



# Legal Analysis of Ruling Number: 44/Pid.Sus/-TPK/2021/PN KDI Regarding the Approval of Work Plans and Cost Budget (RKAB) In the Case Criminal Acts of Corruption

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## ABSTRACT

*This research aims 1) To examine and analyze the legal position of Approval of Work Plans and Budgets (RKAB) for Mining Business License Holders. 2) To review and analyze legal considerations regarding judex factie decisions in Corruption Crime cases, Approval of Work Plans and Budgets (RKAB) in accordance with legal certainty. The type of research used in this thesis is normative using a doctrinal approach. The legal materials used are secondary legal materials obtained through literature studies, indictments, demands, defenses of legal advisors, and court decisions which have permanent legal force, as well as statutory legal materials, analyzed qualitatively using relevant theories. The research results show that: 1) The legal status of Approval of Work Plans and Budgets (RKAB) for mining business permit holders is based on decision Number: 44/Pid.Sus-TPK/2021/PN.Kdi, based on the legal facts that have been described in the trial has legal standing and has the authority to sign the RKAB approval based on Article 19 of Southeast Sulawesi Governor Regulation Number 33 of 2015, 2) Legal consideration of judex factie decisions in corruption cases. Approval of the Work Plan and Budget (RKAB) in the Kendari District Court Number: 44/Pid.Sus-TPK/2021/PN.Kdi whose decision acquits the Defendant from all the charges of the Public Prosecutor which is confirmed by the decision of the Supreme Court of the Republic of Indonesia Number: 4002 K/Pid.Sus/2022, based on evidence, statements witnesses, expert statements provided by the Defendant through his Legal Advisor, as well as based on legal considerations and facts that are legally relevant.*

**Keywords:** Approval of Work Plan and Budget (RKAB), Corruption Crime Cases

## 1. INTRODUCTION

The rule of law is always used as the basis for state administration in a constitutional system, which is implemented in the constitutional norms of each country. Likewise, in Indonesia, through the 1945 constitution of the Republic of Indonesia, the Indonesian state confirmed the principles of state administration, which are oriented towards the principles of the rule of law. Law has an essential meaning in every aspect of life, is a guide to human behavior about other humans, and is a law that regulates all life in Indonesian society. Since the New Order, the issue of national stability, including, of course, in the field of law enforcement, has become a significant component in development. Crimes that occur, of course, cause economic, material, and immaterial losses, which involve a sense of security and peace in social life.

Various efforts have been made to tackle crime, but crime has never decreased; in fact, it has increased along with how humans live and the development of increasingly sophisticated technology, which can cause the growth and development of patterns and various crimes that emerge. This encourages the development of various alternative situations to overcome these crimes, one of which is by developing special criminal law regulations to support the implementation of general criminal law. One of the crimes that is difficult to cover by criminal law is the crime of corruption.

Corruption is an extraordinary crime in the Indonesian context. Corruption is included in the category of an extraordinary crime to overcome and eradicate corruption cases. In principle, Indonesia has taken positive steps by issuing various regulations (policies and laws) to eradicate corruption. The enactment of Law Number 31 of 1999 concerning Corruption Crimes as amended and supplemented by Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes is intended to accelerate the eradication of criminal acts of corruption in Indonesia. Corruption in government is the biggest challenge in every province and even

district/city in Indonesia, including Southeast Sulawesi Province. The large number of corruption cases has given rise to public distrust of the law and the criminal system. The widespread crime of corruption in society today is the problem of corruption in the mineral and coal mining sector, which needs particular attention from various parties. The cases in the mineral and coal sectors have repeatedly shown that morally intensive sectors are prone to corruption. Moreover, the series of corruption cases in this sector are categorized as state capture. Corruption is not solely in the administrative form involving bribes or facilitation payments, but through its roots, namely corruption through regulations. One form of corruption in mining businesses is the Approval of Work Plans and Budgets (RKAB) which is the most crucial part for Mining Business License holders as stated in which is regulated in article 111 of Law no. 4 of 2009 concerning Mineral and Coal Mining, which states that every holder of a mining business permit (IUP) and special mining business permit (IUPK) is obliged to provide regular written reports on work plans and implementation of mineral and coal mining business activities to the Minister, Governor or Regent. /Mayor by his authority to obtain approval.

Guidelines for implementing the preparation, submission, evaluation, and approval of the Annual RKAB are stipulated in the Minister of Energy and Mineral Resources Decree No. 1806 K/30/MEM/2018. RKAB documents can be submitted 90 days and 45 days before the end of the year for the following year to get approval before the year ends. The approved RKAB document is essential for holders of Mining Business Permits (IUP)/unique (IUPK) because it supports legality in every mining activity, starting from the exploration stage, digging-loading, transport, management-refining to marketing for both domestic and export purposes.

