

## **Mining corruption, environmental damage, and the increasing unauthorized properties of state officials**

Lola Yustrisia<sup>1</sup>, Kelik Wardiono<sup>2\*</sup>, Natangsa Surbakti<sup>3</sup>, Arief Budiono<sup>4</sup>

<sup>1,2,3,4</sup>Faculty of Law Universitas Muhammadiyah Surakarta, Ahmad Yani Street, Pabelan, Kartasura, Surakarta City, Central Java, Indonesia; r200230002@student.ums.ac.id (L.Y.) kw268@ums.ac.id (K.W.) ns276@ums.ac.id (N.S.) arief.budiono@ums.ac.id (A.B.)

**Abstract:** Indonesia is blessed with natural resources in the form of minerals and coal. Their use must be directed towards the greatest welfare and prosperity of the people based on the 1945 Constitution. However, what is currently happening is the opposite. the Attorney General revealed case of alleged corruption in the trading system of tin commodities in the Bangka Belitung region. The suspects include businessmen, directors, crazy rich Indonesians, and artists who are now increasingly attracting public attention. The total state losses were equivalent to \$16,667 billion USD. This research used a sociological legal research model. The research object was the legal behavior in the reality of society. It was found that to formulate appropriate law enforcement for mining corruption, Friedman's legal system theory approach was used. This theory includes legal structures, with good synergy from each law enforcement institution. Concerning the legal substance, apart from using the Corruption Crime Law, perpetrators also need to be impoverished by regulating the crime of money laundering. In terms of legal culture, state officials should uphold ethics and integrity to achieve good governance. Meanwhile, restoration of environmental damage resulting from mining activities can begin with future environmental policies that are directed towards ensuring the safety and health of the human life as well as controlling the wise use of natural resources. The integration of environmental law and Islam can be carried out using a prophetic ethical approach. The prophetic paradigm interprets nature as something sacred as humans only borrow it and manage.

**Keywords:** *Corruption, Environmental damage, Illicit enrichment, Indonesia, Mining activities;*

### **1. Introduction**

Indonesia is a country that has abundant natural resources as a gift from God Almighty. Indonesia's abundant natural resources are also influenced by its strategic geographical and astronomical location. Indonesia's natural resource potential includes forest potential, marine potential, land potential, water potential, air potential, tourism potential, and mining potential [1]. Indonesia's mining potential, mineral and coal reserves in particular, is very high. For nickel, Indonesia is ranked the first in the world, beating the Philippines, Russia, China and the United States [2]. Indonesia's tin is placed in the second rank in the world in terms of total reserves and production. Then, for coal and bauxite, Indonesia is in the sixth position. For copper, it is positioned in the seventh place [3].



**Figure 1.**  
Indonesian mining commodity map.

Apart from that, Indonesia recorded a contribution of 39% for gold products. The gold commodity is placed in the fifth position for total reserves and in the sixth in production after China. This is not to mention natural gas, iron sand, manganese, sulfur, asphalt, and iodine. This makes Indonesia always ranked in the top 10 in the world. Its enormous potential causes the mining sector to contribute to non-tax state income [4].

**Table 1.**  
Production of mineral mining goods in 2021-2022.

No.	Mineral mined goods	Production of mineral mining goods	
		2021	2022
1	Coal (Tons)	614,058,577	687,402,285
2	Bauxite (Tons)	25,781,187	28,808,674
3	Gold (Kilograms)	78,996	85,203
4	Tin Concentrate (Tonmetrics)	52,467	57,735
5	Copper Concentrate (Tonmetrics)	3,377,023	3,321,239
6	Nickel (Tons)	65,509,854	98,187,963

**Source:** Publication of Non-Oil and natural gas mining statistics, central bureau of statistics. Data last updated on January 11, 2024.

Based on the table above, it can be seen that the mineral mining goods produced are in the forms of coal, bauxite, nickel, granite, and iron sand in tons. Meanwhile, gold and silver are measured in kilograms. Then, tin concentrate and copper concentrate are measured in tonmetrics.

The development of the coal downstream industry into a product to supply the chemical industry to replace oil is highly necessary. Likewise, nickel, bauxite, copper, and other main minerals are crucial to support the development of the battery-based electric vehicle industry. Then, with other types of mining products, efforts are made to have them domestically processed. To make the development of downstream industry a success, there is a need for integration to provide a greater added value for Indonesia [3].

