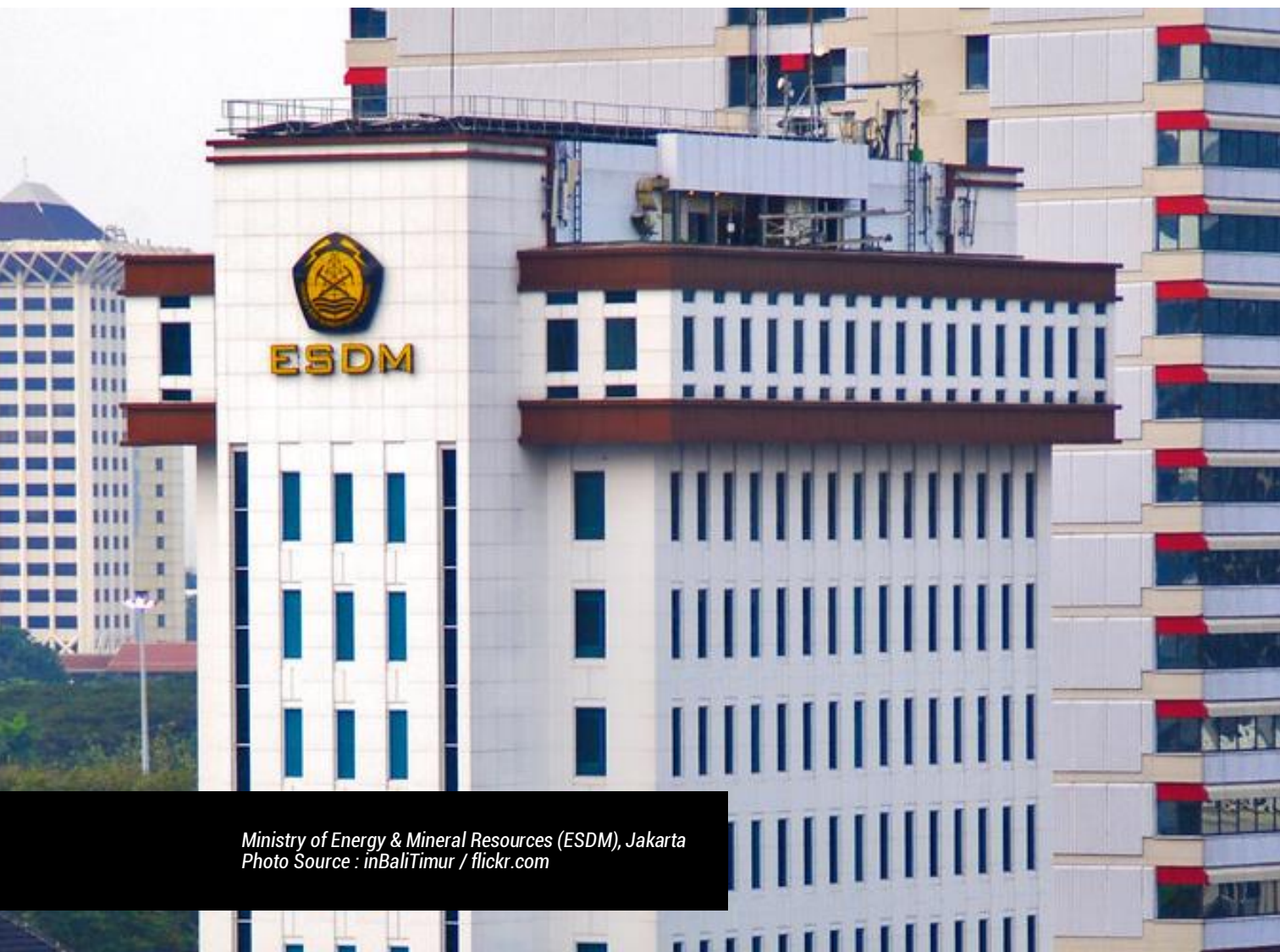
The violation of the obligation became a normal finding when monitoring has failed. More than that, the praxis monitoring issue will also face institutional challenges that will be carried out by the Ministry of Energy and Mineral Resources during recentralisation. For example, various administrative problems revealed after the centralization of the authority for the RKAB issuance under the national government. In recent cases, RKAB belongs to PT Batuah Energi Prima is problematic, even though it is known for violating several obligations or markets such as domestic market obligation, they are still approved by an official in the Ministry of Energy and Mineral Resources. This approval was carried out by Implementing General Director of Mineral, Energy and Coal at that moment, Idris Sihite, and received criticism from the House of Representatives.