In 2021, the people of Southeast Sulawesi were shocked by cases of alleged criminal acts of corruption, which attracted quite a lot of public attention. The high level of public response to the alleged criminal act of corruption is not only due to the significant state losses incurred but, in this case, it reveals the involvement of a relatively well-known public official namely the case of the alleged criminal act of corruption in the Approval of Work Plans and Budgets (RKAB) carried out by YUSMIN S.Pd as head of the mineral and coal sector at the Energy and Mineral Resources (ESDM) Department of Southeast Sulawesi Province.

The Corruption Crime case regarding the approval of the Work Plan and Budget (RKAB) was handled by the Kendari District Prosecutor's Office. It was also tried at the Kendari District Court in case Number 44/Pid.Sus-TPK/2021/P Kdi, in the Public Prosecutor's trial at The Kendari District Prosecutor's Office, accused the defendant YUSMIN, S.Pd of committing an unlawful act that could harm state finances or the state economy, namely that the defendant (YUSMIN, S.Pd) did not carefully research the application for approval of the 2019 Work Plan and Budget (RKAB). 2020 and 2021, submitted by P.T. Toshida Indonesia, has approved P.T.'s 2019, 2020, and 2021 Work Plan and Budget (RKAB) approval requests. Toshida Indonesia regarding P.T. Toshida Indonesia does not pay State Non-Tax Revenue from Forest Area Use (PNBP-PKH) every year as a condition for obtaining approval for the Work Plan and Budget (RKAB) and the defendant YUSMIN S.Pd ordered witness NINING RAHMATIA, S.P. to collect money for processing the application for approval of the Plan Work and Cost Budget (RKAB) submitted by each Mining Business License holder and changing the suggestion sheet from the relevant agency which initially did not approve the approval request to approval.

In Article 17 of the Republic of Indonesia Law Number 9 of 2018 concerning Non-Tax State Revenue (PNPB), there is a PNPB for the Use of Forest Areas (PNPB-PKH) in the Ministry of Forestry for PNPB-PKH bills against PT. Toshiba Indonesia at the 2020 RKAB Evaluation meeting/session PT. Toshiba Indonesia, this is not a condition for approval or rejection of PT. Toshiba Indonesia's 2020 Work Plan and Budget (RKAB) approval application because of collecting PNPB-PKH debts at the Ministry of Forestry for PT. Toshiba Indonesia is not the authority of the Ministry of Energy and Mineral Resources. It is not the authority of Southeast Sulawesi Province ESDM Service because the one responsible for collecting Forestry PNPB is the Ministry of Forestry. By the Principle of Actus Non-Facit Reum, Nisi Mens Sit Rea states that "an act cannot make someone guilty if the intention is not guilty." In some countries, a person's actions and inner attitudes are united and become a condition for a criminal act.

Based on the above, the Panel of Judges in the criminal corruption case at the Kendari District Court gave decision Number 44/Pid.Sus-TPK/2021/P Kdi stated that the defendant YUSMIN, S.Pd was not legally and convincingly proven guilty of committing a criminal act of corruption and acquitted the defendant YUSMIN, S.Pd of all charges from the public prosecutor and based on this decision, the Public Prosecutor at the Kendari District Prosecutor's Office filed a cassation legal action at the Supreme Court of the Republic of Indonesia and the decision at the cassation level of the case rejected the cassation request from the Cassation Petitioner/Public Prosecutor to the Kendari District Prosecutor's Office with decision Number: 4002 K/Pid.Sus/2022'.

## II. LITERATURE REVIEW

### 2.1 Conceptual Foundation

#### 2.1.1 Judicial Independence

The independence of the judiciary is the freedom to carry out and administer justice without interference from various parties, both intervention from the judiciary and the executive in upholding law and justice.

The police, prosecutors, judges, and advocates are used as subjects in analysing the perceptions of law enforcement officials regarding the position of additional evidence in uncovering elements detrimental to state finances or the state economy in cases of criminal acts of corruption because all of these institutions and institutions are part of the criminal justice system, both in cases of general criminal offenses as well as corruption crimes as unique criminal acts, therefore, previously the author would like to outline several theories about the integrated criminal justice system.

The criminal justice system is greatly influenced by the independence of criminal justice, which is often called independence of the judiciary, which consists of 4 (four) components, including:

- a. Crime control model;
- b. Due process model;
- c. Family models;
- d. Guardians model.

Soerjono Soekanto draws a temporary conclusion regarding the effectiveness of law enforcement in Indonesia, which views that the main problem of law enforcement lies in the factors that may influence it, which include:

- a. Legal Factors, which include applicable statutory provisions.
- b. Law Enforcement Factors, namely the parties who form and implement the law.
- c. Facilities or facilities factors that support law enforcement.
- d. Community factors, namely the environment in which the law applies or is established.
- e. Cultural factors result from work, creativity, and feelings based on human intention in social life.