It is crucial to consider that minerals and coal are non-renewable natural resources. Thus, they must wisely and sustainably be used. It is hoped that mineral and coal management in Indonesia may increase

the quantity and quality of national human resources; increase independence and resilience; as well as increase the economic roles and benefits, which will ultimately increase the welfare and prosperity of the people. This is mandated in Article 33 clause (3) of the Republic of Indonesia's 1945 Constitution, which states that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people" [5].

However, the current reality shows that mining natural resources are not used to improve the welfare and prosperity of the people. But it is rather to benefit the ruling class such as politicians and government officials. Government instruments are used to weaken the state's functions in mining which originally have vital value. State officials commit corrupt practices in the mining sector, such as bribing other state officials and increasing illegal wealth through illicit means (illicit enrichment) which is also part of corruption [6].

Politicians' profit-and-loss calculations force them to build ties with investors in order to streamline their business interests, including in the mining sector. This kind of structural perspective can explain that it is possible for public officials or politicians to not accept bribes in producing policies for certain parties, but instead there is a phenomenon of "connection games" with state officials in providing special access for the upper class. This phenomenon is legally "not a violation," but it is still a form of corruption caused by abusing control over the state for the interests of the upper class alone [7].

A study conducted by Oley and Adi [8] revealed forms of market failure that encourage mining corruption in Indonesia. Market failure in mining is a consequence of rent-seeking and speculation due to fluctuations in commodity prices on the global market. Rent-seeking can simply be interpreted as an effort to secure business interests through political processes in the production stage. Rent-seeking in mining in Indonesia is related to "unfair competition" in winning tenders and efforts to reduce externality costs from business activities for the benefit of investors. According to Oley and Adi, rent seeking in the oil, gas, and other mining sectors usually occurs during the tender process and production sharing arrangements. The mining business actually requires an open concession bidding process. However, in reality, whoever is the first to establish "communication" with the government is the one who is awarded the concession. The central and regional governments only convey the tender winners to the public without conveying information regarding geographical and geological data in the context of oil and gas businesses, causing an economic gap between the government and investors. For example, this was revealed in the case of the former Director of Oil and Gas Special Work Unit, Rubi Rubiandini, there is the case of bribery by one of the financiers in the limited auction process for crude oil and condensate [7].

Recently, the Attorney General's Office also uncovered a case of alleged corruption in the trading system of tin commodities in the limited company mining business license area of *Perseroan Terbatas Timah Terbuka* (Limited Liability Company Tin Public Company, hereinafter called PT Timah Tbk) from 2015 to 2022. Tin mining business licenses are most widely distributed in the Bangka Belitung region with a total of 504 mining business licenses. A total of 21 suspects who are known to have taken part in this case emerged from various circles. These include entrepreneurs, directors, crazy rich Indonesians, and artists who are now increasingly attracting public attention. Apart from the perpetrators, the total state losses caused also reached fantastic values. Environmental expert from the Bogor Agricultural Institute (*Institut Pertanian Bogor*), Prof. Ir. Bambang Hero Saharjo, M.Sc., Ph.D., in his statement to the Attorney General's Office stated that the total environmental losses reached IDR (Indonesian Rupiah) 271,069,688,018,700 or IDR 271 trillion, which equivalent to USD 16,667 billion. This series of fantastic figures comes from calculating losses in forest and non-forest areas [9].

This is a real manifestation of poor governance on the of mining resource management in Indonesia. In fact, the Attorney General said in a press conference at the Indonesian Prosecutor's Office in Jakarta on Wednesday, May 29<sup>th</sup>, 2024, that based on the results of the state financial loss audit from the Financial and Development Monitoring Agency, the initial estimation of losses was around IDR 271 trillion. Then, after further detailed calculation, the losses reached around IDR 300 trillion, which is equivalent to USD 18,446 billion [10]. According to the Head of the Center of Legal Enlightenment the

loss of IDR 300 trillion consists of losses from PT Timah Tbk's collaboration with private smelters amounting to IDR 2.285 trillion and losses from tin ore payments to partners of PT Timah Tbk amounting to IDR 271.1 trillion. Therefore, this unlawful act has created an obligation for PT Timah Tbk as the mining business license holder to restore the damage that occurred [11].

