

Mineral Resources Policies and Governance in Indonesia

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ABSTRACT

Indonesia is a fast growing democratic developing country comprising more than 17,000 islands, founding member of ASEAN and a member of the G-20 major economies. It is one of the most highly mineralised countries in the world, the mining sector playing a pivotal role in the country's economy. In 2001, the Decentralization Law No. 22/1999 came into force and caused a transfer of authority and responsibility from central to regional and local administrative governments. The new Mining Law of 2009 substituted its 40 year old predecessor, but lacked detailed regulations for its implementation. These were only issued in 2010, which lead to a period of great uncertainty for investors in the mining industry. The new legislation intends to foster domestic economic development, which may be interpreted as protectionist policy. For the development of a sustainable mineral resources policy, further endeavours will have to be made.

INTRODUCTION

Indonesia is an archipelago country in Southeast Asia and Oceania and comprises 17,508 islands in an area of more than 1,860,000 km². With over 238 million people, it is the world's fourth most populous country. Administratively, it is divided into 33 provinces, which consist of 440 regencies.

Indonesia is a founding member of ASEAN and a member of the G-20 major economies. The Indonesian economy is the world's eighteenth largest economy by nominal GDP and fifteenth largest by purchasing power parity. The contribution of the mining sector to GDP is remarkable. According to the Fraser Institute's 2008/09 Survey of Mining Companies, Indonesia is the fifth-highest rated country in terms of mineral potential.

Indonesia is a republic with a presidential system. As a unitary state, power is concentrated in the central government. Following the resignation of President Suharto in 1998, Indonesian political and governmental structures have undergone major reforms.

In 2001, the Decentralization Law No. 22/1999 came into force and assigned broader authority to the Regional Governments. Consequently, the centralist Mining Law of 1969 was not applicable any more: The Central Government was responsible for developing mineral policies, issuing mining permits and controlling minerals development. Also in 2001, the Government proposed a draft of a new Mining Law to the Parliament. While awaiting the process, the Government promulgated several Ministerial Decrees to bridge the gap between the former Mining Law and the new one. After many discussions, Indonesia promulgated the Mineral and Coal Mining Law No. 4/2009. The new Mining Law has been the biggest change in the mining regulatory framework in Indonesia for more than 40 years. The

government argued that this new law (also) would reinvigorate mining investment in the country. Over the last decade, foreign investment into the sector has fallen sharply. In the late 1990s inward bound investment stood at around US\$ 29 billion, by 2007 that figure had fallen to a modest US\$ 7 billion (Castle, 2004). However, the new Mining Law was criticised by relevant stakeholders of the international mining industry and problems of regulatory governance in the Indonesian mining sector have been indicated.

This paper aims to shed light upon the reasons for this development respectively for the different attitudes and positions of stakeholders. In the first part of the paper, relevant economical data are provided. The second part describes Indonesia's mineral policies, legal and administrative issues and additionally is drawing a comparison between old and new Mining Law. The third section deals with analysis and discussion / conclusions.

ECONOMIC DATA

GDP and mining production

Indonesia is a fast growing emerging economy. GDP increased from US\$ 100,000 billion in 1985 to about US\$ 700,000 billion in 2010, interrupted only once in 1997-1999 due to the Asian economic crisis (figure 1). The contribution of the mineral and energy resources sector to the GDP is about 36 %; the mining industry contributes 4,4% (MEMR, 2009). The country is (one of the biggest producers and) the world's biggest exporter of thermal coal and the second-largest tin producer, and ranks fourth in copper, fifth in nickel and seventh in gold production. In 2009, it was also ranked among the world's top 10 countries in the production of gold and natural gas. Other important mineral commodities are silver, iron (production of steel and ferroalloys), bauxite; industrial minerals including cement production, clays, diamond, feldspar, gypsum, phosphate rock, salt, quartz, granite, dolomite, sulfur. As to mineral fuels, there are considerable deposits of coal, natural gas and petroleum. Indonesia is one of the leading exporters of liquefied natural gas, but is a net importer of oil (USGS, 2011).



Figure 1: GDP of Indonesia 1985 – 2010 (source: <http://www.economywatch.com/economic-statistics/country/Indonesia/year-1985>)