If the condition in the Ministry of Energy and Mineral Resources is not immediately fix or start to carry out their monitoring function, the potential of violation and problems in the mining governance will keep getting worse, considering since the enactment of 2020 Mining Law, local government have lost their authority to conduct monitoring and enforcement function to business actor. This issue was also revealed in the discussion with several stakeholders in Kendari that was conducted by researchers on 6 April 2023, that the Provincial government did not allocate any budget for mining governance practically since 2020. It means that in the past 3 years, thousands of mining industries have run without any monitoring. Hence, it is not surprising that the KPK current findings mentioned a big gap in the nickel trade report to China (Kompas,2023).

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<sup>2</sup> Accessed via <https://www.esdm.go.id/id/publikasi/rka-dan-dipa>.

In addition, as discussed before, until now there is no mechanism in receiving public reports and complaints related to mining companies, despite the existing regulations stating that one of the sources of decision maker in mining suspension related to environmental damage is report from civil society. Various available information system such as MOMI, MODI, MVP, MOMS, Lapor, Whistleblowing need to be appreciated for providing important information, however they don't provide many functions to the impacted community to test the license issuance accountability or the performance of the license in the fulfilment of the good mining principle. This condition and the contextual problems that were previously mentioned have reconfirmed the previous MACRA finding that stated the vulnerability of violation of PADIATAPA principle in the mining governance (TII, 2017).



*Ministry of Energy & Mineral Resources (ESDM), Jakarta  
Photo Source : inBaliTimur / flickr.com*

## PROFILE AND DISCUSSION OF RISK OF CORRUPTION IN MINING SECTOR

### A. Risk Profile

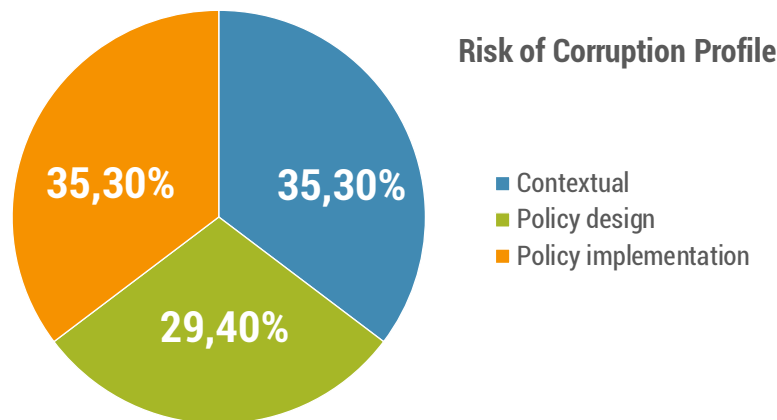
**B**efore explaining the result, it is important to mention early that the result of the risk profile can be more optimal if only all relevant stakeholders, including business owners provide their review. Although the researcher argues so, this review can still be acknowledged as a guide for government and relevant stakeholders to push for the effort in mitigating risk of corruption.

