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MINING SUPERVISION IN PROTECTED FOREST AREAS IN INDONESIA

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Abstract: This research aims to analyze licensing related to mining activities in protected forest areas in Indonesia. They are using normative juridical methods with statutory and conceptual approaches. The results of this study can conclude that although there is a comprehensive legal framework, implementation, and law enforcement still face various challenges, including a lack of coordination between institutions, weak law enforcement, and conflicts of interest between environmental protection and exploitation of natural resources. Dispute resolution can be pursued through out-of-court / nonlitigation. The settlement of ecological disputes outside the court can be done by mediation or arbitration using the services of mediators and arbitrators who help resolve environmental disagreements. Settlement of environmental disputes through court legal means is carried out by filing an "environmental lawsuit" based on Article 34 UUPLH jo. Article 1365 BW on "compensation for unlawful acts" (onrechtmatigedaad).

Keywords: Environmental Law; Mining Law; Onrechtmatigedaad

1. Introduction

The initial thought underlying this scientific research is that mining activities in protected forest areas are a critical issue in Indonesia, given the importance of protected forests for biodiversity conservation and ecosystem balance. Indonesia is very rich in natural resources. Its management is regulated according to Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945); the article is the basis for the pattern of utilization of existing natural resources.[1] Existing regulations aim to regulate the utilization of natural resources while preserving the environment. However, conflicts between resource exploitation and environmental protection still occur, especially in Indonesia's Protected Forest Areas. Forests are unlimited natural resources and have enormous benefits for living things. According to the Basic Forestry Law No.41 of 1999 concerning Forestry, a forest is an ecosystem unit in the form of an expanse of land containing biological natural resources dominated by trees in their natural environment, inseparable from one another.[2]

Mining activities in protected forest areas are a critical issue in Indonesia. Protected forest areas play a vital role in conserving biodiversity, maintaining ecosystem balance, and providing various ecosystem services essential for life. Quoting from the book "Forest Area Management" by Sarintan Efratani Damanik And Tengku Muhammad Sahudra defines protected forests as

[1]Elita Rahmi, Rustian Mushawirya, and Eko Nuriyatman, "Omnibus Law Prospective on Natural Resources," *Bina Hukum Lingkungan* 5, no. 2 (2021): 306, /http://doi.org/10.24970/bhl.v5i2.170 PROSPECTIVE.
[2]Basic Forestry Law No.41 of 1999 concerning Forestry

forests that have certain legal and constitutional protections in certain countries. The state manages protected forests to preserve the ecosystem and natural resources, and the community monitors the existing forests. Protected forests serve as a habitat for many endemic species of flora and fauna and regulate the water cycle, prevent erosion, and store carbon, which is essential for climate change mitigation.[3]

Existing regulations in Indonesia aim to regulate the utilization of natural resources while maintaining environmental sustainability. Some existing laws and regulations include Law No. 41/1999 on Forestry, Law No. 4/2009 on Mineral and Coal Mining, and various government regulations and regional policies. These regulations stipulate various requirements and procedures for obtaining mining business licenses in protected forest areas and regulate the obligations of mining business actors to carry out post-mining land reclamation and rehabilitation. 3 Although the regulations have been developed comprehensively, implementation and law enforcement in the field still face various obstacles. Conflicts between resource exploitation and environmental protection often occur, triggered by factors such as a lack of coordination between institutions, weak law enforcement, and solid economic interests from various parties. In addition, the lack of awareness and participation of local communities in monitoring mining activities is also a factor that exacerbates this problem.

This research analyzes regulations and law enforcement related to mining activities in Indonesia's protected forest areas. Using the normative juridical method, it will evaluate the suitability and effectiveness of existing regulations, identify gaps in policy, and provide recommendations for improvement to ensure environmental sustainability and the welfare of surrounding communities. It is hoped that the results of this research can make a meaningful contribution to efforts to improve sustainable natural resource management in Indonesia.

2. Research Method

The research method used is normative research with a statutory and conceptual approach. The research's literature study is based on materials from online news media, books, scientific publications, and laws and regulations. The statute approach is the research methodology employed.5 This research will analyze various laws and regulations governing mining activities in protected forest areas, including the Forestry Law, Mineral and Coal Mining Law, and related government regulations. In addition, the study will also examine legal documents, court decisions, and government policies to evaluate the effectiveness of law implementation and enforcement. The study will use a descriptive-analytical approach to describe the existing legal situation and provide recommendations based on the normative findings obtained.

