

# Criminal Witnesses: Competent Person in Indonesia in Cases of Misappropriation of Mining Production Quantity Determination

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**Abstract.** The central focus of the study lies on the significance of accurate reporting as a critical element in evaluating mining activities conducted by companies. Within the legal framework of Indonesia, the act of falsifying documents in mining-related reporting is regulated by Law No. 3 of 2020. Article 159 of this law explicitly delineates the criminal penalties that can be imposed on holders of IUP, IUPK, IPR, or SIPB permits who intentionally submit false or inaccurate reports. These penalties encompass imprisonment and substantial fines. Furthermore, beyond criminal consequences, the abuse of authority by CPIs can also be viewed as a breach of professional ethics, potentially leading to the revocation of the CPI's professional position by the relevant industry association. This disciplinary action is taken to mitigate potential further harm and to preserve the integrity of the CPI profession. This research underscores the importance of rigorously applying legal provisions and subjecting CPIs to oversight by professional associations to maintain their integrity when determining tin production quantities and providing truthful mining reports. This, in turn, safeguards the interests of both the state and the public in the mining sector.

**Keywords:** Competent Person, Criminal Penalties, Falsifying Document, Tin Mining

## 1 Introduction

The mining sector in Indonesia has become a prime choice for investors due to the promise of high profits, despite corresponding risks.[1] It also serves as a key source of foreign exchange for the country, even though it is accompanied by environmental damage as the landscape undergoes changes. The environmental and social impacts can be minimized when mining activities are conducted following proper mining practices by the holders of Mining Business Permits (IUP) and executed by competent mining technical personnel. According to Law No. 3 of 2020, mining operations encompass a range of activities related to the exploration, feasibility studies, construction, extraction, processing, purification, development, utilization, transportation, and sale of minerals or coal.[2] The definition of mineral mining includes the extraction of mineral deposits, such as ores or rocks, excluding geothermal resources, oil and natural gas, and groundwater. Tin mining is one of the specific mineral mining activities.[3]

Mining operations involve several stages, including general investigation, exploration, feasibility studies, mining preparation, actual mining, mineral processing, transportation, sales, and post-mining activities.

Post-reform, starting with the enactment of Law No. 22 of 1999 concerning regional governments and Law No. 25 of 1999 on the financial balance between the central and regional governments, Indonesia entered an era of regional autonomy. This shift was followed by the issuance of Minister of Trade Regulation No. 149/MPP/Kep/4/1999, which outlined general provisions for export activities and explicitly stated that tin was no longer considered a strategic commodity, thereby ceasing to be a strategic export for the state. As a result of this regulatory change, the Bangka regency government issued Regional Regulation No. 6 of 2001 regarding the management of general mining.[4]

This change led to a proliferation of mining activities conducted by communities, often neglecting the environmental repercussions. Economically, this shift also had positive impacts, particularly in the Bangka Belitung province, where numerous well-built houses were observed in villages with active mining activities, both legal and illegal, when visiting the area.

The significant economic benefits derived from tin mining activities have enticed many individuals to invest and become holders of IUP OP (Mining Business Permits). Unfortunately, some of these investments exploit mining carried out by local communities without adherence to the country's regulations. Moreover, many entrepreneurs have fallen victim to false promises and misleading assurances made by certain individuals within the community who guarantee abundant production without adhering to the necessary exploration steps to obtain proper data on reserves and resources, as well as the involvement of competent experts.

As a rule-of-law state, economic goals are not the sole priority; they must be balanced with other factors, particularly the environmental impact of economic activities originating from mining.[5] Achieving this objective can only begin with a well-structured regulatory process. This regulatory process should incorporate legal norms that demonstrate a commitment to sustainable and environmentally conscious mining practices.[6] The commitment of the state, as stated in Article 33 paragraph (3) of the 1945 Constitution, is that land, water, and natural resources contained therein are under state control and should be utilized to the greatest extent for the prosperity of the people. This implies that the state's control over natural resources is aimed at the welfare of the Indonesian people.[7] The management of mining is expected to enhance the well-being of the people, including community-based mining, which has been, for the most part, conducted informally.

To address the prevalence of criminal activities in the field of mineral and coal mining, including the falsification of production data by IUP holders, various means can be employed, one of which is criminal law or what is known as criminal law policy or penal policy, as well as non-penal policy).[8] These two approaches should be integrated to ensure that criminal policy for preventing and addressing crimes is optimal and reliable.

