

**LEGAL ANALYSIS OF ABUSE OF POWER PRACTICES
IN THE INDONESIAN TIN MINING INDUSTRY:
A CASE STUDY OF HARVEY MOEIS**

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ABSTRACT

The corruption case involving Harvey Moeis revealed the practice of abuse of power in the tin mining industry in Indonesia. Harvey, as a representative of PT Refined Bangka Tin (RBT), is suspected of having made contact with the President Director of PT Timah, Mochtar Riza Pahlevi Tabrani, to accommodate illegal mining activities in the PT Timah Mining Business Permit (IUP) area. The agreement involves the provision of tin processing equipment in the PT Timah IUP area for several smelters, with profit sharing disguised as Corporate Social Responsibility (CSR). The CSR funds were channeled through PT QSE with the help of another suspect, Helena Lim. Harvey was charged with Article 2 Paragraph (1) and Article 3 jo. Article 18 of the Republic of Indonesia Law concerning the Eradication of Corruption Crimes. Harvey's detention by the Attorney General's Office marks a legal step in efforts to eradicate corruption and restore the integrity of the mining industry in Indonesia.

Keywords: Corruption, Tin mining, Harvey Moeis

A. Introduction

Corruption has become an inseparable part of human history and is recognized as one of the oldest types of crime, a chronic problem plaguing societies. The phenomenon of corruption often increases alongside progress, wealth, and technological development, as rising living needs can incentivize individuals to engage in various forms of crime, including corruption.¹

Corruption is considered an extraordinary crime due to its systemic and endemic nature. It has a broad impact, harming not only state finances but also violating the social and economic rights of society as a whole. The power that perpetrators hold through their positions is often the main factor enabling them to commit criminal acts by exploiting this authority.

The case of Harvey Moeis exemplifies alleged corruption in Indonesia's tin mining industry. This case revealed a network of alleged corruption involving Harvey Moeis and others, accused of abusing authority and embezzling funds. Between 2018 and 2019, Harvey Moeis, a representative of PT Refined Bangka Tin (RBT), allegedly contacted Mochtar Riza Pahlevi Tabrani, the then-President Director of PT Timah.

¹ Djoko Sumaryanto, *Reversal of the Burden of Proof*. Jakarta: Achievement Library, (2009). p.1

Mochtar Riza had previously been named a suspect by the Attorney General's Office in a separate case. During this contact, Harvey allegedly pressured Mochtar Riza to accommodate illegal mining activities within PT Timah's Mining Business License (IUP) area.

The meeting between Harvey and Mochtar Riza resulted in a work agreement to lease tin smelting processing equipment in the PT Timah IUP area. This agreement creates conditions where several smelters, such as PT SIP, CV VIP, PT SBS, and PT TIN, are expected to participate in these activities. Action Harvey in conditioning these smelters to become part of a larger corruption plan.² Harvey allegedly ordered the smelter owners to set aside a portion of their profits. These profits would then be distributed to him and other suspects involved in the scheme. The funds obtained from these profits were allegedly disguised as Corporate Social Responsibility (CSR) funds, meant for social and environmental initiatives.

These CSR funds were allegedly channeled to Harvey through PT QSE, facilitated by another suspect, Helena Lim. Helena Lim's involvement in facilitating the distribution of CSR funds further complicates the alleged corruption scheme orchestrated by Harvey and others. In a legal context, Harvey Moeis and other parties' alleged acts of corruption violate Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes. The articles relevant to this case include Article 2 Paragraph (1) and Article 3 in conjunction with Article 18 of the Law. These articles regulate criminal acts of corruption, including embezzlement of funds, abuse of authority, and bribery.