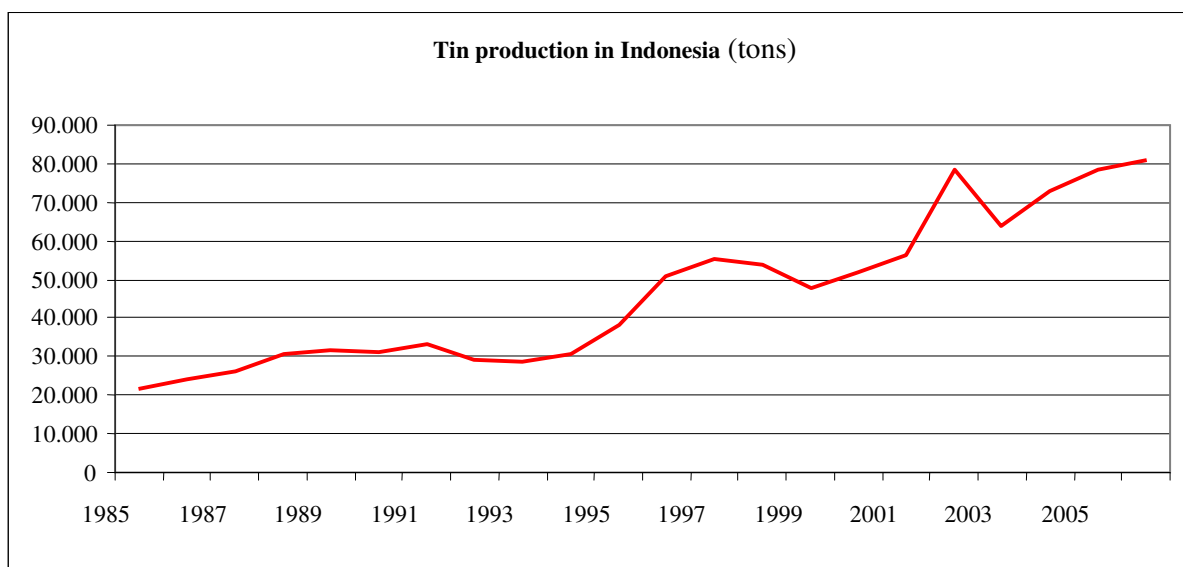


Figure 2: Tin production in Indonesia 1985 – 2008 (Source: BGS)

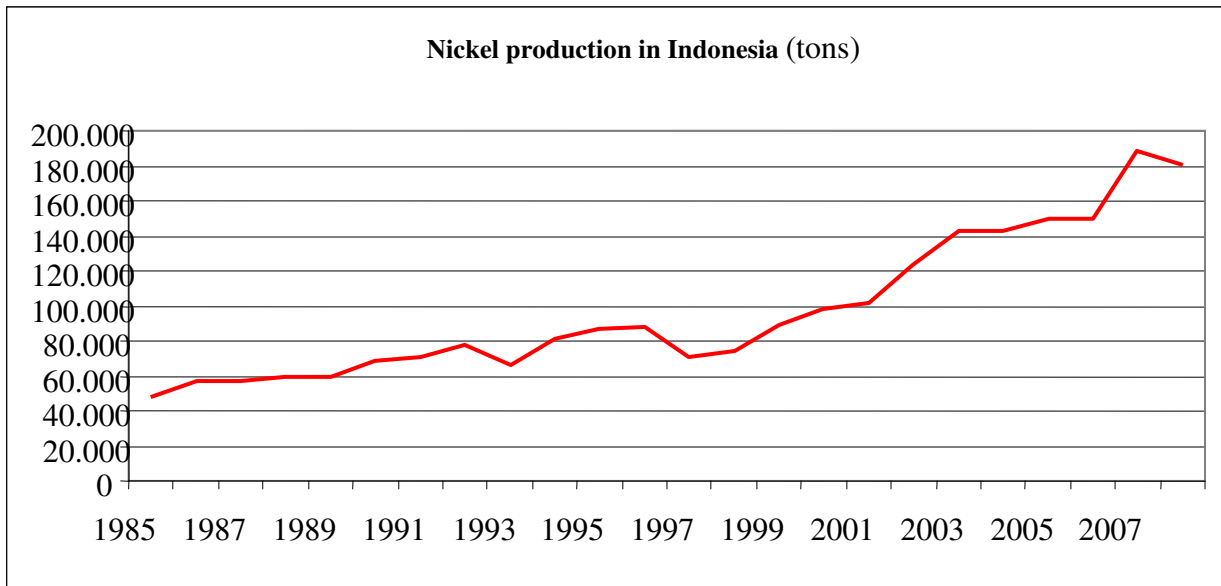


Figure 3: Nickel production in Indonesia 1985 – 2008 (Source: BGS)