Criminal activity can be tackled through criminal law, which, in essence, is a part of law enforcement efforts, particularly in criminal law enforcement.[9] Therefore, it can be said that criminal law policy is also part of law enforcement policy.[10] In a broader sense, criminal law policy can encompass the scope of policies in substantive criminal law, procedural criminal law,

and the implementation of criminal law.[11] Efforts to combat crime can be achieved through policy approaches: firstly, there is integration (comprehensiveness) between criminal policy and social policy; and secondly, there is integration (comprehensiveness) between crime prevention efforts through both penal and non-penal measures.[12]

The evolution of the mining industry worldwide necessitates transparency, standardization, and accountability, including in the field of mineral and coal exploration and mining in Indonesia. In various parts of the world, several codes have been developed and implemented.[13] These codes are used as references for reporting Exploration Results, Mineral Resources, and Mineral Reserves for minerals and coal. Over the past two decades, the mining industry, including exploration, in Indonesia has progressed significantly, resulting in a substantial increase in funding requirements from the stock exchange and banking sectors.[14] This has led to a growing need for credible reporting of Exploration Results, Mineral Resources, and Mineral Reserves, prepared by competent individuals.[15] Under these circumstances, the majority of stakeholders in the Indonesian mining sector believe that credible reporting adheres to the JORC Code (Australasian Code for Reporting of Exploration Results, Mineral Resources, and Ore Reserves). Consequently, Indonesia has deemed it necessary to develop its own Code for Reporting Exploration Results, Mineral Resources, and Mineral Reserves, which can be used as a reference by Competent Persons in Indonesia.

The role of the Competent Person Indonesia (CPI) is crucial in determining the quantity of mineral production and sales by IUP OP holders. These individuals possess the expertise and experience to calculate and predict the content of minerals, particularly tin, within a specific IUP concession. According to the Indonesian Mineral Reserve Code (KCFM) Article 10, a Competent Person Indonesia is a professional in the mineral industry who is registered as a Competent Person Indonesia with IAGI or PERHAPI or other Recognized Professional Organizations (RPOs), as recognized by the respective professional organizations. These organizations have the authority to initiate disciplinary proceedings, including suspension and termination of membership for their members. Other professional organizations (RPOs) are recognized by the Joint Committee of KCFM, which is officially announced from time to time.[16]

If a Competent Person Indonesia prepares a report on Exploration Results, their experience should align with the field of exploration. If a Competent Person Indonesia is involved in or supervising the estimation of Mineral Resources, their experience should be relevant to estimating, reviewing, and evaluating Mineral Resources. If a Competent Person Indonesia is involved in or supervising the estimation of Mineral Reserves, their experience should be aligned with estimating, reviewing, evaluating, and the economic feasibility of extracting Mineral Reserves.

The issues addressed in this research include, firstly: how does the authority of Competent Person Indonesia (CPI) play a role in determining the production quantity for IUP OP holders? Secondly, what are the criminal penalties for Competent Person Indonesia (CPI) if the determination of production quantity for IUP OP holders is not conducted correctly according to Mining Law No. 3 of 2020?

## 2 Method

The research type and problem approach used in this study are normative legal research, which is conducted by examining, summarizing, and supplementing specific legal regulations governing mining to discover legal rules and legal doctrines to address the legal issues under investigation.[17] The reason for choosing normative research is that the nature of the problem necessitates an analysis of the existing legal regulations.

The problem approach employed in this research includes a legislative approach and a conceptual approach. Legislative regulation involves rules that must be written, containing legal norms that have broader applicability and are established by state institutions through procedures stipulated in legal regulations. The conceptual approach pertains to the concepts that prevail in society, and if there is a violation, it necessitates processing in accordance with the applicable legal regulations regarding illegal mining. Secondary legal materials refer to materials closely related to primary legal materials, such as literature that is relevant to the theories, opinions, and viewpoints directly related to the research issues raised in this study.

## 3 Result and Discussion

### 3.1 Authority of CPI in Determining

The terms "authority" and "power" originate from the word "wewenang," and both take the form of nouns. "Wewenang" is defined as the right and power to act, and "kewenangan" means the matter of being authorized, the right, and the power to do something.[16] In English terminology, these terms are collectively referred to as "authority," and there is no substantial or principled distinction between them. Similarly, in Dutch, no distinction is made between the two. The term "bevoegdheid" is often used, although there are other terms that translate to "kewenangan" or "competence," such as "bekwaamheid." So, from a terminological standpoint, there is no substantial or principled difference between the terms "wewenang" and "kewenangan." Both terms are always associated with "the right and the power to act or to do something." [18] Thus, the differentiation made between the concepts of "misusing authority" and "misusing power" based on the argument that there is a difference in the legal definition or juridical definition between "kewenangan" and "wewenang" is no longer relevant.[19]

The mining industry plays a vital role in Indonesia's economy, given its abundant mineral resources. Among these resources, tin is a valuable commodity, and its production and export are closely regulated to protect national interests. The determination of tin production quantities and the accuracy of mining reports are essential aspects of this industry. The role of Competent Person Indonesia (CPI) in this process is defined by Law No. 3 of 2020, which introduces Article 159, outlining their responsibilities and potential legal consequences.