### **2.1.2. Duties and Authorities of Judges**

The definition of a judge, according to the Criminal Procedure Code, is a state judicial official who has the authority to try and decide cases. Judicial authority or power is the power of an independent or impartial State to administer justice and uphold law and justice based on Pancasila, especially the first principle of Pancasila as the basis of the State.

In carrying out his duties and functions, a judge is obliged to uphold the judiciary's independence, honor, and dignity. Therefore, any party is prohibited from interfering with a judge's duties and authority in deciding a case, except in matters regulated by the 1945 Constitution. A judge may accept to try a case submitted to him.

Adjudicating cases is the judge's authority to accept, examine, and decide cases based on the principles of justice, namely freedom, honesty, and impartiality, by the methods specified in the law. Judicial power as a state instrument stands apart from and parallels the other two state instruments: executive power and legislative power. Therefore, judicial power is free from these two state instruments. The guarantees given to a judge are fundamental to achieving legal objectives, in this case, criminal law within the scope of the criminal justice system.

### **2.1.3 Form of Court Decision**

The formal definition of a court decision is contained in Article 1 Point 11 of the Criminal Procedure Code, which confirms that a court decision is a judge's statement made in a hearing open to the public. Alternatively, legal demands are made according to the method regulated in the Criminal Procedure Code.

There are 3 (three) forms of criminal court decisions according to Article 191, paragraph (1-2) and Article 193, paragraph (1) of the Criminal Procedure Code:

#### **a. The defendant was acquitted.**

The judge will issue a verdict of acquittal if the defendant is not legally proven and is convinced that he committed the crime with which he was charged.

#### **b. The defendant was acquitted of all legal charges.**

The judge will issue a decision to release him from legal charges if the defendant is proven to have committed the criminal act he is charged with, but the act does not constitute a criminal act.

#### **c. The defendant was sentenced to a criminal sentence.**

The judge will impose a criminal sentence if the defendant is legally proven and is sure of committing the criminal act he is charged with.

### **2.1.4 Corruption Crimes**

#### **2.1.4.1 Understanding Corruption Crimes**

The word corruption comes from the Latin word corruption or corruption. Then, it appeared in various European languages, such as French, namely corruption. The Dutch language is corrupt, and the term corruption also appears in the reformation of the Indonesian language. The literal meaning of corruption is rot, badness, crime, dishonesty, can be bribed, deviation from purity, words that have an insulting or slanderous nuance, and bribery; the word corruption is an immoral act, such as embezzlement of receipts, bribes, and so on. Then, the meaning of corruption was accepted in the Indonesian vocabulary in the Big Indonesian Dictionary, namely fraud in carrying out obligations as an official. According to Law Number 20 of 2001, the criminal act of corruption includes acts that are pretty broad in scope. The sources for formulating criminal acts of corruption in Law Number 20 of 2001 can be classified into two groups:

- 1) The formulation made by the maker of Law Number 20 of 2001 himself
- 2) Articles of the Criminal Code, which were withdrawn into Law Number 20 of 2001

Regarding the definition of criminal acts of corruption according to Law Number 20 of 2001, namely:

- 1) Every person unlawfully commits an act of enriching himself or another person or a corporation, which could harm the State's finances or the State's economy (Article 2 paragraph (1)).
- 2) Every person who, to benefit himself or another person or a corporation, abuses the authority, opportunity, or means available to him because of his position or position, which can harm the State's finances or the State's economy (Article 3).
- 3) Every person who gives a gift or promise to a civil servant, taking into account the power and authority attached to his position or position, or the giver of the gift or promise is deemed to be attached to that position or position (Article 13).
- 4) Every person who attempts, assists, or conspires to commit a criminal act of corruption (Article 15).

5) Any person outside the Territory of the Republic of Indonesia who provides assistance, opportunities, facilities, or information to commission a criminal act of corruption (Article 16).

Paying attention to Article 2, paragraph (1) above, you will find the following elements:

- 1) Against the law.
- 2) Enrich yourself or other people or a corporation.
- 3) Can be detrimental to state finances and the state economy.

#### **2.1.4.2 Elements of Corruption Crimes**

Article 2 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes jo. Law Number 20 of 2001 concerning Corruption Crimes:

- 1) Every person who unlawfully commits an act of enriching himself or another person or a corporation which may harm the State's finances or the State's economy shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (two) years. Twenty years).
- 2) If the criminal act of corruption, as intended in the paragraph, is committed under certain circumstances, the death penalty can be imposed.

To conclude whether an act is corrupt according to this article, the following elements must be met:

- 1) Everyone
- 2) Enrich yourself, other people, or a corporation
- 3) By breaking the law
- 4) Can be detrimental to state finances or the state economy.