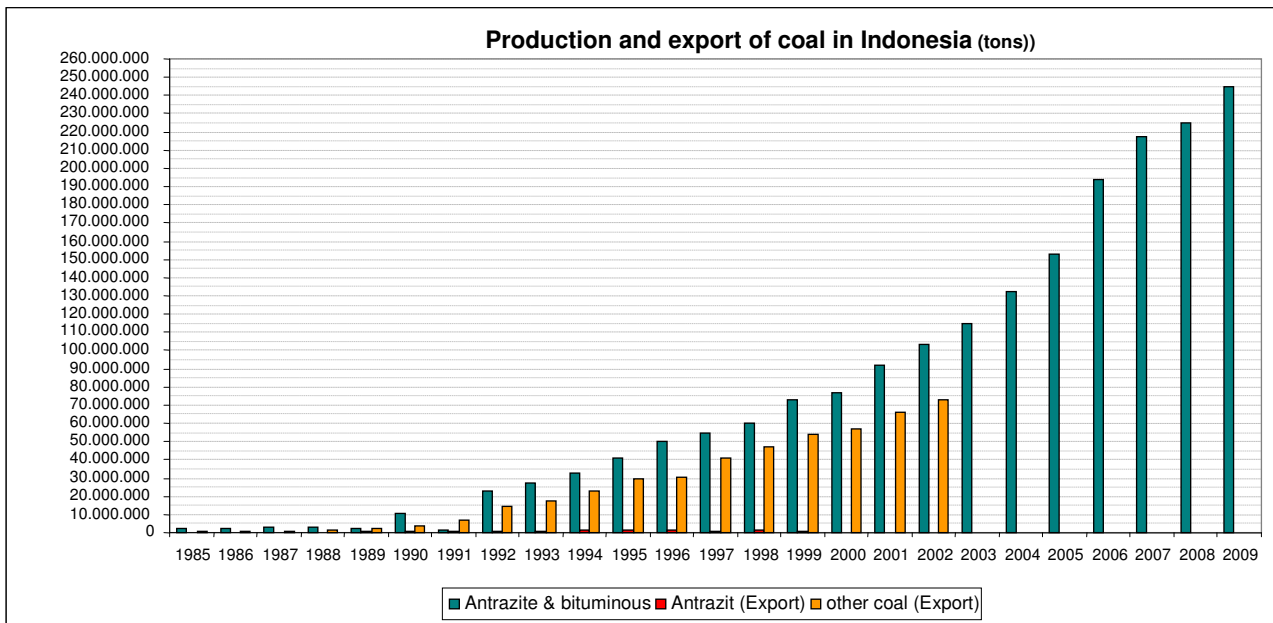


Figure 4: Production and export of coal in Indonesia 1985 – 2009 (source: BGS) (note: production data, colour: green; export data are available until 2002, export of ‘other coal’: colour: orange)

Figure 2, 3 and 4 represent (only) some important examples regarding mining production in Indonesia and illustrate the remarkable production development between 1985 and 2008: production of tin and nickel quadrupled, i.e. tin production increased from 20.000 t to 80.000 t, production of nickel from 48.000 t to 180.000 t. Coal production increased from 2.000 t (1985) to 240 Million t (2009).

Moreover, in 2009, production of mined copper and silver decreased slightly by an estimated 4% and 5%, respectively, owing to the lower grade of the ore mined at Grasberg. The output of smelted and refined copper remained at the same level as in 2008. Based on exports of nickel-cobalt laterite and cobalt content of matte produced, output of cobalt metal decreased by an estimated 8%.

Production of steel decreased by an estimated 11% owing to low capacity utilization by PT Krakatau Steel. The output of bauxite and aluminum, mined nickel and nickel matte, and mined tin and tin metal increased slightly owing to the higher commodity prices. The country produced about 245 million metric tons (Mt) of antrazite and bituminous coal (BGS, 2011) and an average of 948,000 barrels per day (bbl/d) of oil in 2009, which was short of its targeted output of 1,034 million barrels per day (USGS, 2011). The amount of natural gas produced and marketed increased slightly by an estimated 4% and 1%, respectively (USGS, 2011)

Finally, table 1 and figure 5 are illustrating (selected) mineral resources and reserves of Indonesia.

Mineral & Fossil Energy Resources and Reserves (2008)			
Mineral/Energy	unit	Resources	Reserves
Tin (metal)	Ton	622.402	462.402
Nickel ore	Ton	1.650.418.000	627.810.000
Copper (metal)	Ton	68.960.881	41.473.267
Gold (metal)	Ton	5.297	3.490
Silver (metal)	Ton	505.151	23.307
Iron ore (concentrate)	Ton	198.628.784	9.557.846
Bauxite (metal)	Ton	259.515.473	29.528.471
Manganese (metal)	Ton	5.581.869	596.411
Diamond	Carat	539.800	93.565
Granite	Ton	54.784.807.000	13.320.417
Oil	billion barrel	56,6	8,2 *)
Gas	TSCF	334,5	170
Coal	billion ton	104,8	18,8
Coal Bed Methane (CBM)	TSCF	453	-

*) Including Block Cepu

Table 1: Mineral and Energy Resources and Reserves of Indonesia (2008) (Source: MEMR, 2009)



Figure 5: Selected mineral resources of Indonesia (Source: MEMR, 2009)

Structure of the mining industry

The Indonesian mining industry comprises large, middle and small producers, state owned and in the private sector. Large scale mining operations require high capital, high risk taking, and also huge areas. There are many large and world-class local and foreign mining companies in Indonesia.

In 2009, state-owned PT Antam Tbk (Antam) produced bauxite, gold, nickel, and silver. PT Krakatau Steel, PT Pertamina, PT Tambang Batubara Bukit Asam, and PT Tambang Timah Tbk were engaged in the production of steel, oil, coal, and tin, respectively. Private-sector PT Indocement Tunggul Prakarsa Tbk was the leading cement producer in the country. International companies were active in Indonesia's metals mining and processing industries. Partially foreign-owned PT Freeport Indonesia and PT Newmont Nusa Tenggara were involved in the mining of copper and gold. PT International Nickel Indonesia Tbk produced nickel ore and matte, and PT Koba Tin produced tin ore and tin metal (USGS, 2011).

Small enterprises employ 5 – 20 skilled persons, medium enterprises employ 21 – 100 higher skilled and specialised persons. These so-called SMEs practice good marketing and networking activities including collaboration with training and research institutions. SMEs take up a wide range of employees, from unskilled to experts. The number of employees increased from 47.000 in 2005 to 120.000 in 2008. During the Asian economic crisis of 1997 – 1998, most of the SMEs managed to survive (Sajadah, 2003). This underlines the important role of SMEs for national economic development, although, owing to their limited capital, their contribution to the national mineral production is smaller than that of large companies. Small and medium enterprises, especially micro-enterprises, have increasingly diversified the type of minerals mined for. It ranges from diamonds and gold to zinc, coal and others (Aspinal, 2001).

