

# Regulatory Review

## Cinnabar and Mercury in Indonesia

### Mining and Trade



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## Prepared by

Dyah Paramita, CRPG  
Yuyun Ismawati, Nexus3 Foundation

## For more information, contact

[dyahparamita@gmail.com](mailto:dyahparamita@gmail.com)  
[yuyun@nexus3foundation.org](mailto:yuyun@nexus3foundation.org)

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## **List of Abbreviation**

B3	Bahan Berbahaya Beracun / Toxic Substances
IPR	People Mining Permit
IUP	Izin Usaha Pertambangan / Mining Business Permit
IUJP	Izin Usaha Jaza Pertambangan / Mining Services Business License
IUPK	Izin Usaha Pertambangan Khusus / Special Mining Business Permit
SIPB	Surat Izin Pertambangan Batuan / Rock Mining Permit
SKB	Surat Keputusan Bersama/ Joint Decree

# **Cinnabar and Mercury in Indonesia**

## **Mining and Trade**

### **1. Background**

The Government of Indonesia has ratified the Minamata Convention through Law No. 11/2017. Following such ratification, the Government enacted Presidential Regulation No. 21/2019 regarding National Action Plan for Reduction and Elimination of Mercury Use. Attachment I of such Presidential Regulation contains the elimination of the use of mercury in Artisanal and Small-scale Gold Mining (ASGM) as one of priority sector. Several activities in this priority sector is to supervise and control over unlicensed primary mercury mining activities (cinnabar) and law enforcement activities.

To improve such regulations and policies, it is necessary to conduct a review aimed to:

- analyze policies and regulations related to the mining, trading, and refinery of cinnabar;
- analyze the handling of seized goods in the form of mercury as a result of law enforcement;
- analyze loopholes between the regulations and the practice in connection with the mining, trading and refinery of cinnabar as well as handling of seized goods in the form of mercury;
- analyze the administrative and criminal sanctions for cinnabar mining and refinery under the Mining Law;
- provide recommendations to the Government of Indonesia.

This review is carried out using qualitative method, namely by analyzing Indonesian regulations and policies in mining, trading, narcotics, environment, Indonesian Criminal Code (KUHP), Indonesian Criminal Procedure (KUHP), and regulations of the police force of the Republic of Indonesia, as well as case study based on selected court decisions.

## 2. Cinnabar Mining and Refinery

Under Law No. 4 of 2009 regarding Mining of Mineral and Coal (Mining Law) and Law No. 3 of 2020 regarding amendment to law No. 4 of 2009, cinnabar mining and refinery are not explicitly prohibited.

Article 34 (1) of Law No. 4 of 2009 categorizes mining business into mining of mineral and mining of coal. Further, Article 34 (2) categorizes mining of mineral into: a) mining of radioactive mineral, b) mining of metal mineral, c) mining of non-metal mineral, and d) mining of rocks.

Article 2 (2) b of Government Regulation No. 23 of 2010 regarding Implementation of Mineral and Coal Mining Business Activities categorizes metal mineral into, among others, lithium, gold, copper, mercury, lead, nickel, and others. Article 2(3) of Government Regulation No. 23 of 2010 provides that changes to the categorization of mining commodity as referred to by Article 2(2) shall be stipulated by the Minister.

Pursuant to Article 35 of Law No. 3 of 2020, mineral and coal mining business is carried out in the form of business licensing from the central government<sup>1</sup>.

Such business licensing is carried out by the granting of: a) business identification number, b) standard certifications; and/or c) licenses<sup>2</sup>, where such licenses comprise of<sup>3</sup>:

- IUP (Mining Business License) which is a license to carry out mining activities<sup>4</sup>;
- IUPK (Special Mining Business License) which is a license to carry

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<sup>1</sup> Law No. 3 of 2020, Article 35 (1)

<sup>2</sup> Ibid, Article 35 (2)

<sup>3</sup> Ibid, Article 35 (3)

<sup>4</sup> Ibid, Article 1 point 7

out mining activities in a special mining business license area<sup>5</sup>;