Based on the explanation above, it is necessary to carry out research related to mining corruption, environmental damage and the increase in state officials' illegal assets. The problem formulation is, "How to formulate appropriate law enforcement for perpetrators of mining corruption and restore environmental damage?"

## 2. Research Methods

This research used a sociological legal research model. The object of study was legal behavior in the reality of society. So, this research employed primary data. Naturally, the method used is a method that is generally applicable in social research, which basically aims to prove a hypothesis through statistical measurement-based quantitative analysis [12]. This research was carried out by systematically analyzing and presenting the data to ease the obtainment of information. The analysis was conducted by classifying and connecting the information. Then, the data on mining corruption, environmental damage, and the increase in state officials' illegal assets are systematically arranged according to the flow of discussion.

## 3. Results and Discussion

### 3.1. The Formulation of Law Enforcement for Mining Corruption Perpetrators

The mining sector in Indonesia has a number of problems, especially those related to weak governance and corruption. Governance issues, such as the lack of accountability and transparency in granting mining permits, are considered to be the root cause of corruption in this sector. For example, in 2014, the Corruption Eradication Commission under the Coordination and Supervision Program found that around 40% of mining operations that obtained permits fell into the non-compliant category (KPK, 2014). The general pattern is the existence of a lack of governance in granting mining business licenses. This indicates corruption in the licensing process [13].

Meanwhile, corruption in the mining sector can occur throughout the mining life cycle, namely exploration, construction, production, and closure [14]. The causes and modus operandi of corruption in the mining sector include buying and selling mining permits for the benefit of political funds in the decentralization era; weak coordination between institutions in mining governance; and transfer pricing. There are also the issues of the manipulation of monitoring and law enforcement reports; the existence of a weak civil society; as well as the lack of political will and openness of mining information [13].

The Corruption Eradication Commission uses the Monitoring Center of Prevention (MCP) instrument to monitor and coordinate in eradicating corruption in the regions, especially in licensing areas that are prone to corruption. Based on the National Strategy of Corruption Prevention's analysis, there are 521 companies carrying out mining activities in forest areas with an area of 370,410 hectares. On Kalimantan Island, 131,699 hectares of the 226,687 hectares mining businesses in forest areas do not have Mining Business Licenses and Approval of Forest Area Use. Specifically in South Kalimantan, the mining business area reaches 95,260 hectares, with 30,015 hectares having a problematic illegal status. Or, the mining businesses in this area must fines as they lack an Approval of Forest Area Use [15]. Consequently, it is essential to identify and understand the risks of corruption as a first step in the mining business to prevent and mitigate corruption in this sector [14].

Based on the description above, the character and pattern of corruption in the mining sector in Indonesia includes petty corruption and grand corruption. In this context, petty corruption tends to be more influenced by the uncertainty of bureaucratic services and public administration in the government sector. Meanwhile, grand corruption in the mining sector is more characterized by state-captured corruption which is controlled by a meeting of narrow interests (vested interests) between political

forces, bureaucratic elements, and business people. Therefore, it often involves big fishes, big money, and also abuse of big power [13].

Various law enforcement and prevention efforts have been carried out. Unfortunately, corrupt practices in this sector still continue to occur. For example, there is the transferring mining licensing authority from district or city level regional governments to governor level regional governments. The system is regulated by Law No. 23 of 2014 on Regional Government. Then the issuance of Regulation of the Minister of Energy and Mineral Resources No. 43 of 2015 revoked thousands of fake non-clean and clear mining business licenses, which are suspected to be related to overlapping land, administrative inaccuracies, inappropriate reports, or the expiration of the mining business license validity period. Not only that, the government also strives to align 26 laws on natural resource management which have not been completed until now. It has also strived to launch licensing integration efforts; improve the state revenue system; update spatial-based data and information; as well as coordinate and synchronize supervision and monitoring systems, including regulation synchronization efforts. Then, supervision reform was also carried out by increasing investigation and investigative work related to mining crimes [13].

Another cause of such crimes is the low integrity of the private sector. This is confirmed by research results which showed that mining sector business actors tend to be pragmatic in responding to corrupt practices. As long as the activity does not disrupt the company's cash flow, does not cover the calculated profit margin, and is predicted to generate large profits, there is a big risk of committing corrupt practices. This practice is generally motivated by economic calculations, ranging from the interests of permits and regulations, manipulating reports, to investing corrupt practices in political elites, government, and law enforcement so that these business actors can obtain aid in the future [13].