MINERAL POLICIES IN INDONESIA

According to the Indonesian National Constitution of 1945, all natural resources in the whole country belong to the State, shall be controlled by the State and managed for the benefit of Indonesia's people. Besides that, Article 17 Decentralization Law (amended, No. 32/2004) states that Central government and Regional Government have to manage all natural resources: In 1999 the Decentralization Law came into force and brought a considerable shifting of mining related competences from central to regional government.

Comparison of old and new Mining Law

The new Mining Law (ML) has been the biggest change in the mining regulatory framework in Indonesia in more than 40 years (PricewaterhouseCoopers, 2008). The Bill on Minerals and Coal Mining was passed by the House of Representatives on 16 December 2008 and signed by the President on 12 January 2009 as Law No. 4 of 2009. Upon its enactment, the New Mining Law replaced the Law on Principal Provisions of Mining ("Law No. 11/1967" or "Old Mining Law"). A comparison between the old and new Mining Law points out relevant changes as follows:

- Change of law principles/objectives
- Change of administrative regulatory framework
- New minerals classification

- Securing domestic mineral supply by controlling of production and export
- Ensuring mineral supply based on land use planning
- Change of stages in the licensing process (from 6 to 2 stages)
- Mineral processing must be done in Indonesia.
- Issuing of taxes

More information is provided in table 2.

Note: Explanation concerning the term IUP is provided on next page.

Table 2: Comparison of old Mining Law No. 11/1967 and new Mining Law No 4/2009

	Principles	Minerals Classification	Controlling of minerals for domestic need	Ensuring minerals supply: mining zones	Mining licences	Exploration and exploitation areas	Mineral processing	S&H, environment	Tax issues
New ML	<p>(1) <i>assuring legal certainty</i> in the conduct of mineral and coal business activities,</p> <p>(2) ensuring effective, efficient and <i>competitive mining business</i> activities,</p> <p>(3) ensuring mineral and coal <i>supply for domestic needs</i></p> <p>(all law principles are part of Article 1 ML)</p>	<p>*mineral mining: radioactive mining, metal mining, non metal mineral mining, and rock mining *coal mining.</p>	<p>According to Article 5 (1): the Government upon consultation with the House of Representatives of the Republic of Indonesia may adopt a policy on <i>preference for domestic mineral</i> and/or coal needs and Article (2) ML: National interests as intended by section (1) may realized by making <i>supervision of production and export</i>.</p>	<p>ML defines Mining Zones (MZ) as <i>part of the national spatial planning</i>. MZ shall protect mining activities from uncertainty of changing land use status during mining operation. Once mining zones are fixed in land use plans, there can be no further changes of the land use. After stipulation of a MZ, the mining sector will have the priority in using such areas.</p>	<p>2 stages</p> <p>According to Article 36 ML IUP shall consist of two stages: a. IUP Exploration comprising general investigation, exploration and feasibility studies; b. IUP Production Operation comprising construction, mining, processing and refining activities as well as transporting and selling.</p> <p>provision of <i>bidding mechanism</i></p>	<p><i>Depending on kind of minerals</i>. For metal exploration there will be 5.000 to 100.000 ha. This size should be reduced to a maximum of 25.000 ha in the exploitation stage. Coal exploration will be allowed to have a maximum of 50.000 ha and maximum of 15.000 ha at exploitation and production stage respectively.</p>	<p>Mineral processing as an <i>added value</i> of mineral is required to be done <i>in Indonesia</i>. This is stated in Art. 103 ML: Production Operation Mining Permit holders and Special Mining Permit holders must process and refine/smelt mining products domestically.</p>	<p>As stated in Art. 100 ML 2009: Mining Permit holders and Special Mining Permit holders must set up reclamation deposit funds and postmining deposit funds.</p>	<p>Due to the decentralization process, the Central Government transferred <i>more authority</i> to the <i>Regional Government</i> to set its own local tax. The Regional Government taxing power is reflected by increasing local revenue</p>
Old ML	<p>(1) economic development priority, (2) local government participation, (3) environmental concern.</p>	<p>(A) vital minerals, (B) strategic minerals, and (C) neither strategic nor vital minerals. Almost all metal minerals and coal were grouped into vital and strategic mineral. "C" group minerals included limestone, sand and gravel, clay, ornament stone.</p>	-	-	6 stages	<p>Maximum area granted for general Exploration and Exploitation was 5.000 ha, 2.000 ha and 1.000 ha respectively. There was an opportunity to have up to a 25.000 ha for general survey, 10.000 for exploration</p>	-	-	-

Mining/Government - change of administrative responsibility

A hierarchic regulatory framework has been created. Prior decentralization (<1999), mining permits only were issued by the Central Government (Gandataruna, 2009). According to the old Mining Law, the Central Government granted mining authorizations (Knsa Pertambangan, KP) that were only available to wholly owned Indonesian companies, Contracts of Work (CoW) or Coal Contracts of Work (CCoW) respectively. These were replaced by a new licensing system granting the new Mining Business Licence (Izin Usaha Pertambangan, IUP). According to Article 4 ML, new permits can be issued either by Minister (Central Government), Governor (of a province) or Regent (both: Regional Government). Authority of each government's level is based on the administrative border and distance range from the shore (Sudarsono, 2008).

