

Indonesia's mining sector: leaking revenues and clearing forests



Indonesia's rapid and extensive decentralization transferred substantial licensing authority to sub-national administrations, resulting in a proliferation of mining permits. Mining permits now cover 34 percent of Indonesia, with coal mining concessions alone covering 21.25 million hectares. Coupled with poor monitoring and increased rates of corruption, has led to extensive illegal mining. With local government capacity low, coordination between different levels of government poor, and oversight and accountability mechanisms weak, licensing processes have been abused by district officials for personal gain, or to support election campaigns. Licenses have in many cases been issued to more than one company to exploit overlapping areas, or to prospect and mine in protected and community-owned areas, and illegal licenses have been issued to companies that are not registered for tax. The extractives industry is considered to be one of Indonesia's and the world's most corrupt, confirmed by a 2014 study by the Organisation for Economic Cooperation and Development. Of 427 cases of bribery in international business transactions, 19 percent were in the extractives sector.

With official estimates suggesting that almost half of Indonesia's businesses with mining permits pay no royalties,

that a similar proportion lack obligatory tax reference numbers, and that the state may suffer the equivalent of US\$1.2 billion of losses annually from the mineral sector, in 2014 the national Corruption Eradication Commission (KPK) implemented a crackdown. Working with the Supreme Audit Agency and other agencies, the KPK investigation – called a Coordination and Supervision (Korsup) process – focused on the 12 provinces with the highest number of mining permits with the aims of reviewing the legality of the permits, checking if mining companies have valid tax identity numbers and are paying their taxes fully, and investigating whether permits overlap with other concessions, or protected forest areas. The KPK then continued their investigation to all of Indonesia's 34 provinces throughout 2015.

The KPK's main concerns were that non-compliant permits had been issued in exchange for corrupt payments, and that a number of illegal methods were being used to reduce, or avoid, license fee payments. In these areas, civil society organisations accompanied the KPK to support engagement with government, facilitate meetings with civil society, and encourage public participation. From their investigations, the KPK found that more than 4,500 mining companies owed the government revenues of IDR5.43 trillion (US\$468 million).

Civil society organisations have conducted their own investigations into the extractives industry in 26 provinces – Aceh, Bangka-Belitung, Banten, Bengkulu, Central Kalimantan, Central Sulawesi, East/North Kalimantan, Jambi, Java (West, Central, Yogyakarta, and East), Lampung, Maluku, North Maluku, North Sumatra, Papua, Riau, Riau Islands, South Kalimantan, South Sulawesi, Southeast Sulawesi, South Sumatra, West Kalimantan, West Papua, and West Sumatra – where cases of suspected corruption, legal violations and subsequent state loss have been reported by community members, to ensure that the damaging environmental and social impacts from mining does not continue to outweigh the benefits to the state and local communities. The findings from these investigations were provided to the KPK in their meetings with local and provincial governments in each of the provinces investigated, and are summarized in this paper. The data and findings outlined in this paper is the result of the work of more than 50 civil society organisations from across Indonesia.

Neither clean nor clear: basic administrative requirements not met

In order to operate legally, mining operators in Indonesia are required to meet requirements set by the central government. Called clean and clear standards, operators must prove that they have no outstanding royalty and other tax debts, they have fulfilled exploration and environmental commitments, have no property delineation issues and have obtained forestry permits. The KPK's investigations revealed that very few operators fulfil clean and clear requirements – in Kalimantan alone, only half of all mining permits issued across the island have clean and clear status; that is from a total of 3,836 IUP, only 1,514 IUP had clean and clear certification. Of all types of mining, coal mining is the worst. 78 percent of coal permits in Kalimantan are not clean and clear.

The Directorate General of Energy and Mineral Resources stated in 2014 that 2,476 permits, or 77 percent, of Indonesia's mining operations had administrative problems, such as incomplete identification or business registration documents. Such problems demonstrate the poor governance of the mining permitting process in Indonesia, and show the vulnerability of the mining permit process to corruption.

Mining in conservation and protected forests

Mining in Indonesia usually involves clearing forests or farmlands to dig deep, open pits which are often abandoned when they are exhausted, and significant environmental damage often results. Civil society organisations investigations in 26 provinces revealed that permits for mining have been granted in areas of the forest zone (kawasan hutan) designated as protection and conservation forests, which is prohibited. The use of conservation forest for non-forest activities is a clear violation of the Forestry Law (No. 41 of 1999) and the Conservation of Natural Resources and Ecosystems Law (No. 5 of 1990). Forests designated as protected forest are only permitted for underground mining¹. Of the

26 provinces investigated, the largest areas of protected and conservation forests allocated for mining is in Papua, with 1.85 million hectares allocated for mining, and in West Papua, with 1.25 million hectares allocated. A break down of the areas of conservation and protected forests allocated for mining in 26 provinces is detailed in box 1.