Conduct a literature study to understand the legal context and regulations related to the issue under study, including previous research, legal articles, books, and related official documents. Legal Document Analysis: Analyze the content of the identified laws and regulations, including Law No. 41/1999 on Forestry, Government Regulation No. 71/2014 on the Protection and

[3] S E Damanik, S Hut, and T M Sahudra, *Forest Area Management*, ed. Pandapotan Simatupang, 1st Edition (Yogyakarta: K-Media Publishers, 2021) https://books.google.com/books?hl=en&lr=&id=sSRTEAAAQBAJ&oi=fnd&pg=PA1&dq=konflik+rehabilitation+forest&ots=xUNpfxlGJh&sig=thDqDalc8HXiSvKnIVrNym3Gbs

Management of Protected Forest Ecosystems, Presidential Instruction No. 6/2017, as well as relevant local regulations, search court decisions related to the issue under study, especially related to violations of reclamation regulations in Indonesia. Analysis and Evaluation: Analyzing the content of the collected legal materials, evaluating the suitability and effectiveness of existing regulations in controlling mining activities, and enforcing reclamation rules. Inference: Based on the analysis and evaluation results, draw conclusions regarding the success or failure of existing regulations in restricting mining business licenses and enforcing reclamation rules in Indonesia and provide recommendations for improving relevant legal policies. Using normative juridical research methods, this study can provide an in-depth understanding of the legal framework governing the limitation of mining licenses and the enforcement of reclamation regulations in Indonesia. The analysis will provide insight into the effectiveness of existing rules in sustainably managing forest and mining resources.

3. Discussion

3 Preventive supervision of mining in protected forest areas

Preventive supervision, in general, means supervision carried out before implementation. This means supervision of everything that is still a plan. Law No. 5 of 1974 states that preventive supervision also has a technical meaning which does not deviate from the general sense.[4] Preventive supervision of mining in protected forest areas is a significant effort to preserve nature and the welfare of local communities. The first step is establishing and enforcing transparent and fair regulations, ensuring that mining activities comply with strict environmental standards.

In the realm of forests in Indonesia, tropical forests are very rich in animals and plants and more natural resources, such as coal and minerals. Woods clearing is no longer for forest products but for resources under the forest (mining) without being able to restore the forest area as it should be. Section 2(1) of Government Regulation No.22 of 2010concerning Mining Areas provides a separate explanation of the mining area, which is an area that has the potential of minerals and coal, both on the surface of the ground and under the ground within the land area or sea area for mining activities. Land areas that have mineral and coal potential are forest areas. For a long time, Forest regions that are conserved and protected inIndonesia have stored many mining materials that have become the target of investors. The phenomenon that occurs and can no longer be avoided is the emergence of several companiesthat carry out mining activities in protected forest areas. Total mining business licenses reached135 IUPs, 28 licenses are in the exploration stage, and 107 other permits are already in the production operation stage. Nickel mining is spread across three districts, including Morowali Regency (37 IUPs), North Morowali Regency (21 IUPs), and Banggai Regency (20 IUPs). In addition to these three districts, Tojo Una-Una District has two mining licenses. The total mining concessions of all permits in Central Sulawesi reached 214. 076. 33 ha. Among a large number of mining

[4] Yenny Yunus Saleh, Tommy Kumampung M.R, and Ronny Sepang, "A JURISDICTIONAL REVIEW OF THE ISSUANCE OF RAKYAT PERTAMBANGAN USE PERMITS ASSOCIATED WITH THE LAW NO 4 YEAR 2009 ON MINERAL AND BRAZILE MINING" 8, no. 32 (2020): 204

licenses, as many as 15 mining companies are active in forest areas which are spread across 16,000 hectares.

- Mining arrangements in forest areas in Indonesia

However, in Article 38, paragraph (4), the Forestry Law has stated that protectedforest areas are prohibited from mining with open mining patterns. Because many corporations do not consider natural circumstances sensibly and sustainably for the community, mining companies who think their financial gains also support this restriction. Therefore, the author would like to explain related to mining regulations in Indonesia's forest areas and the reality that occurs in mining areas in forest areas in Indonesia.[5]

The issuance of The types and tariffs of non-tax state revenue derived from the use of forest areas for development interests other than forestry are outlined in Government Regulation No. 2/2008.