Regency Government has authority to issue permits only in the administrative land territory and maximum 4 miles in the sea. Provincial Government has authority to regulate and issue permits when the application area overlaps two or more regency boundaries. In addition, the Provincial Government has also the authority in 4 – 12 mile offshore mineral resources. The Central Government has authority in permitting when a company applies for a permit for an area which overlaps two or more province boundaries (figure 6). Besides that, authority of the Central Government pertains the offshore area for more than 12 miles from the shoreline. Art. 8 ML states that regency governments are authorized to implement regulations, to issue mining permits, to collect and manage data, to prepare balance sheets of minerals in the regency. Regency government is also required to empower local communities in mining business to find environmental sustainability. In contrast to this distribution of authorities, according to the old Mining Law only the Central Government was responsible for granting permits, directing and supervising mining activities except C class mining (aggregates).

Before Decentralization Law 1999 came into force, each Province had its own Mining Headquarters, though under the authority of the Central Government (except in Java). The task of the Mining Headquarters was mainly conducting inventory, surveys and (limited) research within the province. Besides that, the Mining Headquarters also inspected mining operations and reported their work to the Ministry of Mining and Energy, however, *they could not issue permits*. After promulgation of Decentralization Law 1999, the Mining Headquarters (HQ) were transferred to the Provincial and Regency Government (figure 6). These two institutions, i.e. Mining Headquarters and Regional Mining Authority, were merged into one single "Regional Mining Authority" under authority of the Provincial Government, which obtained all Central Government responsibilities regarding personnel and infrastructures of the former Headquarters. Furthermore, the Provincial Government divided human resources and infrastructures (related to mining) both to Regency and Province.

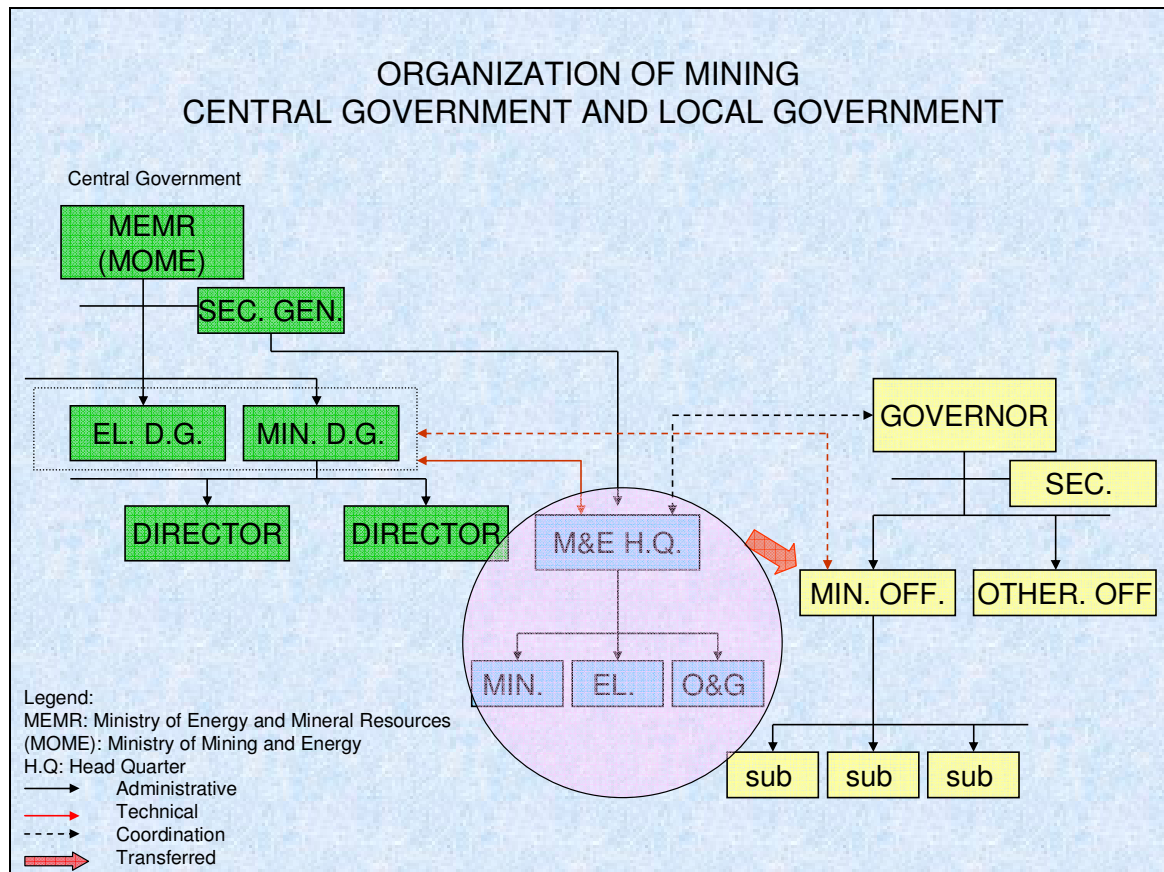


Figure 6: Mining Authority Organization (source: MEMR, 2009)

Government Regulation

Two regulations assisting in the clarification of Law No. 4/2009 were issued effective 1 February 2010:

Government Regulation No. 22/2010 on Mining Areas (Wilayah Pertambangan, WP) says that WPs can be designated as mining business areas (WUPs), state reserve areas (WPNs) (both of which will be determined by the Minister of Energy and Mineral Resources) or people's mining areas (WPRs), which will be determined by the local regent or mayor. A WUP may be categorized into 5 types, namely radioactive, metallic mineral, coal, non-metallic and/or rock WUPs. After categorisation, the WUP can be determined to be a mining business licence area (WIUP) and be issued with an IUP.