Based on evidence collected by the Attorney General's Office, Harvey Moeis was detained at the Salemba State Detention Center, Attorney General's Branch, for the initial 20 days, from March 27 to April 15, 2024. This detention served as a legal step to ensure a smooth and fair investigation process. The corruption case involving Harvey Moeis exemplifies the detrimental effects of corrupt practices on both the state and society. Corruption in the mining industry has a significant financial impact, but it also negatively affects the environment and the sustainability of natural resources.³

Therefore, law enforcement is against perpetrators of corruption like Harvey Moeis is an important step in efforts to eradicate corruption and restore integrity in the

² Denny Susilo, *Criminal Law: Theory and Practice*. Jakarta: Gramedia, (2019). p, 89

³ Andika Pratama, *Law Enforcement Against Corruption Crimes in Indonesia*. Yogyakarta: Our Book Publishers, (2020). p, 69

mining industry in Indonesia. Building on this background, the research seeks to address the following questions: What was Harvey Moeis' role in coordinating illegal mining activities within the PT Timah IUP area and arranging a profit-sharing scheme for several other suspects? How were corruption funds disguised as Corporate Social Responsibility (CSR) by Harvey Moeis through the company PT QSE, facilitated by Helena Lim?

B. Research Methods

This research applies a juridical-normative method, namely research that uses primary legal materials by analyzing concepts, principles and theories from laws and regulations that regulate criminal acts of corruption and abuse of power in the Harvey Moeis case. The resources used are Law no. 31 of 1999 concerning the Eradication of Corruption, the Criminal Procedure Code, relevant journals, books and other scientific writings related to the problems studied.

C. Result And Discussion

In the definition outlined in the Black Law Dictionary in the Corruption Crimes module of the Corruption Eradication Commission, corruption is an action carried out with the aim of obtaining benefits that are contrary to official duties and other truths. This action refers to the behavior of a person who, in violation of the law and full of mistakes, uses his power or position to obtain personal benefits or for other parties that are not in accordance with his duties and truth. In the realm of criminal law, not all known forms of corrupt behavior can be considered criminal acts. Therefore, to determine what actions are legally considered as corruption, we must refer to the provisions contained in Law 31 of 1999 concerning the Eradication of Corruption Crimes.

In Article 3 of the Corruption Eradication Law, it is stated that: "*Every person who, for the purpose of benefiting himself or another person or a corporation, abuses his or her official position or authority, causing harm to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).*"

The elements of criminal acts of corruption as referred to in Law Number 31 of 1999 are The perpetrator (subject), in accordance with Article 2 paragraph (1). This

element can be linked to Article 20 paragraphs (1) to (7), namely, In the event of a criminal act of corruption by or against a corporation, criminal charges and impositions can be made against the corporation and/or its management, A criminal act of corruption is committed by a corporation if the criminal act is committed by people either based on an employment relationship or based on another relationship, acting within the corporate environment either individually or together. In the event that criminal charges are brought against a corporation, the corporation is represented by the management, The management representing the corporation as intended in paragraph (3) may be represented by another person, The judge can order that the corporation's management appear in court in person and can also order that the management be brought to court, In the event that criminal charges are brought against the corporation, a summons to appear and the submission of the summons is served to the management at the management's place of residence or at the management's office, The main punishment that can be imposed on a corporation is only a fine with the maximum penalty being increased by 1/3 (one third), Against the law, both formal and material, Enrich yourself, others or corporations, Can be detrimental to the country's finances or economy, In the event that the criminal act of corruption as intended in paragraph (2) is committed under certain circumstances, the death penalty can be imposed, Causes of Corruption.

Sentencing, also known as criminal imposition, is a term commonly used in legislation. This aligns with the concept of a crime, the essence of which is a consequence for wrongdoing. Punishment, or criminal imposition, plays a crucial role in both criminal law and criminal justice systems. Legal scholar, Andi Hamzah, argues that sentencing concretizes or implements the abstract elements of criminal law as defined in legal regulations.⁴

Corruption, a wrongful act classified as a crime under Indonesian criminal law regulations, carries the threat of criminal sanctions for perpetrators. The definition of corruption in Indonesia, as established in Law No. 31 of 1999 concerning the Eradication of Corruption Crimes (revised by Law No. 20 of 2001), encompasses various forms of punishment beyond those solely outlined in Article 10 of the Criminal Code. Based on Romli A's opinion, he stated that there are 5 objectives for the punishment of perpetrators as regulated in the newly published Criminal Code, namely: (a)

⁴ Andi Hamzah, Indonesian Criminal and Sentencing System, Jakarta: Pradnya Paramita, (1993), p 42

perspectives for social protection; (b) perspective as a form of rehabilitation; (c) perspective as re-socialization of criminal offenders. (d) perspective based on customary law; (e) spiritual perspective and in the view of Pancasila.