- IUPK as Continuity of Contract/Agreement Operation is a business license granted to carry out mining business of certain rocks for certain purposes<sup>6</sup>;
- IPR (People Mining License) is a license to carry out mining business in a people mining area with limited land size and investment;<sup>7</sup>
- SIPB (Rock Mining License) which is a license granted to carry out mining business activities of certain rocks for certain purposes<sup>8</sup>;
- Assignment license<sup>9</sup>;
- Transportation and trading license, which is a business license granted to purchase, transport and sell mineral or coal mining commodities<sup>10</sup>;
- IUJP (Mining Services Business License) which is a license granted to carry out core mining services business activities related to a stage and/or part of mining business activities<sup>11</sup>; and
- IUP for Sale.<sup>12</sup>

Under the previous Law (Law No. 4/2011) mineral and coal mining businesses are carried out in the form of Mining Business License (IUP), b) People Mining Business License and c) Special Mining Business License (IUPK).

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<sup>5</sup> Ibid, Article 1 point 11

<sup>6</sup> Ibid, Article 1 point 13b

<sup>7</sup> Ibid, Article 1 point 10

<sup>8</sup> Ibid, Article 1 point 13a

<sup>9</sup> Ibid, Article 35 letter f

<sup>10</sup> Ibid, Article 1 point 13c

<sup>11</sup> Ibid, Article 1 point 13d

<sup>12</sup> Ibid, Article 35 i

In practice, cinnabar mining and refinery are carried out by people mining. Whereas, regarding the above mentioned matter:

- 1) The Mining Law and its implementing regulations do not distinguish mercury primary mining (or cinnabar mining) from the output of cinnabar refinery in the form of mercury, even though these are conceptually different.
- 2) Based on Article 35 Law No. 4/2011, mining of mercury as metal mineral must be based on an IUP, IPR, or IUPK. Based on Law No. 3/2020, mercury mining business as a metal mineral must be based on an IUP, IUPK, IPR. On that matter, if mercury is found in the field, it is necessary to prove that the mercury is a result of a licensed activity.
- 3) Based on Article 123B of Law No. 3 of 2020 mineral and/or coal obtained from mining activities without an IUP, IUPK, IPR or SIPB is deemed a seized goods and/or state-owned goods in accordance with the provisions of laws and regulations.
- 4) Mining Law No. 4 of 2011 and its amendments (Law No. 3 of 2020), as well as the implementing regulations of said Law do not explicitly prohibit cinnabar mining, trading and refinery. Furthermore, there is no criminal provision regarding cinnabar mining, trading and/or refinery directly. This matter causes implications in law enforcement process.

Based on the Mining Law, cinnabar is not a metal mineral that is prohibited to be mined. There is no regulation that specifically deals with the prohibition of cinnabar mining and refinery, as well as commercialization of mercury.

In other regulations such as Government Regulation No. 74/2001 regarding Management of Hazardous and Toxic Substances (*Bahan Berbahaya dan Beracun* or B3), mercury is not a prohibited B3, but a B3 with limited use.



Furthermore, there is no criminal provision under Government Regulation No. 74/2001 or Law No. 32 of 2009 regarding Environmental Protection and Management.

Other regulations such as Minister of Trade Regulation No. 47 of 2019 on the Third Amendment to Minister Regulation No. 44/M-DAG/PER/9/2009 on Procurement, Distribution and Supervision of Hazardous Substances stipulates that:

- Based on Article 17 (1) letter d, a company that has obtained an NIB which serves as an API-P and has obtained PI-B2 is prohibited to import B2 in the form of mercury with Tariff Post/HS 2805.40.00.00, for companies holding an NIB which serves as an API-P which engages in gold mining industry. Violation of this provision is imposed with administrative sanction pursuant to Article 23 (1) namely in the form of revocation of PI-B2 for API-P holders.
- Based on Article 17 (2) letter e, a company that has obtained an NIB which serves as an API-U and has obtained PI-B2 based on Article 17 (2) letter e is prohibited to distribute B2 in the form of mercury with Tariff Post/HS 2805.40.00.00 to PA-B2 engaged in gold mining industry. Violation of this provision is imposed with administrative sanctions pursuant to Article 23 (4) in the form of revocation of PI-B2 for API-U holders<sup>13</sup>.
- Based on Article 17 (3) DT-B2 and PT-B2 are prohibited to distribute B2 in the form of mercury with Tariff Post/HS 2805.40.00.00, to PA-B2 engaged in gold mining industry. **There is no sanction for the violation of this provision.**
- **The weakness of Minister of Trade Regulation No. 47 of 2019 is that a violation of these provisions are only imposed with administrative sanctions and not criminal actions, whereas Article 45 (4) of Criminal Procedure (KUHAP) is applicable for criminal conducts.**