Regulation No. 23/2010 provides clarification of some key areas of uncertainty concerning existing KPs and CoWs/CCoWs: KPs issued under the old mining regime and CoWs/CCoWs entered into before Mining Law No. 4/2009 will be honoured until they expire. Existing KPs must be converted into IUPs. An IUP will only be issued after a WIUP has been granted. In respect of metallic minerals and coal, an auction process must be carried out with the winner being granted the WIUP. Bidders must be entities established and domiciled in Indonesia, cooperatives or Indonesian citizens. Consequently, foreign investors may only participate in an auction through a foreign investment company.

Regulation No. 23/2010 also provides details concerning areas to be progressively reduced as part of the relinquishment process under Law No. 4/2009, setting limits for area and time to an exploration IUP. Furthermore, divestment obligations and domestic market obligations are issued aiming at the promotion and development of domestic mining property (Asia.Legalbusinessonline, 2011).

ANALYSIS and DISCUSSION

The analysis is based on the following categories: policy, legislative and administrative issues.

Mineral policy issues

A minerals policy document comprising all minerals is missing. So far, Indonesia only established a National Coal Policy by ministerial decree in 2004. A published, clearly defined national policy (covering all mineral resources) is a very useful regulatory tool that serves two important functions. Firstly, it provides the mineral industry with a clear statement of the government's expectations and intents towards the mining activities. Secondly, it provides legislative and regulatory bodies with broad guidance (Otto, 1999).

This new policy issue of Domestic Market Obligation for safeguarding the sustainable domestic supply (as well as revenues) is aimed at controlling production and export. Government has the authority to determine the production percentage of any commodities to fulfill domestic demand. Previously, the mining companies could sell their entire production to the international market. There was no obligation from Government to sell determined products to the national market (Soemarno, 2009).

Minerals planning policies are important elements of a mineral policy in order to secure the supply of minerals in a long-term perspective (Tiess, 2011). The new Mining Law provides provisions which take this issue into account. The former Mining Law did not include regulations related to mining zones. Thus, many problems were caused by the overlapping of mining and other activities. The obligation to develop mining zones (by Central Government) as part in the land use planning can be seen as important contribution. Besides that, mining zones also provide certainty for mining operators, as mining receives priority compared with other utilizations (e.g. nature conservation).

The new Mining Law promotes mining investment: the State is interested to use its own minerals potential as a pivotal contribution to national economical development. The new tax system, for instance, allows the Regional Government to raise its own local taxes, which can be used as an instrument to attract investors.

Legislative issues

There are several major changes in the New Mining Law compared with the Old Mining Law. The new law contains relevant improvements over its predecessor law, including (Parsons, 2009):

- All investors are subject to the same licensing system. Previously, there were different licensing systems for domestic and foreign investors;
- A company can own more than one licence/ property;
- The law strengthens environmental and community development responsibilities; and
- The law clarifies the respective rights and responsibilities of the central government and the regional governments with regards to administration and revenue sharing.

Law principles

The law principles (1) assuring legal certainty in the conduct of mining activities, and the law principle (2) ensuring effective, efficient and competitive mining business activities are principles which usually a modern mining law provides. Both principles are crucial for the mining industry (for instance to justify the required capital for exploration/mining). The law principle (3) is focussed

on ensuring mineral and coal supply for domestic needs (all three law principles are part of Article 1 ML, see table 2). Article 5 ML is referring to it as follows: The Government upon consultation with the House of Representatives of the Republic of Indonesia may adopt a policy on preference for domestic mineral and/or coal needs. National interests may be realized by making supervision of production and export.

Controlling of minerals for domestic need

This principle expressed in Article 5 ML could affect the foreign mining industry. The provision itself is vague and might also lead to disadvantages for operating foreign mining industry (issue of market distortion).

Mining zones

Support for legal certainty is the determination of mining zones by the Central Government (Art 9-33). The new provision of ensuring minerals supply based on mining zones is a strong contribution to sustainable minerals supply. The Mining Law defines mining zones (MZ) as part of the national spatial planning. Mining zones shall protect mining activities from uncertainty of changing land use status during the mining operation. Once mining zones are fixed in land use plans, there can be no further changes of the land use. After stipulation of a mining zone, the mining sector has priority in using such areas. Within mining zones, the mining sector has first priority to develop mineral resources. However, the question of progress of developing and implementing the mining zones arises: only once the process of determining the Mining Area is completed, it is to be sub-categorised into Mining Business Areas (WUP), State Reserve Areas (WPN) and People's Mining Areas (WPR), followed by a complex licensing process regarding possible mining activities.

Mining licences

Under old Mining Law mineral exploration and mining activity in Indonesia was conducted under either a Mining Authorization (KP) and/or a Contract of Work (CoW), which was issued by the Central Government.