The reviewed risk profile shows political, economy, and social risk as the dominating contributor to the amount of risk in the mining governance. From 16 risks that were identified and confirmed, contextual risk contributed 6 risks (35%) where all have high indicators. The democracy character in Indonesia that is dominated by political patronage and the tight condition between business alliances and politicians caused the mining industry governance to be generally problematic. Economically, this is also affected by mining industry and business actor dependency to the policy and regulation that are occupied by interest hunting.

Source of image: rawpixel.com



**Image 8. 2023 Risk of Corruption Profile**

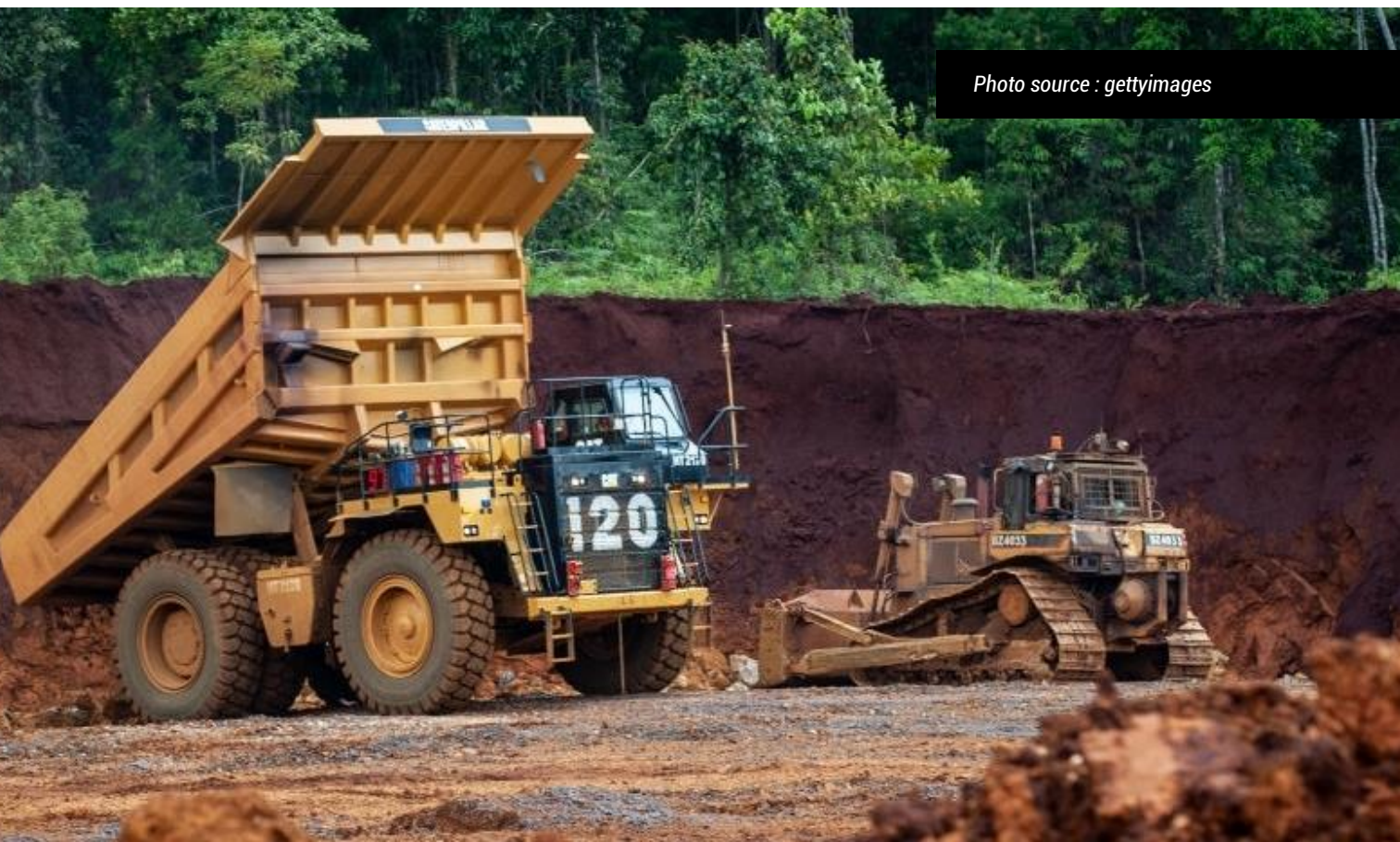


General public are often being put as an audience on the curb of the field in the policy cycle and extractive effort of natural resources in Indonesia that supposedly benefited to build public prosperity. In the confirmed discussion with expert resource persons, this risk is also seen as a significant factor in risk of corruption in mining policy in Indonesia. Corruption cases that were revealed showed the tendency of consolidation between elite politicians and business actors that have personal interest in the mining sector. This research agrees and underlines several findings that previously reviewed the importance of building political consensus in handling conflict of interest.

The other 10 risks that were identified in this research, related to the policy seems to be balance between risk caused by policy or law with risk caused by its implementation. This division might be irrelevant, considering the business process in the mining governance after the 2020 Mining Law is generally under the authority of the Ministry of Energy and Mineral Resources or the national government. The overall stages of policy making, implementation of governance including the issuance of license (although delegated to the Ministry of Investment/BPKM through OSS), and the monitoring of business activity are currently under the responsibility and authority of the National Government. It means, the Ministry of Energy and Mineral Resources will act as regulator, operator, and auditor at the same time. The burden of the layered function must require the National Government, in this case the Ministry of Energy and Mineral Resources to have a high standard of integrity and professional bureaucracy, to ensure that the objective of the organizing affairs in the mining sector as a bridge to public prosperity is achieved.