CPI, as defined by the law, is an independent party with professional expertise responsible for verifying and reporting on mineral and coal mining data. Their role is crucial in ensuring accurate reporting, environmental protection, and preventing the abuse of mining permits. The responsibilities entrusted to CPI involve the certification of mineral and coal reserves, the review of production data, and providing expert opinions.

Article 159 of Law No. 3 of 2020 serves as the cornerstone of the regulation for CPI and their

involvement in determining production quantities for holders of IUP OP (Mining Business License for Production Operation), particularly in tin mining. This article clearly defines the legal consequences for inaccurate reporting, opening the path to a more transparent and accountable mining industry.

Article 159 explicitly states that IUP, IUPK, IPR, or SIPB holders who intentionally submit inaccurate mining reports or false information may face serious legal consequences.[20] These sanctions include imprisonment of up to five years and a maximum fine of IDR 100 billion. This strict legal framework is designed to prevent illegal practices in the mining industry. In addition to criminal penalties, the misuse of authority by CPI can also be considered a violation of professional ethics. In such cases, the relevant professional associations have the authority to revoke the professional status of a CPI. This action is essential to maintain the integrity of the mining profession and prevent further harm to the environment and industry reputation.

Article 159 of Law No. 3 of 2020 reflects the government's commitment to regulating and overseeing the mining industry, especially in the context of tin production. The existence of stringent legal sanctions and ethical consequences for unethical behavior ensures transparency, accountability, and protection of national interests and the environment. This law underscores the importance of maintaining the integrity of CPI and their reports, contributing to the development of a responsible and sustainable mining industry in Indonesia.

### **3.2 Criminal Sanctions Against CPI in the Abuse of Authority**

Reporting is a fundamental aspect in evaluating mining activities conducted by companies.[21] Falsifying documents in reporting is a criminal act that harms the state, and therefore, the provisions in Law No. 3 of 2020 establish sanctions for proven instances of forgery. Article 159 of Law No. 3 of 2020 explicitly states, "Holders of IUP, IUPK, IPR, or SIPB who intentionally submit a report as referred to in Article 70 letter e, Article 105 paragraph (4), Article 110, or Article 111 paragraph (1) that is incorrect or provide false information are subject to a maximum prison term of 5 (five) years and a fine of up to IDR 100,000,000,000.00 (one hundred billion rupiahs)." This provision ensures that if a CPI provides false testimony or creates forged documents, they can be criminally punished with imprisonment or fines as stipulated in the regulations.

In addition to criminal consequences, the abuse of authority by Competent Person Indonesia (CPI) can also violate professional ethical codes. This can lead to the revocation of a CPI's professional status. For CPIs who are proven to have committed criminal acts, professional associations have the authority to remove them from their positions, with the aim of preventing further harm and maintaining the integrity of the profession. These measures underscore the importance of upholding the integrity and compliance of CPIs in the tin production determination process and in accurate and honest mining reporting to protect the interests of the state and the public in the mining sector.

In this context, mining reports are not just routine administration but a vital instrument that determines transparency, accountability, and compliance with regulations. With accurate reporting, stakeholders, including the government, mining companies, and the public, can monitor the environmental and economic impacts of mining activities.

Strict legal provisions, such as those stipulated in Law No. 3 of 2020, reaffirm Indonesia's commitment to maintaining the integrity of the mining sector.[22] This creates a strong legal foundation to mitigate illegal and harmful practices in this sector. Criminal sanctions and ethical professional consequences are essential tools to ensure that Competent Person Indonesia and other mining permit holders comply with the law and ethics in carrying out their duties. Alongside the role of professional associations, this establishes a balanced system between preventing legal violations and protecting the environment, national interests, and professional integrity in the mining industry.

#### 4 Conclusion

In the context of the abuse of authority in determining the tin production quantity by Competent Person Indonesia (CPI), this journal article highlights critical aspects related to reporting in the evaluation of mining activities. Falsification of documents in reporting is a criminal act that harms the state, regulated by Law No. 3 of 2020. Article 159 of this law explicitly states that holders of IUP, IUPK, IPR, or SIPB who intentionally submit incorrect reports or false information can be subject to criminal sanctions, including imprisonment and substantial fines.

In addition to criminal sanctions, the abuse of authority by CPI can also be considered a violation of professional ethical codes, leading to the revocation of their CPI status. In cases where CPIs are proven to have committed criminal acts, professional associations have the authority to remove them from their positions, with the aim of preventing potential further harm and preserving professional integrity.

Thus, stringent legal actions and oversight by professional associations are crucial steps to ensure the integrity and compliance of CPIs in carrying out their authority in determining the tin production quantity and maintaining the quality of accurate and honest reporting to protect the interests of the state and the public.

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