The new Mining Law grants permits through the issuance of the mining business licence or IUP. The new mining licensing procedures were reduced to 2 stages (formerly: 6 stages). This underlines the principle (2) of the Mining Law, i.e. effectiveness, efficiency. According to Article 36 ML, the two stages of the IUP procedure are: firstly, IUP Exploration comprising general investigation, exploration and feasibility studies; secondly, IUP Production Operation comprising construction, mining, processing and refining activities as well as transporting and selling. The new Mining Law guarantees that the holder of the Exploration IUP will consecutively be granted with the Production Operation IUP as the continuance of the business activity.

Besides that, the new Mining Law adopts bidding processes regarding energetic and metallic minerals (Art 74-84 ML). The reason for this measure is: foreign and domestic operators shall be treated equally in future (view of government). This is a great difference to the previous regulations. Bidding procedures are not unusually applied in mining legislation. However, to implement fair bidding procedures, the provision itself would need further clarification.

Mineral processing

Production Operation Mining Permit holders and Special Mining Permit holders must process and refine/smelt mining products domestically (Art. 103 ML). Mineral processing shall bring added value for Indonesia (Gandataruna, 2009). This provision could also be regarded as rather restrictive from the point of view of the foreigner investment industry; additionally there are no thresholds provided. It is important that Central Government sets appropriate criteria and guidelines.

Safety and health, environment

Mining Permit holders and Special Mining Permit holders must carry out the terms of mining occupational safety and health; foster mining operating safety; conduct management and monitoring of the mining environment, including reclamation and postmining activities (Art. 96 ML). Also a reclamation security fund must be provided as stated in Art. 100. Mining Permit holders and Special Mining Permit holders must prepare community development and empowerment programmes (108 ML). This was not required under the previous law. In addition, the Government requires compliance with the national environmental policy established by the Ministry of Environment (Salim, 2008).

Taxation system

Due to the decentralization process, the Central Government transferred more authority to the Regional Governments enabling them to set their own local taxes. On the other hand, Central Government still has the authority to control the macro taxation system. Advantages of this new system are (view of government): Regional Government can set the most favourable local taxes level for attracting investment as well as optimising local revenue; there will be competition between Regional Governments as to be efficient, effective, and more transparent; increasing Regional Government participation will lead to improvement of human resources quality. In turn, taxes can differ from region to region, and surely this could affect the international mining industry.

Government administrative regulatory framework

After promulgation of the Decentralization Law 1999 the legal basis for mining businesses was uncertain, especially for new international investors. In 2001, the Government proposed a draft of a new Mining Law to the Parliament. While awaiting the process, the Government, in this case the Ministry of Energy and Mineral Resources, promulgated several Ministerial Decrees such as Guidance for Processing the Contract of Work and Coal Contract of Work in 2004, Guideline for Reserving the Mining Zone in 2003 and Guideline for Production Monitoring in 1999. These Ministerial Decrees were intended to bridge the gap between the Former Mining Law and the new one. The new Mining Law 2009 provides legal certainty to the mining business and its activities (Yusgiantoro, 2008., Sukhyar, 2008., Soemarno, 2009). Mining Law No. 4/2009 enacts the decentralization process, i.e. implementing the administration of the new Mining Law at different levels (Art. 6, 7, 8 ML).

There are three possibilities of getting mining permits based on the new Mining Law, either by the Ministry, Province or Regency, depending on the administrative location of the mineral deposits. From the government point of view, such a new permitting system has several advantages:

- **Efficiency:** By transferring work load of the permitting process from Central Government to Regional Government, most of the procedure (i.e. for non metallic minerals) will be done at regional level. However, the Regional Governments are obliged to send reports to the Central Government.
- **Transparency and responsibility:** Clauses in permits have to be set by regional governments, implementing guidelines and regulations set by Central Government. If there are any mistakes in issuing permits, the Regional Government is to be punished by the Central Government.
- **Development of regional government capabilities:** By issuing permits, inspecting and reporting, the Regional Government's human resources will be encouraged to develop themselves to achieve standards meeting the customers' (mining operators') demand.

Moreover, the Central Government can concentrate on preparing strategic issues such as national policies, standards, and guidelines. Regional Governments are mainly concerned with technical management such as administrating regulations within their own local jurisdiction.

Administrative capacity

Readiness of the Regional Government to handle mineral resource management is a must. Central Government anticipated this issue by promulgating Ministerial Decree No. 1453 K/29/MEM/2000 concerning Guidelines for General Mining Governance. These guidelines were developed to bridge mineral management between centralist (based on former Mining Law 1969) and decentralist system. Thus, regional governments had approximately nine years (from 2000 – 2009) to adjust and prepare mineral management prior to promulgation of the new Mining Law. Moreover, Regional Mining Offices were established in every province.

As mentioned before, Indonesia is divided into 33 provinces that are subdivided into 440 regencies and cities, which are further subdivided into districts. Central Government took measures to facilitate capacity building for local governments. All assets, including a sufficient number of skilled and experienced human resources of the previous Mining Headquarters were provided to local governments. In addition, there were some Central Government Staffs transferred to local government, who were also familiar with licensing (limited for C class minerals). Regional Governments received Ministerial Decree 1453 K/29/MEM/2000 concerning General Mining Governance Guidelines to their support.