Box 1. Mining Permits Granted in Protected and Conservation Forests

Province	Conservation Forest (HK)	Protected Forest (HL)	Total HK & HL
Aceh	31,316.12	399,960	431,275.88
Bangka-Belitung	3,100	28,900	32,000.00
Banten	841.54	315.55	1,157.09
Bengkulu	5,098.75	113,600.97	118,699.72
Central Kalimantan	8,982.25	59,945.08	68,927.33
Central Sulawesi	5,700	299,700	305,400.00
East/North Kalimantan	4,849.14	57,566.14	62,415.28
Jambi	5,200	56,200	61,400.00
Java (West, Central, DIY, and East)	3,275.81	33,645.66	36,921.47
Lampung	20	9,777	9,797.48
Maluku	15,712.27	66,717.49	82,429.76
North Maluku	8,100	127,900	136,000.00
North Sumatra	2205.66	176,485.22	178,690.88
Papua	448,994.33	1,409,976.14	1,858,970.47
Riau	242.95	11,534.73	11,777.68
Riau Islands	100	500	600.00
South Kalimantan	3,860.10	20,318.95	24,179.05
South Sulawesi	3,300	209,700	213,000.00
South Sumatra	6,300	71,600	77,900.00
Southeast Sulawesi	2,900	145,900	148,800.00
West Kalimantan	2,532.00	135,156.64	137,688.64
West Papua	641,706.28	609,613.43	1,251,319.71
West Sumatra	190.16	97,315.06	97,505.22
	1,204,527.62	4,142,328	5,346,855.66

Source: Compiled from data from the Directorate General of Forest Spatial Planning, Ministry of Forestry and Environment 2014, the Directorate General of Energy and Mineral Resources 2014, and the Coalition Against Mining Mafia 2014.

Accessing the right to mine in the kawasan hutan – borrow to use permits

For companies seeking to mine in areas of land designated as kawasan hutan, the company must first obtain a location permit to determine land ownership, the existence of any customary (adat) communities, and financial compensation required, along with a temporary permit (izin prinsip). This requires a deposit bond, and confirmation of

1 Law 41 of 2004, which was passed by the central government, provides exemptions for 13 mining permit holders to conduct open mining in protected forest.

community consultation. A borrow to use permit (IPPKH) must then be obtained from the Ministry of Environment and Forestry (MoEF). The permit requires technical submissions including an exploration/feasibility report, and details of and post-mining reclamation plans. Conditions of IPPKH permits specify that permit holders must return the kawasan hutan to its original conditions once mining has been completed, however in reality most permit holder do not fulfill these obligations leaving the forest and water systems ruined.

There are more than 548 permit holders operating in conservation and protected forests, with 274 permit holders operating in each. Of the data collected, Central Sulawesi has granted the greatest number of mining permits in conservation forest, with 105 permits, followed by East Kalimantan, with 62 mining business permits. Across all of Kalimantan there are 124 mining companies operating in conservation forests – covering an area as wide as 37 percent of the total conservation forest zone in Indonesia.

Problematic mining business permits give rise to massive potential state revenue losses

Where mining occurs illegally, without adhering to basic clean and clear standards, the financial benefit of mining is diminished, meaning that the state and local communities do not benefit. Potential revenue losses are determined based on Government Regulation No. 9 of 2012 on tariffs and non-tax state revenue, and by calculating the shortfall between potential state revenue and the actual revenue received in the 26 provinces under investigation. Rp 1.3 trillion (US\$96.3 million) between 2010 and 2013 was recorded in the 26 provinces studied. Poor mining governance is leading to minimal economic benefit to both the state and local communities.

The highest potential revenue loss from the coal and minerals sector was recorded in Kalimantan. Kalimantan recorded potential state revenue losses of Rp 2.3 billion from unpaid royalties and Rp 574.9 billion from land rent. Sumatra followed, with potential losses of Rp 510.7 billion from

Potential state revenue losses in 16 provinces

Province	Total (Rp)
Aceh	11,917,449,638.27
Bangka Belitung	19,254,575,953.89
Banten	5,359,096,284.78
Bengkulu	25,054,970,490.00
Central Kalimantan	145,136,075,806.52
Central Sulawesi	48,348,833,528.03
East/North Kalimantan	218,302,616,345.32
Jambi	35,306,888,690.76
Java (West, Central, Diy, East)	8,630,000,000.00
Lampung	10,462,619,132.00
Maluku	22,473,615,688.36
North Maluku	69,088,921,439.02
North Sumatra	n/a
Papua	140,142,402,548.52
Riau	n/a
Riau Islands	7,213,035,788.05
South Kalimantan	34,022,034,200.15
South Sulawesi	17,097,169,258.07
South Sumatra	113,015,263,062.58
Southeast Sulawesi	34,952,476,708.40
West Sumatra	n/a
West Kalimantan	177,442,912,665.32
West Papua	162,423,000,000.00
Total	1,305,643,957,228.04 (US\$96,366,285)



royalties, and Rp 186.7 billion from land rent. Sulawesi and North Maluku recorded potential losses of Rp 226 billion from royalties and Rp 169.5 billion from land rent.