The additional burden also needs to be reconsidered by the government if they are serious in mitigating corruption in the mining governance. During the development of this report, the former General Director of Mineral, Energy, and Coal of the Ministry of Energy and Mineral Resources was named as suspect in a criminal act of corruption in abusing their power in the approval of the RKAB from PT Kabaena Kromit Pratama. The process of approval is allegedly problematic for violating the requirements of the approval, including the fact that PT Kabena no longer owns any nickel deposit in their business area license. This approval eventually became a way for several companies to carry mining activity in areas managed by PT Aneka Tambang. The suspicion of corruption was revealed based on the result of a limited meeting of the Directorate General of Mineral, Energy and Coal that concluded to simplify the approval review of RKAB of those companies.

If all of these were proven in court, the revealed cases and the 10 risks that were exposed in this study will strengthen the researcher's conclusion to underline several things that need to be strengthened by the Ministry of Energy and Mineral Resource in mitigating the opportunities and impact of corruption. These strengthening will include the reduction of authority under the Directorate General of Mineral, Energy and Coal and mitigation of conflict of interest. Furthermore, the openness of information through MOMI and MODI is necessary and urgent to be completed with a more effective regulation on conflict of interest and limitation of mining industry ownership to the convicted corruptors. Including one of the most crucial issues to build public accountability including a platform to receive and process company and reports as a guarantee to the integrity and accountability of the governance in the mining sector.



*Photo source : gettyimages*

*North Konawe Flood, allegedly caused by mining activity, seen from a Drone capture in early June 2019. Photo source: rightnewskendari.com*



B. List of Risks

Table 5. List of Risk of Corruption

Table remarks:

CF, PD, PP indicating the type of risk

Contextual Factors (CF) : Risk related to contextual factors

Process Design (PD) : Risk related to design/process in IUP issuance

Practice (PP) : Risk related to the practices in license issuance

PI, AK, PM, PU, MS indicating the reviewer

PI : Primary Researcher

AK : Academics

PM : Government

PU : Business Actor

MS : Civil Society=



Contextual Risk	Risk Findings	Reviewer	Probably (1-5)	Impact (1-5)	Amount	Color
CF01-PO						
Centralisation in licence issuance after the 2020 Mining law carries the burden of monitoring and control on mining industry activities. The capacity of KESDM in carry out the monitoring function is unsee, on the other hand, the pre-condition of monitoring function such as the number of supervisor apparatus and the institution is not available. The poor monitoring capacity can further create impunity to violation and discretion in the law enforcement.	In early 2022, the government revoked more than 2000 mining license. This condition seems to show that national government has the capacity to take control. However, upon a more detailed observation, the instrument of the review is limited to whether or not the company is actively carry out business activity by providing their annual work plan (RKAB). Meanwhile, the monitoring after 2020 Mining Law revision has not been reviewed.	PI	5,0	5,0	5,0	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	4,7	4,7	4,7	
		Total			4,9	

CF02-PO						
<p>Many decision makers within executive or legislative level have strong relationship with business actor and even themselves are business actor in mining sector. The situation where consolidation between politician and business actor that happen in mining sector can not only developed into risk of corruptive conflict of interest but also the neglect of public interest in policy that has greater impact. The regulation of ethich and conflict of interest in many situation are often not functioning in preventing the opportunity of corruption.</p>	<p>Several regulation show more facilitation, privilege, and even treatment in prioritizing business actor than public interest. While the 2020 Job Creation law provides fiscal incentive, the 2020 Mining Law provides a way out for contract holder to ensure their continous power over ther mining location. (ICW, 2022; Bersihkan Indonesia, 2020).</p>	PI	5,0	5,0	5,0	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	5,0	5,0	5,0	
		<b>Total</b>			<b>5,0</b>	
CF03-PO						
<p>The weakening of KPK independence as auxilaration institution after reformation continue to happen in the past 2 decades, the peak was marked by the revision of KPK law in 2019.</p> <p>The 2019 Revision of KPK Law positioned KPK as part of executive level, causing significantly stripping off KPK independence. This position put KPK in vulnerable situation that will easily be politically affected in carry out their mandate. ICW in 2022 record at least there are 3 substantial weakening, 1) hindering the law enforcement effort by inhibiting mechanism, 2) the existence of Advisory Board that will affect the practical function of law enforcement, 3) the collapse of KPK personnel.</p>	<p>After the weakening, many cases of big criminal corruption act were facing challenges. Besides Harun Masiku and Joko Tjandra, tax corruption case that involves PT Jhonlin Baratama lost its evidence during the confescation process.</p>	PI	5,0	4,0	4,5	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	4,0	4,4	4,1	
		<b>Total</b>			<b>4,5</b>	

CF04-EK						
<p>The crucial position of mining industry for state's economy put many privileges in policy implementation. This privilege often caused the ignorance and neglect of other public rights, for example environmental and social damage caused by mining industry.</p>	<p>After the 2020 mining Law, the disobedient towards the obligation of post-mining reclamation can be held criminally responsible, however diobedient towards forest area received impunity based on 2020 Job Creation Law.</p> <p>In practice the efforts to ensure the environmental restoration obligations post-mining activity does not receive a lot of success. One of the research mentioned that the implementation of post-mining reclamation in East Kalimantan only reach 4% of the total area that in critical condition (Sabarudin dkk, 2018).</p>	PI	4,0	4,0	4,0	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	4,7	4,7	4,7	
		<b>Total</b>			<b>4,6</b>	
CF05-EK						
<p>This Control and monitoring inability caused a big sapce for illegal economy that add more problem in law enforcement. The lack of accountability in monitoring of illegal mining companiy and its poor capacity, creating a big space for illegal interest that provide incentive for law enforcement to be involved in the interest hunting.</p>	<p>With high trade balance difference, the room for the illegal interest can create an incentive for apparatus to be involed in the interest hunting activities. Some anonymous interview even mentioned the involvement of appartus in illegal mining have been considered as a normal phenomenon. Recently PPATK mentioned that they found some of illegal fund (from illegal mining, logging, and arrest) have been directed to election. (PPATK, 2023).</p>	PI	5,0	5,0	5,0	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	4,0	4,0	4,0	
		<b>Total</b>			<b>4,7</b>	