Article 3 of Law Number 31 of 1999 concerning Corruption Crimes jo. Law Number 20 of 2001 concerning Corruption Crimes:

"Any person who, to benefit himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position because of his position or position which can harm the State's finances or the State's economy, shall be punished by life imprisonment or criminal imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years 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). "

To conclude whether an act constitutes corruption according to this article, the following elements must be met:

- 1) Everyone
- 2) to benefit yourself or another person or a corporation and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).
- 3) Abusing authority, opportunities, or means
- 4) What he has because of his position or position
- 5) Can be detrimental to state finances or the state economy

#### **2.1.4.3 Understanding State Finance or State Economy**

The definition of State Finance is all State assets in whatever form, separated or not separated, including all parts of State assets and all rights and obligations arising from:

- 1) Be under the control, management, and accountability of State institution officials at the central and regional levels.
- 2) Be under the control, management, and accountability of State-Owned Enterprises/Regional-Owned Enterprises, foundations, legal entities, and companies that include State capital or companies that include third-party capital based on an agreement with the State.

Meanwhile, the meaning of the State Economy is economic life which is structured as a joint effort based on the principle of kinship or an independent community effort based on government policy, both at the central level and the regional level by the provisions of applicable legislation, aimed at providing prosperity and well-being benefits to throughout people's lives, State finances, or the State's economy which is increasingly sophisticated and complicated, the criminal acts regulated in the criminal law on corruption are formulated in such a way that they include acts of enriching oneself or another person or a corporation unlawfully, in formal and material terms, with this formulation, the definition of breaking the law in criminal acts of corruption can also include disgraceful acts which according to the sense of justice in society must be prosecuted and punished.

#### **2.1.4.4 Subject Act Criminal Corruption**

As explained in Constitution Number 31 of 1999 Concerning Eradication Act Criminal Corruption, the subject follows criminal corruption divided into 2 (two) groups. If both of them do a deed, they are threatened with a penalty. Subject law is:

- 1) In the explanation of Article 59 of the Criminal Code, it is stated: " that something follows criminal only can be realized by humans, fiction about legal entities No applies in the field law criminal." This matter is in line with the principle *nullum dictum*, which lacks the protection of the interests.
- 2) The corporation in question with the corporation is a group of people and organized wealth, whether it is a legal body or not a legal entity (Article 1 paragraph (1) of Law Number 31 of 1999 concerning Act Criminal Corruption).
- 3) Civil servants work for the government and people who receive their wages or wages from state finances or regions and use capital or facilities from the country or public.
- 4) Everyone in question with each person is an individual (individual) or a corporation.

#### **2.1.4.5 Forms Corruption**

According to J. Soewartojo, several shapes/types follow criminal corruption, that is as follows:



- 1) Types of illegal levies follow criminal, that is, corruption of state money, avoiding taxes and duties, excise, excise, and bribery.
- 2) Types of illegal levies include difficult crime is proven, i.e., commission in bank credit, project tender commission, rewards service in giving permits, increases rank, retainer against travel money, extortion at interception posts on roads, ports, and so on.
- 3) Types of illegal levies are Not legally carried out by the regional government, namely levies made without a decision based on the regulation area, but only with letters of decision.
- 4) Bribery is when a ruler offers money or other services to somebody or his family. For something, service is a money giver.
- 5) Blackmail, namely people who do power demand payment of money or other services as change or reciprocity facilities provided.
- 6) Theft, namely, people in power abusing power and stealing people's property, directly or not directly.
- 7) Nepotism, namely, people in power give power and facilities to the family or relatives, which other people should also get or be entitled to when done in a fair way.

#### **2.1.4.6 Reasons Corruption**

Corruption is caused by factors namely the following:

- 1) Nothingness or weakness leadership in positions capable key give inspiration and influence Act taming behavior corruption,
- 2) Weakness religious and ethical teachings,
- 3) colonialism,
- 4) Lack of education,
- 5) Poverty,
- 6) Nothing harsh punishment,
- 7) Scarcity is a fertile environment for anti-corruption behavior,
- 8) Structure government,
- 9) Change radical, and
- 10) Circumstances public.

#### **2.1.4.7 Consequences Corruption**

David H. Bayley stated that the consequences of corruption without notice and whether the consequences are good or bad can be categorized into two categories. First, the consequences are direct without an intermediary. These are the consequences that are part of the deed. That is Alone. Second, the consequences are not direct through those who feel that deed is certain in matter. This deed of corruption has been done.

Corruption can have positive side effects, most of which are harmful. Consequence positive corruption between others:

- 1) Consequence deed corruption is better than consequences something honest decision if criteria set by the government or based on the medium system applies, worse than based decisions on corruption,
- 2) Multiply allotment sources enter to field investment and not to field consumption,
- 3) Increase the quality of civil servants,
- 4) The collusive nature of reception civil servants can become a replacement system, work in general,

#### **2.1.5 Plan Work and Budget Costs (RKAB)**

A future financial plan budget includes management's expectations regarding income, costs, and other financial transactions within one year. A public sector organization's budget includes plans regarding how much the plan will cost and how much and how to obtain money to fund the plan.