According to his opinion, the existence of Article 150 paragraph (2) in the book strengthens the emphasis on the five objectives of criminal punishment. This article clarifies that the purpose of criminal punishment is not to inflict suffering or intentionally degrade the human dignity of the convicted.

1. Harvey Moeis' role in coordinating illegal mining activities in the PT Timah IUP area and setting up a system to share the profits among several other individuals involved

Harvey Moeis, a representative of PT Refined Bangka Tin (RBT), is alleged to have played a significant role in coordinating illegal mining activities within the PT Timah IUP area and arranging a profit-sharing scheme for several other suspects. To understand the scope of his involvement, we can examine several key aspects: his interactions with relevant parties, the strategies he allegedly employed, and the environmental and social impacts of his actions.⁵

Harvey used his position as a representative of PT RBT to build relationships with key stakeholders, including the President Director of PT Timah at the time, Mochtar Riza Pahlevi Tabrani. In the 2018-2019 period, Harvey is suspected of actively contacting Riza with the aim of submitting a request for PT Timah to accommodate illegal mining activities in the IUP area owned by PT Timah. These efforts demonstrate that Harvey played a significant role in facilitating and promoting these illegal activities. Harvey is suspected of having held a series of meetings with related parties, including smelter owners such as PT SIP, CV VIP, PT SBS and PT TIN. In this meeting, it was agreed to carry out rental work tin smelting processing equipment in the PT Timah IUP area. This shows that Harvey not only acted as a liaison between PT RBT and PT Timah, but also played an active role in designing and negotiating illegal business deals involving related parties.⁶

Harvey also allegedly instructed smelter owners to set aside a portion of their profits from the illegal mining operations. These profits were then allegedly divided

⁵ Bambang Hartono, *Corruption: Legal and Sociological Analysis*. Surabaya: Graha Ilmu Publishers, (2018). p, 79

⁶ Eka Indriyana, *Legal Protection for Whistleblowers of Corruption Crimes*. Bandung: Alfabeta Publishers, (2017). p, 55

among himself and several other suspects. These actions suggest that Harvey not only participated in planning and organizing the illegal activities but also actively engaged in a corrupt scheme for personal gain. To allegedly conceal the flow of illicit funds, Harvey is suspected of employing a scheme to channel the money through a fictitious company, PT QSE. This scheme was allegedly facilitated by another suspect, Helena Lim. The corrupt funds were allegedly disguised as Corporate Social Responsibility (CSR) funds, typically used for social or environmental initiatives. However, in this case, the funds were allegedly used to distribute rewards to Harvey and others involved in the corruption scheme.

The impact of Harvey Moeis' alleged involvement in this case is far-reaching, causing significant economic and environmental damage. From an economic standpoint, Harvey's promotion and support of illegal mining activities are suspected to have inflicted substantial losses on PT Timah and related companies. This could disrupt market stability and discourage investment in the tin mining sector. Furthermore, the alleged corruption scheme orchestrated by Harvey is suspected to have harmed state finances and exacerbated socio-economic injustice. Funds that should have been used for the public good were allegedly diverted for personal gain.

From an environmental perspective, illegal mining activities permitted by Harvey could cause serious environmental damage, including deforestation, water and air pollution, and loss of habitat for local species. This impact not only impacts the environment directly, but also affects the well-being and sustainability of local communities who depend on these natural resources for their lives and livelihoods. In this process, Harvey not only acted as an intermediary, but was also actively involved in designing and negotiating illegal business deals involving related parties.⁷ Harvey also allegedly ordered the smelter owners to set aside some of the profits from the illegal mining business. The profits set aside were then divided between himself and a number of other suspects.