CF06-S0						
<p>The continuously shrinking space for public participation caused by the 2020 Job Creation Law, while criminalisation articles continuously implemented to silence civil society and activist that questioning the accountability of mining license.</p> <p>Instead of protecting their rights, activist and public that voice their rejection or protest towards mining project or other environmental threat are often faced with intimidation, threat, violence, and even arrest.</p>	<p>Tirto Media (2022) recorded at least 20 civilants threatened to be criminalized in 2020 – 2022, three of them were arrested and awaiting trial. Some civilants are criminalized with various articles, not only "obstructing mining industry" but also article on communism, disorderly conduct, or even defamation.</p>	PI	4,0	5,0	4,5	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	4,0	4,0	4,0	
		<b>Total</b>			<b>4,5</b>	
Risk Gap and Vulnerability – Determination of Mining Area	Risk Finding	Reviewer	Probability (1-5)	Impact (1-5)	Amount	Color
PP07-WP						
<p>Incomplete information on land and cadaster, geological asymmetric information, and lack of coordination with other relevant sector that cause the overlapping with other land use and benefit related to the blocking of mining area and business.</p>	<p>At the end, the uncertainty of rights of cadaster and its allocation, causing business actor to carry independent negotiation on different policy and land control.</p> <p>Coordinating Ministro of Economy in 2021 released an information on mapping that record the overlapping of spatial use and mining license within 5,2 millions acres of forest, where 4.2 millions among them are potentially in dispute for not having a Borrowing Permit, or the company name does not match with the name on the license. (Kemenko Perekonomian, 2021).</p>	PI	5,0	3,0	4,0	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	3,0	4,0	3,5	
		<b>Total</b>			<b>4,2</b>	

PP08-WP						
The integration of mining industry area within the regional spatial planning is dominantly determined by KESDM. Although it has been contested in the Constitutional Court, the regulation that obligate "guarantee of integration" is still regulated in the derivative regulation.	This regulation limit wider public capacity to be involved in the local policy making process to contribute in reviewing the accountability in the policy to determine local mining area. Generally, this caused the negotiation process to determine mining are can not be reviewed by community that will receive direct impact of the mining activity.	PI	3,0	3,0	3,0	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	5,0	5,0	5,0	
		<b>Total</b>			<b>4,3</b>	
PP09-WP						
Another finding that was found in the previous MACRA research and still found in the the 2023 Government Regulation on Mining Area is related to the role of House of Representative in determining mining area. In the study, the sample of risk of corruption is the influence trading practices that carried out by members of house of representative to ensure that area recommended by business actors are included in the determined mining area. Considering the information on mining is dominated by business actor (TII, 2017), negoatiation and decision making process will most likely in favor of the best interest of the business actor.	There is no meaningful change related to the risk of role of House of Representative. The lack of information opennes in the discussion related to Mining Area or its minutes of meeting led to hypothetically high probability of risk.	PI	3,0	3,0	3,0	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	4,0	4,3	4,1	
		<b>Total</b>			<b>4,0</b>	

Risk Gap and Vulnerability – WIUP Auction and Mining industry License	Risk Findings	Reviewer	Probability (1-5)	Impact (1-5)	Amount	Color
PD10-IU						
Regulation related to WIUP auction and IUP approval tends to be without clear flow of procedure. Among them is several important steps in decision making and its criteria are not regulated in detail in the 2020 mining law. For example, field survey during qualification.	With various regulations related to license including on WIUP and IUP auction policy discretion, negotiation on decision making is still widely open, and opportunity to a face to face meeting. The electronic-based platform on license can't fully prevent the face to face meeting and the negotiation during the decision making process.	PI	5,0	3,0	4,0	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	4,0	4,0	4,0	
		<b>Total</b>			<b>4,3</b>	
PD11-IU						
A group of business action can form a coalition to control (among them) the winning bidder in an auction. This can be carry out by determining an offer that create opportunity for one of them to win, or by agreeing to not offering more bid to create a single bidder situatin. They will take turn to make one another a winner in other auction process.	This risk is mentioned in the previous MACRA study as a hypothetical risk that remain possible to happen.  However, this reasearch did not find the evidence for this risk to happened, and there is no certainty that there will be a new auction process for WIUP.	PI	4,0	3,0	3,5	
		AK	4,0	4,0	4,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	3,3	3,3	3,3	
		<b>Total</b>			<b>3,9</b>	