There are some understanding budget including, among others, the following:

- a. Budget can form budget physical and budget finance. Budget, commonly called plan work, is put in a way written in the form of numbers finance.
- b. A budget is a plan of activity covering companies' various activities, mutual operations, and must, as well as mutual influence. They use each other as guidelines for reaching the goals and objectives of an organization. In general, they are arranged in a written way.

### **2.2 Base Theory**

#### **2.2.1 Judge's Reasoning Theory**

There are several theories or possible approaches internal judges use to consider dropping a decision in something matter, such as the following:

- a. Balance Theory
- b. Approach Theory and Intuition.
- c. Approach Theory Experience.
- d. Ratio Decidendi Theory.
- e. Wisdom Theory.

#### **2.2.2 Legal Purpose Theory**

- a. Legal Justice

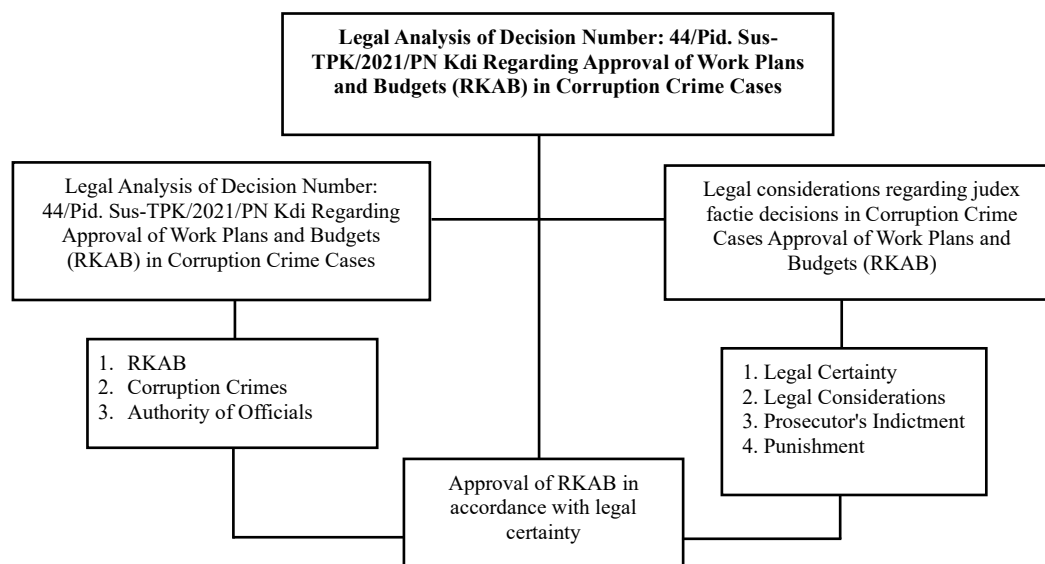
- b. Legal Benefits
- c. Legal certainty

### 2.2.3 Theories of Punishment

While "punishment" is interpreted as punishment. Doctrine differentiates law criminal material from legal criminal formal. The explanation of the second matter is as follows:

- a. Criminal law material
- b. Criminal law formal

## 2.3 Conceptual Framework



## III. RESEARCH METHODS

### 3.1 Research Type

This type of research is normative legal research, namely, legal research carried out by examining library materials or secondary data, also called doctrinal research, where Law is often conceptualized as what is written in statutory regulations (Law in books) or conceptualized as rules or Norms are standards for human behaviour that are considered appropriate. According to Peter Mahmud Marzuki, normative legal research is finding legal rules, principles, and doctrines to address the legal issues faced.

Based on the definition above, this thesis's research type is normative legal research because the research uses library materials as the primary data to analyse cases, and the research does not conduct field research. This research was conducted using library materials (secondary materials) or library legal research, generally aimed at research on legal principles, legal systematics, legal synchronization, legal history research, and comparative Law.

### 3.2 Problem Approach

The approaches used in this type of research consist of:

#### 3.2.1 Conceptual Approach (Conceptual Approach)

The conceptual approach, namely by studying the views and doctrines in legal science, research will find ideas that give rise to legal understandings, legal concepts, and legal principles that are relevant to the issue at hand and as a basis for building a legal argument in solving the issue at hand.

#### 3.2.2 Case Approach

This approach is carried out by examining all statutory regulations related to the problem (legal issue). For example, this legislative approach is carried out by studying the consistency/conformity between the Constitution and the Law, between one Law and another Law, and between one judge's decision and another judge's decision.