Activities Applicable to the Ministry of Forestry (from now on referred to as PP PNBP), promulgated on February 4, 2008, should have surprised the public. The type of PNBP in this Government Regulation is PNBP derived from the use of forest areas for development outside forestry activities where the forest area is more than 30% of the area of the watershed and island. The PP PNBP has legalized mining in protected forest areas. Previously, Article 38 Paragraph (4) of the Forestry Law had stated, "In protected forest areas, mining with open mining patterns is prohibited." However, Berry Nahdian Forqan, Executive Director of the Indonesian Forum for the Environment (WALHI), said that based on the Forestry Law, mining in protected forests is allowed with an underground system. However, whenLaw No. 41/1999 was changed to Law No. 19/2004, forest mining was altered to a borrow-to-use permit.

Article 38, paragraph (3) of the Forestry Law clearly states that mining licenses covering forest areas must obtain permission from the Minister of Forestry. The Forestry Minister's permit also includes the forest area to be used for mining, as well as the license's validity period. Thus, the Minister of Forestry determines how much forest area is permitted for mining businesses through the Forest Area Borrowing and Use Permit (from now onreferred to as IPPKH) and the validity period of the IPPKH concerned. If a company holdingan IPPKH wishes to expand its mining area in the forest area, it must apply for IPPKH expansion to the Minister of Forestry. Article 38, paragraph (5) stipulates that specifically for IPPKH, which has a significant impact, broad scope, and strategic value, including mining, the license issued by the Minister of The approval of forestry is required by the House of Representatives. It needs to be reviewed by Article 19 of the Forestry Law, which states that (Law Number 41 of 1999 concerning Forestry Article 19, 1999):

a. Based on the findings of the integrated study, the government decides how to reclassify and utilize forest lands.
b. The Government shall specify, with the House of Representatives consent, any changes to the forest area designation stated in paragraph (1) that have a significant impact, a broad scope, and strategic value.
c. Government regulation will govern the provisions about the processes for changing the designation and function of a forest area, as mentioned in paragraphs (1) and (2).

[5] Fatma Ulfatun Najicha, "The Impact of the Policy *on the* , no. 28 (2021): 3

Therefore, if the House of Representatives of the Republic of Indonesia (DPRI) does not approve the mine, the Minister of Forestry has no right or legality to issue an IPKH or permit to expand/extend the mine. Similarly, Presidential Regulation No. 28/2011 on the Use of Protected Forest Areas for Mining has regulated the mining licensing procedure in protected forests.

The enactment of this license was also accompanied by regulations aimed at protecting forests. Presidential Decree No. 41/2004 on Licenses or Agreements in the Field of Mining Located in Forest Areas is intended to state 13 mining companies that have existed before the enactment of Article 38 paragraph (4) of the Forestry Law, but this decision states that mining.

According to the forestry ministry, licenses are founded on the idea of lease. The mining business in protected forests is an open space to be protected, which is the authority of the central and regional governments through ministerial decisions so that damage to protected forests can be minimized, for example, in the form of strict rules and provisions for forest rehabilitation and reclamation efforts (Handayani, Gunarto, et al., 2018). Similarly, Government Regulation No. 45 of 2004 divides forest protection activities into 3 Conservation Forest Management Units (KPHK), Protected Forest Management Units (KPHL) and Protected Forest Management Units (KPHP). The implementation of forestry governance, efforts to secure forests, forest products, forests, and the environment so that their functions can be achieved optimally and sustainably (Handayani, Gunarto et al., 2018).

In Article 5, paragraph (1) of Government Regulation Number 24 Year 2010 on the Use of Forest Areas, The use of forest areas for mining activities is carried out under the provisions:

(1) Mining with open mining patterns and mining with underground mining patterns are both possible in producing forest regions;
(2) Only underground mining methods are permitted in protected forest regions, and such methods are subject to the restriction that they cannot cause:
    a. The surface of the ground sinking;
    b. A permanent alteration to the forest area's primary purpose; and c. harm to groundwater aquifers.