2. The mechanism by which Harvey Moeis disguised corruption funds as Corporate Social Responsibility (CSR) through his company, PT QSE, was facilitated by another suspect, Helena Lim

The mechanism by which Harvey Moeis disguised corruption funds as Corporate Social Responsibility (CSR) through his company, PT QSE, facilitated by another

⁷ Eka Indriyana, *Legal Protection for Whistleblowers of Corruption Crimes*. Bandung: Alfabeta Publishers, (2017). p, 55

suspect, Helena Lim, is a clear example of sophisticated and undercover corruption practices. In such schemes, corrupt funds that should be used for social or environmental purposes are laundered through a web of shell companies and convoluted channels to avoid detection and monitoring. Like PT QSE, fictitious companies are used as tools to channel corruption funds without arousing suspicion. PT QSE may have been either a shell company created specifically for this purpose or a preexisting one infiltrated to mask the illegal transactions. PT QSE's main role in this scheme was as an intermediary or "protector" to hide the trail of corrupt money from the eyes of the public and the authorities.⁸

Another suspect in this case, Helena Lim, acted as a facilitator in the process of disguising the corruption funds. Helena Lim established PT QSE or controlled it through other means. Key facilitators like Helena Lim played a key role in organizing and managing the flow of corrupt funds through a series of complex and undercover transactions. One mechanism that may be used to disguise corruption funds is the creation of fake or fictitious transactions between companies involved in the corruption scheme. For example, PT QSE may produce fake invoices or fake contracts with companies involved in illegal mining to cover up the flow of funds that actually originate from corruption. These transactions are then used to disguise corruption funds as payments for services that were never performed or goods that were never received.

The practice of budget misappropriation can also be used as a mechanism to disguise corrupt funds. PT QSE may submit fake CSR project proposals to the government or charities, with the aim of obtaining additional funds which will then be diverted to the personal accounts of Harvey Moeis and other involved parties. These fake proposals may present social or environmental projects that were never implemented or cost much less than they actually did.

Bank transfers and electronic financial transactions can also be used to disguise the flow of corrupt funds. PT QSE may carry out a series of transfers between domestic or international bank accounts to hide the origins and final destination of the corruption funds. This practice may be accompanied by the use of third party accounts or financial intermediaries to obscure traces of actual transactions. The use of foreign currency can also be part of a mechanism to disguise corruption funds. PT QSE may use overseas bank accounts or conduct transactions in foreign currency to avoid detection by

⁸ Agus Widodo, *Corruption and Criminal Law in Indonesia: Challenges and Prospects*. Yogyakarta: Student Library, (2019). p, 80

domestic authorities. The use of foreign currency can also complicate efforts to track and trace the flow of corrupt funds by financial authorities.

The mechanisms for disguising corruption funds can be very complex and vary depending on the needs and skills of the perpetrators. The suspects in this case may have developed complex and constantly changing strategies to deceive the authorities and ensure the smooth flow of corrupt funds. Therefore, effective law enforcement efforts and strong international collaboration are needed to identify, stop and punish perpetrators of corruption and recover funds that have been misused. Disguising corruption funds as Corporate Social Responsibility (CSR) projects carried out by Harvey Moeis through the company PT QSE, which was facilitated by another suspect, Helena Lim, is a clear example that corruption is not only about individual actions, but also involves collaborative networks involving various parties, including company officials, government officials, and other parties involved in business processes.⁹

D. Conclusion

Harvey Moeis's coordination of illegal mining activities in the PT Timah IUP area and his arrangement of a profit-sharing scheme for several other suspects demonstrate his involvement in planning, opening roads, and engaging in corrupt practices that harm the state. This constitutes an abuse of power, which is a key element of corruption. The significance of criminal acts of corruption is regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The mechanism for disguising corruption funds as Corporate Social Responsibility (CSR) carried out by Harvey Moeis through the company PT QSE, facilitated by Helena Lim, reflects a complex and organized strategy to hide the flow of illegal funds, through a series of fake transactions, budget misappropriation, and the use of fictitious companies. This case also highlights weaknesses in supervision and law enforcement in Indonesia's mining sector. Concerted efforts to prevent corruption and implement tougher environmental regulations are needed to overcome corrupt practices and environmental exploitation in the mining industry.

⁹ Budi Santoso, *Eradicating Corruption: Legal Review and Implementation*. Jakarta:Rajawali Press, (2018). p, 51

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