## IV. RESULT AND DISCUSSION

### 4.2 Legal Considerations Regarding the *Judex Factie Decision* in Corruption Crime Cases Approval of Work Plans and Budgets (RKAB)

#### 4.2.1 Judge's Legal Considerations

##### a. Case Position

Defendant YUSMIN, S.Pd., is the Head of the Mineral and Coal Division at the Provincial Energy and Mineral Resources (ESDM) Service, Sulawesi Southeast, Which lifted based on Letter Decision Governor of Sulawesi Southeast Number 36 the Year 2019, dated January 7, 2019, and based on the inauguration statement number:

821 23 / 596 dated January 29, 2019, based on the decision of the Governor of Southeast Sulawesi number 36 of 2019 which was signed by the acting Regional Secretary on behalf of the Governor of Southeast Sulawesi, Holding or Occupying the Position of Acting Head of the Minerals Sector and Coal at the Southeast Sulawesi Provincial Energy and Resources Service since August 29, 2019.

The Defendant, as Head of the Mineral and Coal Division of the Provincial Energy and Mineral Resources Service. Southeast Sulawesi needed to carefully research the application for approval of the 2019, 2020, and 2021 Work Plan and Budget (RKAB) submitted by PT. Toshiba Indonesia has approved the request for approval of PT's 2019, 2020, and 2021 Work Plan and Budget (RKAB). Toshiba Indonesia, even though PT. Toshiba Indonesia does not pay State Non-Tax Revenue for Use of Forest Areas (PNBP-PKH) every year as a condition for obtaining approval for the Work Plan and Budget (RKAB), ordering Witness NINING RAHMATIA, SP to collect money for processing applications for approval of the Work Plan and Budget ( RKAB) submitted by each Mining Business License Holder and amending the suggestion sheet from the relevant agency which initially did not approve the request for approval of the 2020 Work Plan and Budget (RKAB) of PT. Toshiba Indonesia became approved with conditions.;

#### **b. Public Prosecutor's Indictment**

The Defendant was brought to trial by the Public Prosecutor and was charged based on indictment no. Reg. Case: PDS-010/RP- 9/EP.1/09/2021, dated September 24, 2021, as follows:

1. **Primair:** violate as regulated and punishable by crime in Article 2 paragraph (1) of Law Number 31 of 1999 concerning Eradication Act Criminal Corruption as amended by Law Number 20 of 2001 concerning Eradication Act Criminal Corruption *junto* Article 55 paragraph (1) number 1 Criminal Code *in conjunction with* Article 65 paragraph (1) of the Criminal Code;
2. **Subsidiary:** violates as regulated and subject to criminal penalties in Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes *in conjunction with* Article 55 paragraph (1) 1st of the Criminal Code *in conjunction with* Article 65 paragraph (1) Criminal Code;

#### **c. Public Prosecutor's Demands**

The Public Prosecutor's Criminal Complaints at the Kendari District Prosecutor's Office on January 19, 2022 are as follows:

1. Stated that Defendant YUSMIN, S.Pd. has been legally and convincingly proven to have committed the act of "taking part in committing a criminal act of corruption" as in Primair's Indictment in violation of Article 2 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Act Criminal Corruption as amended by Law Number 20 of 2001 concerning Eradication Act Criminal Corruption *junto* Article 55 paragraph (1) number 1 Criminal Code *in conjunction with* Article 65 paragraph (1) of the Criminal Code;
2. Sentencing the Defendant YUSMIN, S.Pd. with a prison sentence of 10 (ten) years reduced by the time the Defendant is serving the period of detention with an order that the Defendant remain detained and a fine of Rp. eight months;
3. Declaring that evidence in the form of serial numbers 1 to 448 was returned to the Public Prosecutor to be used in the case file on behalf of the Defendant UMAR, S.Si.;
4. Determine that the Defendant be burdened with paying court costs of IDR 10,000 (ten thousand rupiah).

#### **d. Judge's legal considerations**

Of all the charges brought against the Defendant above, the one deemed proven by the Public Prosecutor is the Primair indictment. and if the primary indictment has been proven, then the subsidiary indictment does not need to be considered, but if the primary indictment is not proven, then the subsidiary indictment must be proven/considered The elements are:

1. Every person;
2. Do deed enrich yourself Alone or person other or something corporation;
3. Abusing the authority, opportunities, or facilities available to him because of his position or position."
4. Harm state finances or economy Country;
5. They Which do, order do, or join in as well as do.