PD12-IU						
There is no clear regulation on license implementation by local government in relation to special autonomy. The implementation seems fragmented with policy and governance carried out by KESDM.	License issuance that implemented under the special autonomy framework is more vulnerable to corruption since there is no implementation of prerequisite governance condition developed and implemented by KESDM.	PI	4,0	4,0	4,0	
	This research found many IUP issued by DPMPSTSP Aceh, and civil society involved in this research questioned the decision making and the credibility of the license holder in carry out mining industry. Information about the new mining company was not available in the system managed by KESDM; MOMI and MODI.	AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	4,0	4,0	4,0	
		Total			4,3	
PP13-IU						
Although the regulation on beneficiary information collection and prevention on conflict of interest exist, the information and procedure did not seem to be connected to the effort in maintaining the integrity of the process of license issuance. For example, the regulation in forming auction committee, how to interact with PEP and not specifically become part of realistic bureaucracy in licensing (ICW and TII, 2023).	No strong evidence that the regulation created to strengthened the integrity of mining governance work effectively. The clash of ownership, for example, in WIUP action or through public official relation with PEP on the license decentralisation policy have become a normal phenomenon in plenty of corruption in mining sector.	PI	4,0	5,0	4,5	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	3,7	4,7	4,2	
		Total			4,6	

PP14-IU						
<p>Regulation on IUP ownership limitation to 1 ownership is easily manipulated by using different company name.</p> <p>If the objective of the limitation is to ensure more opportunity for more competent company in mining industry, this regulation is not enough to limit mining control in the hand of few people.</p> <p>Among them is because that it's not regulated as licensing requirements and there is no due diligence process in over limit ownership.</p>	<p>Ownership of minings good in the hand of one or few people will led to control over one specific comodity that will cause toxic climate of competition. In long term, monopoly of economy is vulnerable to or can cause policy and regulation hijacking in many spaces.</p>	PI	4,0	5,0	4,5	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	4,3	4,3	4,3	
		<b>Total</b>			<b>4,6</b>	
Risk Gap and Vulnerability - Monitoring	Risk Findings	Reviewer	Probability (1-5)	Dampak (1-5)	Jmlh	Warna
PD15-PS						
<p>Lack of precondition in implementing monitoring that caused lack of activity in mining monitoring after the 2020 Mining Law. There's no budget allocated to carry out monitoring in General Directorate of Mining and Coal.</p> <p>Ministry Regulation 26/2018 on Implementation of Good Mining Principle and Mineral and Coal Mining Monitoring has not been revised to adjust the change of monitoring aspect after the 2020 Mining Law.</p>	<p>The not functioning implementation of monitoring activity by mining supervisor and public accessibly to information on monitoring, although has given mandate by 2020 Mining Law. There is no budget allocation to carry out monitoring activity in the Directorate General of Mineral and Coal.</p> <p>This dysfunctionality of monitoring creates various impunity towards violation of obligation from mining company. No clear function of monitoring also has potential to cause discretion in the implementation. Newest data from KPK (2023) and PPATK (2023) indicates the rampant illegal distribution from mining industry activity.</p>	PI	5,0	5,0	5,0	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	4,0	4,3	4,2	
		<b>Total</b>			<b>4,7</b>	