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<sup>13</sup> Ibid Article 23 (2)

### 3. Case Study of Cinnabar Mining, Trading and Refinery and Mercury Trading

There are several cases related to illegal cinnabar trading and refinery and illegal mercury trading. These cases occurred prior to the promulgation of Law No. 3 of 2020. Below is a summary of some of those cases:

A. **Chander Hass Khera Case**, an Indian National, Decisions No. 92/Pid.Sus/2018/PN. JKT Utr, Decisions No. 230/Pid.Sus/2018/PT.DKI and Decisions No. 425K/Pid.Sus-LH/2019.

- Chander had approximately 3,800 kg of Mercury. He was planning to export Hg to India and Dubai when he was arrested on 29 September 2017.
- Chander had a business license and prior to his arrest he had legally exported mercury 6 times between 7 February 2017 until 23 June 2017 (total 9,315 kg) to India, Thailand, and South Africa.
- **A number of seized mercury was missing from the North Jakarta port warehouse where mercury was seized and temporarily stored. The disappearance was reported by PT PPLI when it transported and received seized mercury (PT PPLI only received 600 kg out of 3,200 kg).** Investigators of the Criminal Investigation Agency reported this matter to the North Jakarta Police.
- Based on decision of the North Jakarta District Court, Chander violated Article 161 of Law No. 4/2009 and was proven to possess mineral (cinnabar) from an unlicensed mining activity as regulated in Article 37, Article 40 (3), Article 43 (2), Article 48, Article 67(1), Article 74(1), Article 81 (2), Article 103(2), Article 104(3) or Article 105 (1) of Law No. 4/2009.



- The punishment for Chander based on the decision of the North Jakarta District Court:
  - 1) 3 years 6 months of imprisonment,
  - 2) fines of Rp3,500,000,000; (if not paid shall be redeemed with 8 months of detention).
- The punishment for Chander on appellate level: 1) 1 year 6 months of imprisonment and fines of Rp1,000,000,000 (if not paid shall be redeemed with 3 months of detention), 2) Defendant to pay dispute costs in the amount of Rp2,000.
- Based on the decision of first level and appellate level courts, **evidence in the form of 18 (eighteen) wooden chest containing 108 tubes of ± 3.8 tonnes of suspected mercury with details: 90 empty mercury flasks (tube in empty condition) with weight of 479 kg and 18 mercury flasks (tube) containing mercury elements with weight of 600 kg (flask and mercury elements) were confiscated to be destroyed.**

B. **Unang Suparman bin Hasan Basri Case**, an Indonesian. Decision No. 485/Pid.Sus/2017/PN CBD.

- Unang Suparman is an individual carrying out business as cinnabar rock trading broker since June 2017, and business as mercury trading broker since March 2016 until 2017 by connecting sellers and buyers and gaining fees from mercury trading in the amount of Rp1,000 to Rp2,000 per kg.
- Based on court decision, Unang Suparman is legally proven to have committed a criminal conduct of "Hoarding, selling mineral not sourced from holder of IUP, IUPK and/or license in accordance with the provisions of Article 37, Article 40 (3),

Article 43 (2), Article 48, Article 67 paragraph (1), Article 74 (1), Article 81 paragraph (2), Article 103 paragraph (2), Article 104 paragraph (3), or Article 105 paragraph (1) Law No. 4 of 2009 on Mineral and Coal.