#### **Element "Each person :**

Every person's definition is based on Article 1 point 3 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. In the explanation, it is pretty clear that every person is an individual or includes a corporation, which intended every The person in this case is Defendant YUSMIN, S.Pd. as Head of the Mineral and Coal Division at the Provincial Energy and Mineral Resources (ESDM) Service. Southeast Sulawesi, who was appointed based on the Decree of the Governor of Southeast Sulawesi Number 36 of 2019, dated January 7, 2019, is currently being brought before the court as a person charged with committing a criminal act of corruption;

Whereas at the beginning of the trial, the Chief Judge examined and asked for the Defendant's identity, both name and other identification as stated in the indictment, which was subsequently confirmed by the Defendant so that there was no error in person (*error in person*) who was confronted in this case;

The Defendant is in good physical and mental health and answers every question asked of him; the Defendant is even able to refute the statements of the witnesses, which he considers to be untrue so that he is deemed competent and understands what he is accused of;

Because the word "*Everyone*" is attached to an element of the criminal act charged, then this element will be fulfilled and proven if all the elements of the criminal act in the offense are also fulfilled and proven so that the perpetrator can be held criminally responsible;

**The element of doing a deed enriches yourself Alone or another or something corporation:**

According to the facts at the December 26, 2019 trial, LAODE SINARWAN ODA, SE., as the Main Director of PT. Toshiba Indonesia submitted a Presentation Request Letter for Ratification of the 2020 RKAB to the Head of the Southeast Sulawesi Province ESDM Service; however, before the presentation was carried out, on January 28, 2020 witness UMAR, S.Si met NINING RAHMATIA, SP in her office at the Southeast Sulawesi Province ESDM Office to hand over IDR 60,000,000.00 (sixty million rupiah) for consumption at a meeting or session to discuss PT's 2020 Work Plan and Budget (RKAB). Toshiba Indonesia, then NINING RAHMATIA, SP, reported handing over the money to Defendant YUSMIN, S.Pd., then the money was distributed to witness DR. BUHARDIMAN, ST, MS, amounting to Rp. 10,000,000.00 and the Defendant YUSMIN, S.Pd. Amounting to IDR 15,000,000.00 and the remainder to parties related to PT's 2020 RKAB evaluation. Toshiba Indonesia, considering the Defendant YUSMIN, S.Pd. in 2019, when he had just served as Head of the Minerba Division, he ordered NINING RAHMATIA, SP to increase the collection of money for processing applications for approval of the Work Plan and Budget (RKAB), which originally amounted to Rp. 10,000,000.00 to Rp. 25,000,000.00 to Rp. 50,000,000.00 up to IDR 75,000,000.00

That witness UMAR, S.Si. Denied that there was no provision of IDR 60,000,000 for the 2020 Work Plan and Budget (RKAB) Approval Meeting of PT. Toshiba Indonesia, because this was denied by witness Umar, S.Si (Defendant in a separate case file), "There was no provision for food, drink, and honorarium for the 2020 Work Plan and Budget (RKAB) evaluation meeting because witness Umar was at Jakarta from January 21, 2020, to February 7, 2020";

When Defendant Yusmin, S.Pd. just served as Head of the Mineral and Coal Division of the ESDM Service, or to be precise on January 7, 2019, witness Yusmin, S.Pd. had been given money by his staff, but witness Yusmin, S.Pd. the money was rejected, this was based on the testimony of witness Yusmin, S.Pd. which states "*I just joined in 2019 on January 7, I also signed the PT RKAB evaluation attachment. Toshiba Indonesia, and at the same time, I want to be given an honorary term because it is assumed that there is leftover food and drink. I conveyed it at the meeting to all staff, not because of eating and drinking. Then you ask the company for money; for example, if there is food and drink, hand it all over to "The company provided it because then we would have legal problems, that is why I did not accept it."*" This statement is by the statements of witness Nirmala, witness Nining Rahmatia, witness Andi Sadly, and witness Irfan Naim, who stated, "*When Mr. Yusmin just took office as a witness, he heard Mr. Yusmin convey matters regarding food, drink, and honorarium. Do not take care of it, let the company itself prepare it. There is";*

That the Defendant Yasmin, S.Pd. I was never ordered to ask for or increase the money from Rp. 10,000,000.00 to Rp. 25,000,000.00 to Rp. 50,000,000.00 to Rp. 75,000,000.00. This is as stated by witness DR. BUHARDIMAN, ST, MS, who stated, "*I have never ordered my staff to raise or ask for food, drink and honorarium money from the company for the Work Plan and Budget (RKAB) evaluation meeting and I have never received that money";* because this was admitted by the witness Nining Rahmatia herself who stated "*the one who determines the amount of the costs is me (Nining Rahmatia)"* this is also in line with the statement of Witness Umar (the Defendant in a separate file) who basically stated "*the one who determines the costs is witness Nining Rahmatia,*" then apart from that witness Nining Rahmatia also gave the task to Witness Nirmala to distribute the money, as in witness Nirmala's statement which stated "*the witness was given the task by Mrs. Nining to distribute the honorarium money in the amount determined by Miss Nining";*