Apart from that, this is also confirmed by the highly permissive attitude of mining business actors regarding the practices of bribery, gratification, and extortion. It was found that they tend to exhibit more permissive attitudes towards collusive practices by optimizing networks of political and government elites to secure business interests in the field. Therefore, as the nature of business is based on oligarchic roots, most mining corporations have close relationships with political and government elites. Their positions range from executive, commissioner, majority shareholder, to simply company advisor positions [13].

This condition makes the institutional approaches and administrative reforms that have been implemented so far have no impact. The world of mining corporations which are closely linked to the structure of oligarchic power relations tends to have a strong "immunity to change" character [13].

The greater impact of corruption implies to the fragility of the country's economic foundations, increasing economic disparities and poverty in society. It also creates other acute social problems cannot easily be resolved. Based on a study by the Corruption Eradication Commission (2011), there are at least four priority sectors that must receive great attention in the work to prosecute and prevent corruption, namely the political-government sector, the energy sector, the food sector, and the natural resource sector. These four strategic sectors not only concern the livelihoods of the wider community, but are also identified as the main sources of state losses [13].

Viewed from a law enforcement perspective, various law enforcement instruments relating to the eradication of criminal acts of corruption have been created, such as Law No. 28 of 1999 on the State Administration that is Clean and Free of Corruption, Collusion and Nepotism, Law No. 31 of 1999 on the Eradication of Corruption Crimes, Law No. 20 of 2001 on the Amendments to Law No. 31 of 1999 on the Eradication of Corruption Crimes, Law No. 30 of 2002 on the Commission for the Eradication of Corruption Crimes, and Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 on the Corruption Eradication Commission.

Unfortunately, the law enforcement in Indonesia does not run very well. Its condition is highly concerning. The problem of law enforcement is the tendency for an imbalance in the dynamic interaction between legal aspects in the expectations or *das sollen* and aspects of the real legal application or *das sein*. The current weakness of law enforcement in Indonesia can be reflected in the various

unfinished resolutions of major cases, one of which is the widespread practice of corruption. Ironically, very few main perpetrators are affected by the law [16].

Despite this, in reality, law enforcement efforts must still be carried out with efforts to provide justice in society. As it develops, law enforcers have begun to realize that it is important to consider environmental damage as a state financial loss. An example was the case of Nur Alam, the non-active Governor of Southeast Sulawesi Province had to deal with the Corruption Eradication Commission and the Corruption Court, Jakarta. This was because he issued an exploration permit in a block covering two districts, namely Bombana and Buton. As a result of his actions, Nur Alam was sentenced to 18 years in prison. Due to the issuance of the mining business permit, the defendant received an amount of IDR 2,781,000,000.00 (two billion seven hundred eighty one million rupiahs) [17]. Then, the Corruption Eradication Committee Public Prosecutor also included land and environmental damage resulting from mining carried out by Anugrah Harisma Barakah Limited Company. It was calculated to generate a state loss of IDR 2,728,745,136,000. This calculation used Ministerial Regulation No. 7 of 2014 on Environmental Losses Due to Environmental Pollution and/or Damage as a reference [17].

The Corruption Eradication Commission's step in starting to consider environmental damage as a loss to the state is worthy of appreciation. It is interesting to be further discussed. In practice, the inclusion of the "harming state finance" element in the corruption criminal act, as regulated in Article 2 (1) and Article 3 of the Corruption Eradication Law, often creates problems that can affect the process of handling corruption cases [18].

The Attorney General's Office of the Republic of Indonesia has previously made a breakthrough by including the element of ecological loss in the calculation of state economic losses. Unfortunately, this step has often been annulled by the courts. Upon further observation, the problem lies in the Constitutional Court Decision No. 25/PUU/XIV/2016. In essence, the decision which reviews the provisions in Article 2 clause (1) of the Corruption Crime Law deletes the word "can" before the phrase "harms state finances". This decision is then interpreted to mean that state losses must be something that has actually happened (actual loss), rather than something that has not yet happened or will happen (potential loss).