However, the administrative issue may be an open question. Particularly, the Regional Government needs for the implementation of the new Mining Law sufficient institutional capacity. Although, the preparation time was nine years, the institutional capacity might be poor: it requires high levels of expenditure for training and education, salaries, and high quality information systems. However, the poor mining investment environment in Indonesia could mean that institutional capacity building (necessarily) will be not easy to achieve in the next future (OCallaghan, 2010).

Issues related to domestic and foreign mining industry

The new Mining Law serves above all the national interest and strongly supports domestic minerals supply, even taking some protectionist measures. The decentralization system is expected to be favourable for SMEs, most of them being domestic companies. SMEs have limited resources (man power, capital, equipment, technology) compared to big mining companies. SMEs usually occupy smaller mining areas which mostly lie in one certain regency. They tend to avoid obtaining permits overlapping two or more administrative areas. However, mineral deposits are based on geological processes which are not correlating with administrative boundaries. For this reason a policy to classify permits based on an administrative area obviously implies some risks for the mining operator:

- Potential of dispute between one and other administrative government, i.e province and other provinces or between province and regency.
- Inefficient using of mineral deposits. For example: if one mineral deposit lays in two regencies, but each Regency can only issue permit for one mining operator in its own administrative area. Such a deposit would be mined more efficiently as one mine.
- Applying this policy has to be based on the establishment of a mining zone. Correct establishment of a mining zone depends on detailed identification of mineral resources with good quality of data, in which process much work has to be done yet.
- Domestic investors increased very fast. Many local mining companies in different Regencies submitted KP applications. Due to the euphoria of the decentralization process and lack of infrastructure and technology, some Regencies issued licences which overlapped

the existing Contract of Work (CoW) or Mining Licence (KP, Kuasa Pertambangan) previously issued by Central Government. The Supreme Court *cancelled all such permits* issued by Regional Government.

Point of view of international mining industry

East Asia Minerals Corporation (EAS, 2009) believes that the changes proposed under the new Mining Law are largely positive for the company and considers that the new Mining Law of Indonesia is a globally competitive framework within which to operate. It will provide the company with excellent security of tenure, and a well defined framework within which to grow the company.

However, most of the foreign international companies have another attitude (for instance Parsons, 2009; OCallaghan 2010). In the last decade there was no certainty for international investors to apply for new mining permits. Prior to decentralization, permission procedure was transparent from the investor's point of view. International investors tended to wait whether to invest in a new mining project started from prospecting until exploration. If successful, the investor contacted the Ministry of Energy and Mineral to apply and get permits. Regarding the period of 2000 until 2009, mining activities were based primarily on several Government Regulations and Regional Government Regulations which mainly referred to the Decentralization Law 1999. However, there was no certainty for international investors anymore to apply for new mining permits and consequently, there was no contract application during 2000 until 2008. Most investment from mining companies in this period was made for *developing the existing mines*, for example capacity expansion. There was a hope that the new Mining Law might improve the situation, but it turned out to be *short on details*. New investors are affected because of 'low' international competitive regulatory regimes. The law fails to embrace some important international best practices. For example:

- The licensing system is based on a bidding system instead of the more conventional first-come-first-served principle;
- The law makes some vague references to possible mandatory downstream processing;
- The law authorises the government to impose production and export controls in circumstances not yet defined;
- The law declines to define the licence holder's royalty obligations.

It is not realistic to expect the Mining Law to be changed in the short term to correct these and other possible deficiencies. In the short term, the main hope is that the (foreseen) regulations can move the law closer to international best practices and make the law's shortcomings more palatable (OCallaghan, 2010). Also Asia.Legalbusinessonline (2011) is pointing out: "The new Mining Law No. 4/2009 provides relevant principles, however has left many specific issues relating to the implementation to be fleshed out in implementing regulations". As mentioned above, two regulation were issued in 2010, Government Regulation No. 22/2010 on Mining Areas and Regulation No. 23/2010 to provide clarification of some key areas of uncertainty concerning existing KPs and CoWs/CCoWs.

CONCLUSIONS

Enacting the Mining Law of 2009, the Indonesian Government meant to provide legal certainty for mining businesses after promulgation of Decentralization Law No. 22/1999. The new Mining Law includes relevant improvements over its predecessor law but fails partly to embrace some important international best practices. The new legislation also intends to foster domestic economic development, which may be interpreted as protectionist policy.

The Regional Government needs for the implementation of the new Mining Law sufficient institutional capacity. However, the poor mining investment environment in Indonesia could mean that institutional capacity building will be not easy to achieve in the next future

For the development of a sustainable mineral resources policy, further endeavours will have to be made. Getting the balance right between the competing goals of different stakeholders, particularly government and foreign mining industry will be a challenge.

Hopefully, government regulations can improve the law's shortcomings; so far only two regulations were implemented. Government Regulations No.22/2010 on Mining Areas and 23/2010 on Conduct of Coal and Mineral Mining Business Activities were issued effective 1 February 2010 and are meant to assist in the implementation and clarification of Law No.4/2009. The implementing regulations will play a pivotal role in determining the competitiveness of Indonesia's regulatory regime for mining. However, if these (and other expected) regulations fail to cure the shortcomings of the new law, then Indonesia's mining industry may be in for another prolonged period of limited development.

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