PP16-PS						
<p>Service to provide public access to monitoring information is not functioning although other information is needed to carry out monitoring and has been mandated by 2020 Mining Law.</p> <p>Whereas report from civil society is a resource of information to carry out performance evaluation of mining industry</p>	<p>Public could not review the accountability of the implementation of monitoring activity, potentially adding fraud in mining industry. As explained in the previous research (TII, 2017), if public conduct an investigation and report their finding, their report are often ignored.</p>	PI	4,0	3,0	3,5	
		AK	5,0	5,0	5,0	
		PM	-	-	-	
		PU	-	-	-	
		MS	4,5	4,3	4,4	
		Total			4,3	



Protesters target Freeport mine and West Papuan self-determination on May Day, kicking off the month-long strike at Timika.

Photo Source : Johannes P. Christo / Tempo.co

Coal mining near Samarinda in East Kalimantan.  
Photo by Hong, S.K / jmic.online .



## CONCLUSION & RECOMMENDATION

**C**onsolidation, alliance, the overlapping interest between politicians and mining actors (patronage and clientele network) are found to be the highest rank in risk of corruption based on this research. In the case investigation in the three research locations it appears that his situation has led to the loss of capacity of the governance ecosystem to be held accountable and created a bias to separate public and private interest despite the fact that the mineral and coal that were extracted is public property. In this situation, researcher assume that any kind of effort in improving administration process that aims to provide more ease for business and certainty of licensing will not be able to reduce the risk of corruption created by the relation. Therefore, in addition to serious effort in reorganizing or updating the governance of mining permits, it is still important to think about a political and policy breakthrough to end the patronage and corrupt oligarchy network that gatekeeper the authority of the state.

Nevertheless, it does not mean that the effort in addressing these challenges within the legal framework, such as regulation clarity, service standard, access to information, and strengthening the harmonization of cadaster information, is not necessary to do. The result of this research aims to encourage the Indonesian government to take a more significant step in building a governance in the mining sector with integrity. Especially to expand the space for public accountability, one of them is by separating private and public interest with regulation on conflict of interest and strong law regime to prevent and seize interest that came from crucial illegal mining activity.

Government, including the Ministry of Energy and Mineral Resources, has taken the initial step to require business actors to report their beneficiaries. This research recommend the government to urgently strengthen these steps:

1. Indonesian government needs to build an effective public accountability framework in the governance of mining sector:
  - a. Conduct a revision to the 2020 Mining Law and remove criminalisation articles toward civil society, and to guarantee that public objection will lead to criminalisation.
  - b. Provide a reliable reporting mechanism to respond to public reports on environmental, social, and economic problems caused by mining industry activity.
  - c. Build transparent mechanisms and effective public participation in the mining industry, by providing adequate information to the general public for every new business request, through the available information channels.
  - d. Ensure the same criteria, standard, and information related to mining governance applied to local governments with special autonomy.
2. Ministry of Energy and Mineral Resource needs to strengthen the legal framework and integrity in the governance:
  - a. Add the integrity value in the good mining principle, for example by adopting blacklist system or rejecting convicted corrupt to be involved in mining industry activity.
  - b. Ensure all regulation and enforcement needed in determining mining area, permit, and monitoring are issued with decision making criteria and procedures that provide legal certainty.
  - c. Provide precondition and institutional capacity to carry out monitoring activity for thousands of mining industries with permit.
  - d. Conduct verification of reported beneficial owners.
  - e. Strengthen internal control system within the working environment of the Ministry of Energy and Mineral Resources.
3. Financial Audit Body and Extractive Industries Transparency Initiative Indonesia has conducted an audit process of the state income from mineral and coal by reviewing all production reports and state income included in the company RKAB.
4. Corruption Eradication Commission encourages a system to strengthen the prevention of conflict of interest within mining governance by evaluating and strengthening the legal framework in the Ministry of Energy and Mineral Resources

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