Furthermore, license or contract holders are required by the Energy and Mineral Resources (ESDM) Decree Number 1,827 of 2018 to begin reclamation as soon as possible after no operations on disturbed property, but no later than 30 calendar days. Similarly, reclamation and revegetation in forest areas are done without waiting for the Forest Area Borrowing and Use Permit (IPPKH) to expire, according to Minister of Environment Regulation No. 27/2018 (APBI-ICMA, 2020).[6]

- The Reality of Mining Areas in Protected Forest Areas in Indonesia

The conversion of protected forest areas into mining areas poses at least a danger that thefunctions of protected forests as hydrological, ecological, and biodiversity providers will be destroyed. These functions are so vital and unique that their existence is irreplaceable. This disaster is caused by the loss of water catchment function due to the loss of forest cover and the proliferation of shrubs due to deforestation. Environmental damage due to mining activities

[6] Fatma Ulfatun Najicha, "The Impact of the Policy *on* , no. 28 (2021): 5-7.

usually takes the form of mine pits, acid mine drainage, andtailings, all of which threaten the sustainability of the ecosystem—even people who live in the area around the mine experience economic and social inequality. For example, the operations of the coal company PT Buana Tambang Jaya in Riau Mining will cause social conflict and environmental damage. This is because the company will mine an open system with explosives, which can cause damage to houses, residents' buildings, and plants around the mine, pollute the Kampar River and its tributaries, and even disrupt the sustainability ofRimbang Baling, the mining area that BTJ will work on is flanked by community village forests, precisely in the middle of their settlements and gardens. Apart from these problems, the ex-mining pit may be a void from mining activities that cannot be restored to its original state. According to studies conducted with the government, it will function as a water reservoir or aquaculture.

Mining companies that do not conduct reclamation burden future governments as they face ecological damage and reduce the region's ability to ensure future environmental carrying capacity. License holders abandon coal mining lands for various reasons, including removing natural forest areas. Also, the Energy and Mineral Resources Regulation Minister on reclamation has specific legal implications because it contains several constructions, including a definition of reclamation that does not support the protection of forest areas. The definition of reclamation is activities conducted at every level of the mining industry to arrange, repair, and enhance the ecosystem's and environment's quality so that it can resume its designated purpose. The deviation of reclamation obligations from the construction of Permen of ESDM No. 7/2014 also obscures the legal status of reclamation obligations. The designation of reclamation funds becomes unclear as they are transformed into tourism development funds or water supply guarantee funds. Miners quite well accept this interpretation because the principle of reclamation is formulated, which states that miners "place ex-mining land utilization activities under their designation.[7] So, the author concludes that legal arrangements and the reality in the field show that preventive supervision is essential to preserving forests and preventing damage to the ecosystem. Preventive supervision is the key to maintaining a balance between economic development and environmental conservation, ensuring that protected forests remain a legacy that future generations can enjoy.

3. 2 Refressive supervision of mining in Protected Forest areas

Environmental law enforcement cannot be carried out with prevention and preventive measures only; for example, law enforcement efforts to prevent environmental pollution can be made repressively in the effort of law enforcers to take legal action against those who violate the provisions of the applicable legislation.[8] In its form, a permit is a repressive action from the central government or the state against the Regional Government to realize the state's power structure where the law has explained one of them in the Regulation of the Minister of Home Affairs no. 20 of 2008. In mineral and coal mining activities/projects in their implementation of environmental management where the project will be carried out, there are several primary stages, namely the IUP stage in the form of Exploration is intended as a certainty observation

[7] Fatma Ulfatun Najicha, "The Impact of the Policy *on the* , no. 28 (2021): 8.

[8] Elita Rahmi, Nola Elfi Tumangger, and Hartati Hartati, "Enforcement of Strict Liability Principles in Cases Environmental Law in Indonesia," *Mendapo Journal of Administration Law* 5 (2024): 70

as well as a public study and feasibility of this given time for eight years, the second stage is the IUP in the form of production operations intended as the implementation has been carried out. There is a need for control measures from special parties to protect against fraudulent actions in mineral and coal mining.