- Punishment for Unang Suparman is 1 to 6 years imprisonment and penalty of Rp1,000,000,000 (one billion Rupiah) provided that if the penalty is not paid it shall be redeemed by 2 (two) months detention. Court decision ordered for the detention that has been carried out by the Defendant shall be fully set off from the punishment.
- Evidence in the form of **129 (one hundred twenty-nine) small sacks of cinnabar rocks with average weight of 40 kg amounting to approximately 5,121.11 kg shall be confiscated for the state, handed over to the Ministry of Mineral Resources through the relevant institution.**

C. **Awad Alla Khalfalla Mohamed Ahmed Farah Bin Khalf Alla Mohamed (a.k.a. Mohamed) Case**, a Sudanese National. Decision No. 984/Pid.Sus/2017/PN Smg.

- Mohamed had approximately 8,383.5 kg of mercury and planned to be exported to Dubai (7 Sept 2017).
- Mohamed ordered 10-tonnes of mercury from LASMINO, CV Cipta Logam Utama. LASMINO, **CV Cipta Logam Utama obtained Decree of Purworejo Regent No: 665.3/01/2015 dated 13 February 2015 on Environmental License for metal refinery.**
- Mohamed has violated Article 161 of Law No. 4/2009 (“hoarding, utilizing, transporting, selling mineral not sourced from a holder of mining area, special mining business license”

based on those articles”) as referred to in Article 37, Article 40 (3), Article 103(2), Article 104(3), or Article 105 (1) Law No. 4/2009.

- Criminal punishment for Mohamed:
  - a) One year imprisonment and penalty in the amount of Rp150,000,000; (if not paid shall be redeemed with 1 month detention),
  - b) Pay dispute costs in the amount of Rp5,000.
- Evidence in the form of 41 boxes comprising of 40 boxes containing @ 6 bottles @ 34.5 kg of mercury and 1 box containing 3 bottles @ 34.5 kg of mercury shall **be confiscated for the State to be handed over to the Ministry of Energy and Mineral Resources through the Relevant Service Office in Central Java Province.**

D. **Lukman Nul Hakim Case**, an Indonesian. Decision No. 29/Pid.Sus/2018/PN.CBD.

- Lukman Nul Hakim produced and processed cinnabar rocks into mercury by grinding the cinnabar, and then mixing it with steel gram and chalk, and then blended into one mix. Further, it is poured into a steel tube using a funnel and tightly sealed. Subsequently, it is lifted onto the burning stove and burned using firewood up to 200 degrees Celsius for 9 to 12 hours. Later on, the mercury will seep out in the form of dripping liquid through steel tube funnel to be contained in a small bucket filled with cold water. Mercury which has been contained in the bucket is then poured into a large containment bucket to separate mud from the mercury liquid using foam. After mud is separated from the mercury liquid, then the mercury liquid is

packed into plastic containers with volume of 2 litres or in the weight of 25 kilograms.

- Lukman Nul Hakim was proven legally and convincingly to have committed criminal action of “carrying out an activity or process that produces B3 waste” based on **Article 103 Law No. 32 of 2009 regarding Environmental Protection and Management.**
- Criminal punishment in the form of 1 year imprisonment and fines in the amount of Rp3,000,000,000 (three billion Rupiah) provided that if the fines are not paid it shall be redeemed by 1 (one) month detention. The detention period that has been done by the defendant shall be fully set off from the criminal punishment decided onto him.
- Evidence in the form of 4 containers containing 99kg of mercury liquid, 48 steel tubes for processing and burning, 9 used sacks previously used for cinnabar rocks, **are confiscated to be destroyed.**

Based on the summary of cases provided above, there are several issues, among others:

- a) In practice, regional governments issue license for metal refinery which is used for cinnabar refinery. This is proven by the existence of **Decree of Purworejo Regent No: 665.3/01/2015 dated 13 February 2015 for CV Cipta Logam Utama regarding Environmental License for metal refinery.** The absence of prohibition of mining of metal mineral in the form of cinnabar (or mercury) resulted in an interpretation in the region that metal mineral refinery (cinnabar/mercury) is permitted by virtue of a license as long as it is not prohibited.