As a result, a number of natural resource corruption cases was thwarted by the panel of judges, such as the crude palm oil export corruption case which caused losses to the country's economy amounting to IDR 10.9 trillion and the Surya Darma Group plantation business permit corruption case in Indragiri Hulu Regency, Riau, with Surya Darmadi as the defendant who caused losses to the state economy amounting to IDR 39.7 trillion. Although in Surya Darmadi's corruption case, the Public Prosecutor's demands were accepted by the court at the first level up to the appeal level. However, at the cassation level, the Supreme Court annulled the calculation of state economic losses based on considerations of Constitutional Court Decision No. 25/PUU/XIV/2016 [19–20].

Apart from hampering law enforcement efforts in corruption cases, this condition also causes environmental damage that is exploited due to corrupt practices to become irreversible. This is also related to the absence of a deterrent effect on perpetrators. In the future, it is not impossible that the number of corruption cases that intersect with natural resources will increase. In fact, according to Rimawan Pradiptyo, the effort to provide an optimum deterrent effect for perpetrators of corruption is to increase the expected cost of corruption, because the value of the financial penalty is much lower than the amount corrupted, causing the corrupted money not to return to the state in full [20]. There is a push for law enforcers and judicial institutions to transform the practice of calculating state losses in criminal acts of corruption.

If a formulation of law enforcement for mining corruption perpetrators is made, it can be described using the legal system theory approach by Lawrence M. Friedman. According to Friedman, the main elements of the legal system are [21]:

1. *Legal structure* is an institution created by the legal system with various functions in order to support the working of the system. This component makes it possible to see how the legal system provides services for the regular processing of legal materials.

2. *Legal substance* is the output of the legal system, which is in the form of regulations and decisions used by both those who regulate and those who are governed.
3. *Legal culture* consists of values and attitudes that influence the legal operation of the law. This legal culture functions as a bridge that connects legal regulations with the legal behavior of all citizens.

In relation to the legal structure, law enforcement efforts for mining corruption perpetrators can be implemented with good synergy between each law enforcement institution which includes the Corruption Eradication Commission, the Republic of Indonesia's Police Force, the Republic of Indonesia's Attorney General, and the Republic of Indonesia's Supreme Court and all of its derivative judicial institutions. If there are allegations of corruption, apart from having the mining business permit revoked, the perpetrator must legally be prosecuted. To provide a deterrent effect, the Corruption Eradication Committee and the Attorney General need to involve the Financial Transaction Reports and Analysis Center in prosecuting corruption perpetrators in the mining sector. Apart from that, the integrated supervision system by the Regional Government, ministries, and institutions related to mining activities must carry out efforts to improve systems and institutions related to mining governance.

Then with regard to the legal substance, apart from using the Corruption Crime Law, perpetrators also need to be impoverished by regulations on money laundering crimes. This is because acts of corruption committed by state officials regarding mining interests have led to an increase in these state officials' illicit wealth.

Then, regarding legal culture, state officials in this case should uphold ethics and integrity. Corruption is the use of power for illegitimate or illegal purposes either by individuals or groups who hold power and authority [22]. Therefore, creating and strengthening ethics of integrity for public officials is one of the most important factors in eradicating corruption as well as in achieving the establishment of good governance.

If seen from a philosophical approach, then essentially, the law enforcement aims to realize what the law desires to achieve. The essence of the legal purpose lies in justice. More than that, law enforcement should accommodate the religion and morality that have developed in society [16].

### 3.2. *The Recovery of Environmental Damages Due to Mining Activities*

Humans were created as caliphs on earth to regulate life and protect environmental heritage. However, what is visible today is that humans have caused a lot of damage on this earth [16]. The mega tin mining sector corruption case mentioned at the beginning, with a total loss of IDR 271 trillion is a fantastic figure. However, rather than just numbers, what deserves to be highlighted is the real impact felt by the environment and surrounding communities. Tin mining corruption not only steals natural resources that should be common wealth, but also steals the health and life of the people that should be the right of every citizen [23].

The concept of environmental losses includes ecological and economic aspects that arise due to damage to natural resources. In this context, ecological environmental loss refers to the loss of ecosystem functions that regulate water, air, and nutrient cycles. Meanwhile, environmental economic losses include the economic values of lost ecosystem services, such as carbon sequestration, clean water supply, and biodiversity. When we see losses that reach IDR 271 trillion due to corruption in tin mining, we are actually seeing how natural resources, which should be a common asset for survival, have been confiscated by irresponsible actions [23].