The existence of abundant natural resources is a benchmark as a country with abundant natural wealth potential as well, with the existence of mineral and coal mining activities, which are entirely beneficial for many parties, both for the country and its people. But in fact, every time mineraland coal mining activities are carried out; there are people who are only negatively affected, such as waste from the project, so that people's livelihoods are hampered. The country's economic growth liesin the governance of mining itself, making the community unable to do much when the mining projecthas been carried out, and the local government has permitted the project. The rule oflaw needs to be improved rapidly to protect people who are victims of the ferocity of mineral and coal mining activities, which should impact the prosperity of all parties.

Protection in the form of Repressive Law According to Setiono in his case study on the rule of law (2004), the law in its protection as a repressive form is a matter when a conflict that crosses the boundaries of human norms has been created by humans or the parties concerned (Setiono, 2004). This makes the law firmly creates a reciprocal impact to process the conflict so that it is not repeated in every human activity, both subjects and objects of law, for example, in fines, imprisonment, sanctions, and other penalties.

In the previous discussion, the natural resources are owned and fully controlled by the state, which means that the state controls the natural resources in the country. Therefore, any party intending to process natural resources must have a permit to be investigated by the state and authorizedby the local government. It is also emphasized that all natural resources directly impact the surrounding community, which means that the country's people have the right to prosperity from the results of natural resources. The provisions already contain both meanings, especially in the 1945 Constitution in Article 33 paragraph (3). In Indonesia, mineral and coal mining activities are often found in the context of activities that are directly related to natural resource utilization activities.[9]

Certain parties carry out the processing, usually large business partners approved by the government and have special licenses to run the project. Processing andmanaging natural resources is not arbitrarily taking crops. Still, control measures are required to maintain state assets, which are even referred to as world assets, for the prosperity of each surrounding community. There needs to be justice where every mineral and coal mining project activity also hasa positive impact on the community, primarily indigenous peoples in places where natural resource processing activities are carried out. Of course, there are principles and objectives to be emphasized in the management of mineral and coal mining; the Minerba Law has regulated the system of these activities.

The following things can be digested for mineral and coal mining activities: a. Utilization, justice that must be shared equally, balance-sustainability b. They are always prioritizing the rules and interestsof the entire nation c. Participants must also have a bright or broad insight into the environment so that no parties arbitrarily process natural resources. d. Transparency and accountability: Natural resources are natural resources that are mainly non-renewable; therefore, their processing needs to be considered carefully by all aspects of society, including

[9]*Pradiatmika, Putu Putra., etc. 2020. Perlindungan Hukum Terhadap Masyarakat di Daerah Pertambangan. Jurnal Analogi Hukum 2 (2)*

the government and strict rules. Transparency and accountability: Recall that natural resources are primarily non-renewable. Therefore, all aspects of society need to carefully consider their processing, including the government and strict rules.

Its utilization is not solely for individuals but for the benefit of the nation and state for all people. But in fact, the impact of every activity carried out by mineral and coal mining projects is very much found on the island of Kalimantan, especially indigenous peoples who are victims of the prosperity of survival in the community area there. Rules that have been issued and are expected to control these activities, such as the Agrarian Law and the Forestry Law No. 41 of 1999, the role of the Natural Resources Law has not fully emphasized processing or management that directly impacts Indigenous peoples.

3.3 Out-of-court dispute resolution (non-litigation)

In mining activities in protected forest areas, the dispute is about the restoration of forest damage after mining activities, so based on the description above, dispute resolution can be taken through out-of-court / nonlitigation. In out-of-court environmental dispute resolution, mediation or arbitration can be carried out by using the services of mediators and arbitrators who function to help resolve ecological disputes themselves. The police can enter and participate as mediators in implementing mediation. The mediation or arbitration form of dispute resolution requires a third person as a judge, not a policy maker. The government has issued a policy on the development of Forest Management Units (from now on referred to as FMUs), which are organizations that work at the site level and are felt to be a litmus test for the implementation of a forest management system that is sustainable from an economic function, social function, and environmental function, with justice, and so that the sustainability of the forest can run efficiently and optimally. The establishment of FMUs is a new and permanent regulatory entity that directly addresses existing problems and provides the basis for better forest governance, planning, co-management of forest resources, monitoring, and stakeholder involvement. The role of FMUs is to carry out forest management activities, one of which is problem-solving and avoiding new problems, as well as increasing the management capacity of conservation forests and protected forests. (Rahmadanty et al., 2020) Based on this description, FMUs can be present as institutions/third parties that can become mediators in dispute resolution in mining disputes.[10]