That the order intended by Witness Nining Rahmatia must be interpreted as a verbal order because no written evidence shows and supports the statement made by Witness Nining Rahmatia. and If it is true that there was an order from Defendant Yasmin, S.Pd. to increase the RKAB processing fee collection which was initially Rp. 10,000,000,- to Rp. 25,000,000,- to Rp. 50,000,000,- to Rp. 75,000,000- why did Witness Nining Rahmatia, a subordinate/staff member of Defendant Yasmin, S.Pd., just implement the order one year ago? The answer is, of course, because there was no such order in the first place; this is also by what was conveyed by Br. Umar S.Si (Defendant in a separate case file): "*There was no money for food, drink, and honorarium for the RKAB evaluation meeting in 2020 because witness Umar was in Jakarta from January 21 2020 to February 7 2020."*

Based on the juridical reasons mentioned above, it is evident that the Defendant's actions were not found to be "**Enriching the Corporation.**" Thus "**This element is not fulfilled";**

**The element "Misusing the authority, opportunities or facilities available to him because of his position or position."**

The main problem in the *A quo* case is an attachment letter approving the Work Plan and Budget (RKAB) signed by Defendant YUSMIN, S.Pd. Head of the Mineral and New Coal Division of the ESDM Department of Southeast Sulawesi Province and a letter of approval for PT's Work Plan and Budget (RKAB). Toshiba Indonesia was issued by the ESDM Department of Southeast Sulawesi Province and signed by witness DR. BUHARDIMAN, ST., M.S. as (Plt.) Head of the Energy and Mineral Resources Service of Southeast Sulawesi Province from August 29, 2019, to July 1, 2020, and in the central issue of whether the approval letter for RKAB PT. Toshiba Indonesia has caused losses to the State's finances in connection with the payment of outstanding bills for Non-Tax State Revenue from Forest Area Use (PNBP-PKH), which PT has not paid. Toshiba Indonesia from 2009 to October 19, 2019, amounting to IDR 495,216,631,168.83 (four hundred ninety-five billion two hundred sixteen million six hundred thirty-one thousand one hundred sixty-eight rupiah and eighty-three cents).

**e. Court ruling**



Kendari District Court Decision Number: 44/Pid-Sus-TPK/2021/PN Kdi has decided:

1. Stated that the Defendant YUSMIN, S.Pd. mentioned above, has not been legally and convincingly proven guilty of committing a criminal act of corruption as charged in the Primair or Subsidiary indictment;
2. Released the Defendant YUSMIN, S.Pd. therefore from all the Public Prosecutor's indictments;
3. Restoring the Defendant's rights in terms of ability, position, honor, and dignity;
4. Order the Defendant to be released from detention;

Whereas based on the first level *judex active decision*, the Public Prosecutor filed a cassation effort with the Supreme Court of the Republic of Indonesia, and based on the Public Prosecutor's cassation effort, the Judge of the Supreme Court of the Republic of Indonesia gave a decision Number: 4002 K/PID.SUS/2022 with the verdict as follows. Following:

1. Reject the cassation request from the Cassation Petitioner/Public Prosecutor at the Kendari District Prosecutor's Office;
2. Waiving case fees at all levels of justice and the cassation level being charged to the State;

Due to the rejection of the legal cassation effort from the Public Prosecutor, the Kendari District Court's decision has obtained permanent legal force *Inkracht Van Gewijsde* or strengthens the decision of the *Judex Factie court* of first instance, both in its legal considerations and in its ruling.

## V. CONCLUSIONS AND RECOMMENDATIONS

### 5.1 Conclusion

Based on the description of the research results and discussion above, the author draws the following conclusions:

1. Based on the legal facts explained in the trial, the approval of the 2019, 2020, and 2021 Work Plan and Budget (RKAB), PT. Toshiba Indonesia defendant Yasmin, S, Pd has the authority to sign approval for the Work Plan and Budget (RKAB) based on Article 19 of Southeast Sulawesi Governor Regulation Number 33 of 2015 concerning Technical Guidelines for Granting Mining Business Permits for Special Production Operations for Processing and Refining Minerals and Coal.
2. Legal considerations regarding the judicial decision in the criminal act of corruption case Approval of the Work Plan and Budget (RKAB) at the Kendari District Court Number: 44/Pid.Sus-TPK/2021/PN.Kdi, whose decision acquitted the Defendant of all the Prosecutor's charges. The Public Prosecutor's decision has been confirmed by the decision of the Supreme Court of the Republic of Indonesia Number: 4002 K/PID.SUS/2022 and *Inkracht* (has permanent legal force) is by legal certainty.

### 5.2 Suggestions

Based on the description of the conclusion above, the author's suggestions that can be used as recommendations in uncovering corruption cases according to their relevance to writing this thesis are as follows:

1. It is hoped that investigators at the Prosecutor's Office in Corruption Crime cases will pay attention to displaying the legal value of solid evidence to fulfil the elements of the articles applied in the resume for transferring the case to the Public Prosecutor.
2. To the Public Prosecutor who is examining corruption case files not to force the case to be transferred to court before the evidence presented by the investigator has been perfected, to avoid the emergence of new evidence presented by the Defendant before the trial, which could weaken the proof of the elements of the crime who was accused.

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