For this reason, it is important for the government and related parties to not only focus on economic aspects in handling tin mining corruption cases. It is essential to undergo an in-depth consideration of long-term impacts on the environment, public health, and natural resource sustainability. Complete disclosure of this case could be a turning point in the recovery of the tin mining sector in Bangka Belitung. This case should truly become an alarm for all parties to not only exploit

natural resources, but also think about the surrounding environment and the fate of future generations [9].

A non-profit organization, Mining Advocacy Network recorded 45 cases of mining conflicts throughout 2020, consisting of 22 cases of environmental pollution and destruction, 13 cases of land grabbing, eight cases of criminalization of residents who refused mining (with 69 criminalization victims), and two cases of employment termination. This number increased compared to 2019 with only 11 conflicts. Thus, the total number of mining conflicts have increased by 116 cases since the start of President Joko Widodo's leadership in 2014 [24].

The problem of environmental damage is due to human behavior which places nature as a commodity. Nature is exploited without considering that the environment can experience degradation [25]. The root of the problem is also inseparable from Indonesia's development which adopts a materialist concept from the Western capitalist society. It also emphasizes the role of the free market and private enterprise [26]. This development, which then gave birth to a modern, capitalistic life, has encouraged humans to be greedy for the environment. Capitalism (materialism) has given birth to modernism and spreads hedonism. Capitalism is never satisfied. Humans and the nature have become somewhat like mere things that are exploited to fulfill consumer needs. According to Robert Malthus, to balance population growth (births) with food growth (production), food productivity must be increased by optimizing natural resources into goods and services. Because the level of human satisfaction with goods and services is unlimited, optimizing the use of natural resources is also unlimited. As a result, the process of environmental degradation is getting worse and worse [27].

Environmental policies need to be directed towards realizing benefits, namely ensuring the safety and health of the human life and controlling the wise use of natural resources. However, whether or not environmental policies can realize social benefits and justice, it depends on the current environmental management and protection policies [28].

The building of the environmental law and Islam integration concept based on prophetic ethics begins with the concept of welfare contained in *maqashid sharia* (the goal of the Sharia) which includes the human urgency to fulfill the needs of *dharuriyat* (essential needs of the human life), *hijayat* (human's primary needs), and *tahsiniyat* (needs that perfect the human life). Basic needs (*dharuriyat*) are used to protect religion, reason, property, life, lineage/honor. It includes the need for peace of mind that is obtained through faith and devotion to Allah which is manifested in worship. Humans seek a sense of security and safety from crimes and natural disasters, i.e., peace. So, the good policy formulation in matters of management, supervision, licensing, and social security for the people uses a work ethic that complements current legal policy concepts. In its implementation and practice, work ethics through the principles of legal certainty, professionalism, public interest, and orderly administration of the state needs to be integrated with prophetic principles [25].

The prophetic paradigm interprets nature as a sacred thing, as humans only borrow it and manage it. In using nature, humans must be accountable for their actions in the afterlife. Humans are a miniature universe, while nature is an object for exploring knowledge, exploring the greatness of God, and ultimately increasing one's faith. In the prophetic ethics, the management and use of the environment must be directed towards the goals of humanization (humanizing humans), liberation (freeing humans from ignorance, oppression, and structural domination) and transcendence (directing towards monotheism), which ultimately supports the ethical ideals of a just and egalitarian society [29].

#### 4. Conclusion

An effort to formulate appropriate law enforcement for mining corruption perpetrators is the use of Friedman's legal system theory approach. It includes legal structure, where there is a need for a good synergy from each law enforcement institution. Then, there is also the legal substance. apart from using the Corruption Crime Law, perpetrators also need to be impoverished by regulating the crime of money laundering. As for the legal culture, state officials in this case should uphold ethics and integrity in order to achieve the establishment of good governance. The restoration of environmental damage caused by



mining activities can begin with future environmental policies that need to be directed towards realizing benefits, namely ensuring safety and health of the human life as well as controlling the wise use of natural resources. The prophetic paradigm interprets nature as a sacred thing, as humans only borrow it and manage it. In using nature, humans must be accountable for their actions in the afterlife.

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