3.4 Main Heading of the Second Analysis or Discussion, etc.

Settlement of environmental disputes through court legal means is carried out by filing an "environmental lawsuit" based on Article 34 UUPLH jo. Article 1365 BW on "compensation for unlawful acts" (onrechtmatigedaad). Based on this provision, it is still difficult for victims to succeed in environmental lawsuits, so the possibility of losing the case is enormous. The main difficulties faced by pollution victims as plaintiffs are, among others, proving the elements contained in Article 1365 BW, especially the aspect of fault ("Schuld") and the element of a causal relationship. Article 1365 BW includes the principle of liability based on fault ("schuld aansprakelijk- heid"), which can be equated with "Liabi- lity based on fault" in the Anglo-American legal system. They are proving a causal relationship between the act of pollution and the loss. The process of examining a lawsuit by an environmental organization (legal standing)

[10] Risty Sekar Yuhana And Universitas Sebelas Maret, "Penyelesaian Sengketa Pertambangan Di Kawasan Hutan Indonesia," No. September (2021).

or a class action in court still refers to the civil litigation process based on the HIR (het herein Indonesisch Reglement) Rbg (Reglement Buite Gewesten, and Rv (Reglement op de burgerlijke recht Vordering). The content of the lawsuit letter in environmental disputes is not regulated in the UUPLH. Therefore, it still refers to the previous laws and regulations, namely HIR, Rbg, and Rv. Regarding the formulation of the lawsuit, the HIR and Rbg only regulate how to file a lawsuit.[11]

First is the parties' identity, including their full names, age/place of birth, occupation, and address/domicile. However, there are times when a branch of a legal entity carries out the position of plaintiff/respondent; therefore, the BH must be explained.

Second, posita/fundamentum petendi. I was supposed to be a concrete argument about the existence of a legal relationship, which is the basis and reason for the claim (middleman van den is). Posita consists of two parts: the part that describes the events/legal events and the part that describes the law, namely the description of the existence of rights or legal relations, which are the juridical basis of the claim.

Third, the petitum. The petitum is the part of the letter of claim that contains the matters requested to be decided by the judge. The petitum consists of two parts, namely the main/primary petitum, which includes matters/proposal demands requested to be granted by the court, such as demanding the termination of the agreement with additional compensation or the implementation of the agreement with forced money. The second part, the subsidiary petitum, contains matters that give the judge the freedom to grant other than the prima facie petitum.

Moreover, considering that the most significant part of Environmental Law is Administrative Law, it is necessary to know that environmental dispute resolution can also take the form of a lawsuit by a person or civil legal entity to the State Administrative Court because their interests (for a good and healthy environment) are harmed by a State Administrative Decision in the environmental sector based on Law Number 5 of 1986 concerning State Administrative Courts. A lawsuit to the PTUN contains a demand that the permit be declared null or invalid so that the decision (PTUN judge) immediately stops environmental pollution due to an environmental permit that is not careful.[12]

4. Conclusion

The results of this study can conclude that despite the existence of a comprehensive legal framework, implementation, and enforcement still face various challenges, including a lack of inter-agency coordination, weak law enforcement, and conflicts of interest between environmental protection and natural resource exploitation. Although coal mining makes much money, this business has negatively impacted the environment, especially in protected forest areas. Ecological dispute resolution can be submitted civilly to the District Court. The settlement of environmental disputes outside the court can be done by mediation or arbitration using the services of mediators and arbitrators who help resolve environmental

[11] Sawitri, Handri Wirastuti., Bintoro, Rahadi Wasi. 2010. Sengketa Lingkungan Dan Penyelesaiannya. *Jurnal Dinamika Hukum* 10 (2)

[12] Handri Wirastuti Sawitri and Rahadi Wasi Bintoro, "Sengketa Lingkungan Dan Penyelesaiannya," *Jurnal Dinamika Hukum* 10, no. 2 (2010): 163–74, https://doi.org/10.20884/1.jdh.2010.10.2.149.

disagreements. Settlement of environmental disputes through court legal means is carried out by filing an "environmental lawsuit" based on Article 34 UUPLH jo. Article 1365 BW on "compensation for unlawful acts" (onrechtmatigedaad).

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