- b) There is a risk of disappearance of seized goods. This occurred in the Chander Hass Khera case, in which a number of seized goods disappeared from the North Jakarta port warehouse where mercury had been seized and temporarily stored.** Cinnabar or mercury trading and trading business activities must first be proven in court that the goods are sourced from an unlicensed activity, or must prove first that such activity damages/pollutes the environment or fulfills the elements under the Environmental Law. The seizure and storage of cinnabar or mercury up to the court decision causes a risk of disappearance of evidence or other risks such as spoilage or high storage costs. However, considering the hazardous nature of mercury and the government policy to eliminate mercury, cinnabar and mercury should have been seizable and destroyable (processed) without having to wait for a court decision.
- c) There is no clear procedure for the handling of seized goods in the form of cinnabar and/or mercury which is ordered to be "destroyed".** Handling of seized goods based on court decision namely: "confiscated for the state to be handed over to the Ministry of Mineral Resources through the relevant institution", "confiscated to be destroyed", "confiscated for the State to be handed over to the Ministry of Energy and Mineral Resources through the Relevant Service Office in the Central Java Province".

## 4. Procedure for Destruction of Discovered, Seized, and Confiscated Evidence

The following is a comparison of procedure for destruction of seized and confiscated goods based on the Criminal Procedure (*Kitab Undang-undang Hukum Acara Pidana* or KUHAP), the Regulation of the Minister of Environment and Forestry No. P.26/MENLHK/SETJEN/KUM.1/4/2017 of 2017 regarding Handling of Evidence in an Environment and Forestry Criminal Conduct and Law No. 35 of 2009 on Narcotics Criminal Conduct.

### 4.1. Procedure for Destruction of Seized and Confiscated Goods Based on KUHAP

There are two processes or stages of destruction of evidence/confiscated goods based on KUHAP, namely destruction of evidence in investigation stage and destruction of evidence pursuant to a court decision.

#### A. Destruction of evidence in preliminary examination as follows:

- **Article 45 KUHAP** paragraph (1) states "In the event the seized goods comprises of goods that are easily destroyed or are hazardous, such that storage until the court decision of the relevant court is final and binding is impossible, or if the storage costs of such goods will be too high, to the extent consented to by the suspected party or his proxy, the following measures could be taken:
  - i) If the case is still handled by the investigator or public prosecutor, the goods can be auctioned or secured by the investigator or public prosecutor, as witnessed by the suspected party or his proxy;

- ii) If the case is already in the court, such goods may be secured or sold by the public prosecutor based on the permission of the presiding judges and witnessed by the defendant or his proxy.
- **Article 45 Indonesian Criminal Procedure (KUHAP) Paragraph (2)** The funds generated from the auction of such goods shall be used as evidence.
  - **Article 45 Indonesian Criminal Procedure (KUHAP) Paragraph (3)** For the purpose of evidence, to the extent possible, a small portion of the goods as referred to in paragraph (1) shall be spared.
  - **Article 45 Indonesian Criminal Procedure (KUHAP) Paragraph (4)** Seized goods which are restricted or prohibited for distribution, except as intended in paragraph (1), shall be confiscated for use for the state's interest or for destruction.
  - Whereas Article 45 paragraph (1), (2) and (3) cannot be applied to evidence in the form of cinnabar or mercury because those goods cannot be auctioned or sold.
  - **Article 45 paragraph (4) of Indonesian Criminal Procedure (KUHAP) is the appropriate article for the destruction or treatment of evidence in preliminary examination stage for goods which are restricted or prohibited for distribution.**

**B. Destruction of evidence based on court decision is as follows:**

- Article 46 (2) If the case has been decided, the goods subject to seizure shall be returned to the persons designated in the decision, unless **where according to the court decision the goods shall be confiscated for the state, to be destroyed or to be damaged so that it can no longer be used** or if such goods are still needed for evidence in a separate case.

#### 4.2. Procedure for Destruction of Evidence based on the Regulation of the Chief of Police of the State of Republic of Indonesia No. 10 of 2010

Regulation of the Chief of Police No. 10/2010 regarding Procedure for Handling Evidence within the Police Force of the Republic of Indonesia Article 21 allows for the destruction in the preliminary examination. However, the destruction in the preliminary examination focuses on narcotics, psychotropics, and prohibited drugs.