In Kalimantan, up to Rp 500 billion (\$37 million) of potential non-tax state revenue from the mining sector was lost because of poor management of forest use permits between 2009 and 2012. Research conducted by Article 33 Indonesia² recorded that poor management of forest use permits between 2009 and 2012 resulted in state revenue losses of Rp 500 billion (US\$38.6 million), or 31 percent of total potential revenue derived from forest use for mining.

Lack of transparency and accountability in the cancellation of permits

A major challenge for national and local governments and the KPK is to increase transparency in the coordination and supervision process. The names of mining companies that have had their permits revoked, and the reason for the cancellation, must be made public. This would have the effect of increasing public participation in monitoring the process, to ensure permits have been revoked, and that the companies in question are no longer operating.

Collaborative Mining Monitoring

Some regional governments are demonstrating their willingness and ability to make improvements to mining permitting and monitoring processes. As part of the KPK coordination and supervision (Korsup) process, the West Kalimantan government has considered input from local civil society organisations and higher education institutions in their evaluation and review of permits and plans for reclamation and post-mining rehabilitation. Civil society groups, in their field research, identified a number of permits operating illegally, and the government responded to these findings by cancelling permits. 11 mining business permits were revoked as a result of this process. Meanwhile, the East Kalimantan government is preparing a gubernatorial regulation on the formation of a Commission for the Monitoring of Reclamation and Post-Mining Rehabilitation, which will involve civil society, the Departments of Mining, Forestry and Environment, and other relevant professionals, in line with regional regulation No. 8 of 2013 on Reclamation and Post-Mining Rehabilitation.

2 Policy Brief, "Optimizing State Revenue from Use of Forest Zone for Mining," Article 33 Indonesia, 2014, unpublished.

Recommendations

Improving the management of Indonesia's natural resources will benefit the lives of local communities who are most impacted by the environmental damages that extraction brings. The KPK, law enforcement agencies and some regional governments have made positive steps towards improving mining governance, but without follow up on commitments, mining corruption and revenue loss continues business as usual.

Civil society coalitions urge that the following recommendations are implemented immediately to support sustainable development:

- The KPK gave local governments until December 2014 to obtain clean and clear certification. This deadline has passed however, and still many operations fail to adhere to clean and clear. To mitigate any further state revenue losses, law enforcement officials, in particular the KPK, must act against permit holders who violate the terms of their permits and state officials involved in corruption in extractives industries.
- As the body responsible for issuing permits, the government must freeze the operations of mines in conservation forests, and act on permit holders who do not meet 'Clean and Clear' standards. Violations such as unpaid taxes and environmental destruction must be followed up, even after permits are revoked.
- The government must temporarily freeze the activities of mining companies that have not paid their debts.
- The government must tighten monitoring procedures by involving civil society, to ensure that there is no change in the classification of land status or other administrative violations.
- The government must improve transparency and accountability in the management of revenue from land rents and royalties.
- The government must develop a transparent and participatory scheme for the management of used land following the cancellation of permits, including measures for the rehabilitation of the land.
- The Joko Widodo administration must strengthen law enforcement in the natural resources sector, including by formulating an anti-natural resources mafia work unit, as promised in his campaign manifesto, and conduct surprise spot inspections of mining sites (*blusukan tambang*) to ensure the coal and mineral sector is adhering to laws and regulations.

Civil Society Coalition Against Mining Corruption

NATIONAL:

ICW, AURIGA, PWYP Indonesia, Seknas FITRA, ARTICLE 33 Indonesia, ICEL, IWGFF, TII, IESR, IPC, PATTIRO, MPM PP Muhammadiyah;

SUMATRA:

GERAK Aceh, WBH-Sumsel, WALHI Sumsel, FITRA Sumut, FITRA Riau, MATA Aceh, GERAK Aceh Besar, AKAR Bengkulu, LPAD Riau, FKPMR Riau, WALHI Riau, PUSPA Palembang, FITRA Sumsel, WALHI Aceh, PUSPA Palembang,

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FITRA NTB, LSBH NTB, SOMASI NTB;

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FOKER Papua, PERDU Manokwari