- A. **The release of evidence** in the form of narcotics, psychotropics, and prohibited goods for destruction shall be carried out after obtaining a stipulation letter from the Chairman of the local District Court/ Chairman of local District Prosecutor and destruction order from the superior of the investigator.
- B. **Destruction order** from the superior of the investigator as referred to in paragraph (1) shall be issued by:
  - i) Director IV of Narcotics/Organized Crimes of the Criminal Investigation Agency of the Police at Police Headquarters level;
  - ii) Director of Narcotics Investigation at Regional Police level;
  - iii) Chief of Area Police/Chief of Metropolis Area Police at Area/ Metropolis Area levels;
  - iv) Chief of Metropolis Police/Chief of Resort Police/Chief of Metropolis Resort Police/Chief of City Resort Police at the Metropolis/Resort/Metropolis Resort/City Resort levels; and
  - v) Chief of Sectoral Police/Chief of Metropolis Sector/Chief of City Sector at the Sectoral Police/Metropolis Sector Police/City Sector levels.
- C. **In the implementation of release** as referred to in paragraph (1), the Chief of Evidence Management must carry out the following procedure:

- i) Examine and carefully observe the order letter and stipulation for the destruction of evidence;
- ii) Prepare minutes of handover with copies to the superior of the investigator and the suspect; and
- iii) Record and strike out such evidence from the available list.

D. **Prior to the implementation of the destruction**, the evidence as referred to in paragraph (1) must be spared for evidence purposes and laboratory examination as recorded in the available register book.

#### **4.3. Procedure for Destruction of Evidence based on the Minister of Environment and Forestry Decree No. P.26/MENLHK/SETJEN/KUM.1/4/2017**

The procedure for destruction of evidence is stipulated in the Minister of Environment and Forestry Decree No. P.26/2017 specifically addressed in:

- A. **Article 7** of the Regulation of the MOEF No. P.26/2017 provides that the procedure for handling evidence is carried out by way of:
- a. *identification;*
  - b. *securing;*
  - c. *transportation;*
  - d. *storage;*
  - e. *laboratory testing;*
  - f. *care and maintenance;*
  - g. *custody;*
  - h. *care custody;*
  - i. *auction;*
  - j. *designation; and/or*
  - k. *destruction and release to the wild.*

B. **Article 41 (1)** of Regulation of the MOEF No. P.26/2017 provides that the destruction of evidence as referred to in Article 7 letter k shall be carried out on:

- i) Waste, B3, B3 waste, forestry products, plants, animals, or parts thereof that contain seeds of diseases or damages;
- ii) Wood forestry products sourced from a conservation area; and
- iii) Including discovered goods designated for destruction.

D. **Article 41 (2) of MOEF Regulation No. P.26/2017 For the purpose of investigation, prior to destruction, evidence must be spared.**

E. **Article 41 (3)** procedure for destruction as referred to in paragraph (1) shall be implemented in accordance with the provisions of laws and regulations.

F. **Article 43 (1)** every destruction or release must be carried out based on the order of the task force responsible in the field of environmental and forestry law enforcement.

G. **Article 43 (4)** minutes of sparing of evidence shall contain: a) time and place, b) type, nature, amount and/or size of evidence spared, c) characteristics and special marks, d) suspect and/or person with possession, e) alleged article, f) institution that carries out destruction or release, and g) at least 2 witnesses.

H. **MOEF Regulation LH No. P.26/2017 allows destruction in preliminary examination stage based on Article 41(1) and (2).**

#### 4.4. Procedure for Destruction of Evidence based on Law regarding Narcotics Criminal Conducts

Based on Law No. 35 of 2009 it is possible to carry out **destruction** of narcotics evidence **prior to the issuance of court decision**. This is carried in accordance with Law No. 35 of 2009 as follows:

- Article 91 (1) Chairman of the local District Prosecutors Office, within at maximum 7 days after receiving notice regarding seizure of Narcotics goods and Narcotics precursors from the investigators of the Police Force of the State of the Republic of Indonesia or investigators of BNN (Badan Narkotika Nasional/National Narcotics Agency) must declare the status of such seized narcotics for the purpose of development of science and technology, education and training **and/or destroyed**.
- Article 91 (2) Seized Narcotics and Narcotics Precursors which are in the custody of the investigators which have been stipulated for destruction, must be destroyed within maximum 7 days as of the receipt of stipulation from the chairman of district prosecutor's office.
- Article 91 (3), Investigators must prepare minutes of destruction within maximum 1 x 24 hours as of said destruction and deliver the minutes to the investigators of BNN or investigators of the local Police of the State of the Republic of Indonesia with copies to the Chairman of local District Prosecutors office, the Minister, and Chairman of the Food and Drugs Supervisory Body.
- Article 91 (4), In certain circumstances, the period for destruction as referred to in paragraph (2) may be extended one time for the same period.
- Article 91 (5), Destruction of seized goods as referred to in paragraph (2) shall be carried out in accordance with Article 75 letter k.

- Article 94, further provisions regarding the conditions and procedure for handover and destruction of seized goods as referred to in Article 91 and Article 92 shall be stipulated in a Government Regulation.
- Article 95, Investigation, prosecution, and court examination processes shall not delay or prevent the handover of seized goods in accordance with the period as referred to in Article 90 and Article 91.

#### 4.5. Definition of Destruction of Seized and Confiscated Goods

Hazardous and toxic substances (B3) like mercury cannot be destroyed but must be treated to remove the hazardous nature/the toxic. Article 46 (2) Indonesian Criminal Procedure (KUHAP) states **“If a case law has been decided, the confiscated goods (seizured goods) shall be returned to the persons designated in the decision, unless where pursuant to the court decision the goods shall be confiscated for the state, to be destroyed or to be damaged so that it can no longer be used or if such goods are still needed for evidence in a separate case”.**

Such treatment cannot be done directly by the investigators or public prosecutors, but must be done by a qualified processor of B3/B3 waste. MOEF Regulation No. P 26/2017 does not specifically define what is meant by destruction of evidence.



## 5. Recommendations

- There is a need for criminal provisions for cinnabar and mercury mining, refinery, and commercialization in the Mining Law and/or its derivative regulations.
- There is a need for extended interpretation of the “destruction” of seized goods and confiscated goods in the form of hazardous and toxic substances (B3) or other indestructible substances (such as cinnabar). In this matter, there is a need for cooperation among the Supreme Court, the Police Force, the Prosecutors Office, the Ministry of Environment and Forestry and the Ministry of Energy and Mineral Resources to align on such interpretation (issuance of Joint Agreement Letter (*Surat Kesepakatan Bersama/SKB*)).
- There is a need for a clear guidance on the stages and procedure for destruction/processing or seized goods/confiscated goods in the form of cinnabar and mercury to implement Article 7 (k), Article 41, Article 42 and Article 43 of MOEF Regulation No. P.26/ 2017.
- Without waiting for a revision of GR No. 74/2001 and the Mining Law, handling of seized cinnabar and mercury to be carried out in accordance with MOEF Regulation No. P.26/2017 2017. Storage can be handled by the MOEF to be administered in an interim storage or by an institution responsible to manage interim storage, and then destroyed. Budget may be allocated to the MOEF based on Article 46 MOEF Regulation No. P. 26/2017. There is a need for a Joint Agreement Letter among the Police Force, the MEMR, and the MOEF so that all seized goods are handed over to the MOEF for temporary storage while the case is ongoing and pending court decision.
- If there is already a formal delict (the crime is considered as done by the fulfillment of elements of action, not awaiting or considering on results)

the Law and/or regulations for cinnabar and/or mercury as prohibited B3, then investigators will be able to implement Article 45 paragraph (4) of KUHAP and Article 41 (1) and (2) of MOEF Regulation No. P.26/2017 namely to carry out destruction by way of a treatment while the court process is ongoing (treatment of mercury and/or cinnabar may be carried out without having to wait for a court decision). Mercury may be transported into an interim storage or directly to the premises of B3 waste processor who will perform treatment on the mercury. The consequence arising from the application of this article may refer to Article 46 of MOEF Regulation No. P. 26/2017.

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