Mining and Development in Indonesia: An Overview of the Regulatory Framework and Policies

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Research aims:

This desktop research provided a brief on mining legislation and policies in Indonesia, before and after the period of national and regional transition. The project aimed to identify current Indonesian regulatory frameworks/policies and analyse their implications for mining, Corporate Social Responsibility and community development and empowerment.

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IM4DC

Action Research Report

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Summary of Action Research Activity

Mining and development in Indonesia: an overview of the regulatory framework and policies

The mineral resources sector plays a vital role in the Indonesian economy. Mining contributes approximately five percent of the total Indonesian Gross Domestic Product and a much greater share within the regional economies of some resource-rich provinces. The industry has attracted many investors, including 'newcomers' from China, India, Russia and South Korea. Indonesian civil society (and specifically local communities) is demanding that mining companies recognise their 'local rights', which sometimes leads to conflict between companies and local communities.

This project provided an overview of the history of mining legislation and policies in Indonesia and an analysis of the current legislation and its impact within the mining industry. Seven key points were noted and expanded for consideration by policy makers, private enterprise and other stakeholders, to assist mining and development within Indonesia:

1. Prior to the decentralisation era, the Indonesian mining regulatory framework was governed with a centralised mining administrative system under Law 11/1967.
2. Decentralisation and political reform resulted in significant changes to the Indonesian mining regulatory framework with a greater role given to sub-national governments.
3. Decentralisation has encouraged a paradigm of 'localism' in natural resources and economic wealth for local communities.
4. Forestry and mining areas often overlap and there are conflicts between government agencies over their control.
5. Companies are required to obtain relevant environmental approvals as well as the 'new environmental license' as part of an Environmental Impact Assessment.
6. Social and environmental responsibility has been legally mandated in Indonesia, but with mixed outcomes from its implementation.
7. The Indonesian mining regulatory framework and practices are still in transition; however there is clear intent to ensure greater benefits to Indonesia's citizens.

The research illustrated that the evolution of regulatory frameworks for mining in Indonesia has been pronounced during the past century and will continue to evolve. Notably, the key factors in this regulatory framework pertain to:

- Economic benefits that could be enjoyed by local people through the development of local suppliers and infrastructure, and the creation of direct employment.
- Corporate social responsibility through community development and empowerment programs that can benefit communities, in particular those near mining operations.
- The importance of mitigating impacts on the environment due to mining activities, both large and small-scale.

The report includes recommendations regarding continued collaboration with LabSosio (Department of Sociology, University of Indonesia), utilising the report information in training activities and international publications, and further research activity.

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(Final Report)

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Centre for Social Responsibility in Mining

SMI CSRM
Centre for Social Responsibility in Mining

The Centre for Social Responsibility in Mining (CSRM) is a leading research centre, committed to improving the social performance of the resources industry globally.

We are part of the Sustainable Minerals Institute (SMI) at the University of Queensland, one of Australia's premier universities. SMI has a long track record of working to understand and apply the principles of sustainable development within the global resources industry.

At CSRM, our focus is on the social, economic and political challenges that occur when change is brought about by resource extraction and development. We work with companies, communities and governments in mining regions all over the world to improve social performance and deliver better outcomes for companies and communities. Since 2001, we have contributed significantly to industry change through research, teaching and consulting.

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1. INTRODUCTION

The mineral resources sector plays a vital role in the Indonesian economy. Mining contributes approximately five per cent of the total Indonesian Gross Domestic Product (GDP) and a much greater share within the regional economies of some resource-rich provinces such as West Papua, East Kalimantan and West Nusa Tenggara (PwC, 2012).[1] Indonesia is a key minerals supplier to the global market. This industry has attracted many investors with 'newcomers' of mining players from China, India, Russia, and South Korea penetrating the Indonesia market.

The sector has undergone considerable change since 1998 in respect of policies and regulatory frameworks. This is largely due to Indonesian democratisation and the application of decentralisation of government and greater regional autonomy. As mining activities have increased in Indonesia's more democratic environment in recent years, communities are increasingly demanding greater benefits from the mining industry, and they are increasingly requiring mining companies to be more transparent and promote better social performance. Regional governments have been seeking to maximise benefits from mining in terms of both revenue and economic development.

Indonesian civil society (and specifically local communities) is demanding that mining companies recognise their 'local rights', which has sometimes led to conflict between companies and local communities. Since the early 2000s, company – community conflicts have increased in frequency and magnitude, affecting the development of the Indonesia's mining sector and ultimately its overall economic performance (Resosudarmo et al., 2009). Consequently, it is essential for mining companies to promote better environmental and social responsibility activities to assist communities in the host areas to benefit from mining sector activities.

To promote sustainable mining development in Indonesia, national and sub-national governments need to improve their governance mechanisms and policies so as to optimise the benefits from the mining sector for the social, economic and environmental development of the country and its citizens.

The transitional changes coupled with new society expectations create an opportunity for the International Mining for Development Centre (IM4DC), funded by AusAID, to better position itself to build the capacity of government, civil society and mining companies within Indonesia in order to promote more sustainable development.

As a first step toward achieving this objective, the International Mining for Development Centre Action Research program in 2012 provided a research grant to the Centre for Social Responsibility in Mining (CSRM) to conduct desktop research on the regulatory framework and policies which govern mining and development in Indonesia. This research project is referred as the 'IM4Indo project'.

[1] Elias and Noon (2011) provides mining and utilities output contributes about 8 to 13 per cent to the total of Indonesia GDP as described in the later chapter.

1.1. Purpose

The IM4Indo project provides an overview of mining legislation and policies in Indonesia before and after the period of national and regional transition. It identifies current Indonesian regulatory frameworks and policies and analyses their implications for mining and current development issues.

It is hoped that this research will assist IM4DC in its ability to continue to build local capacity in mineral governance and mining in Indonesia. Findings from this research can be incorporated into training materials describing the mining regulatory frameworks in Indonesia within the broader discipline of community development and Corporate Social Responsibility (CSR).

In addition, this project is conducted in partnership with the LabSosio, Department of Sociology, University of Indonesia (LabSosio-UI), and it is expected that this partnership will: foster the development of an entry point for close collaboration between IM4DC and other universities (UQ and UWA); result in the development of a formal university relationship to conduct in-country training and researcher exchange; and lead to other collaborative research projects with the LabSosio-UI.

1.2. Methodology

This research was undertaken by desktop study which included reviewing literature and materials that are available in the public domain such as journal articles, Indonesian mining legislation (and its derived regulations as well as agency reports) and presentation materials. Information presented in this report was also derived from:

- The involvement of a CSRM researcher, Bernadetta Devi, as one of the team members in the AusAID scoping mission. Bernadetta joined the AusAID scoping mission for one week (24th June until 1st July 2012) which aimed to investigate the possibilities for AusAID to be involved in the mining sector. On this trip, Bernadetta and other AusAID team members interviewed a total of 23 respondents from four groups: the government, civil society (local NGOs), international organisations and private sector mining companies.
- During the course of this research, news media was tracked to examine the emerging issues in Indonesian mining legislation as well as the broader issues of mining and development in Indonesia.

The original timeframe for this research was February to September 2012. The research actually commenced and took place from June 2012 and the intensive works were completed in September 2012. The draft final report was submitted to IM4DC in December 2012. After receiving feedback from IM4DC, the final report was submitted in March 2013.

1.3. The scope

This report examines the evolution of the current regulatory framework for mining in Indonesia, including its changes over time. A central focus is on the implications of the

regulatory framework for community development, including artisanal mining and corporate social responsibility.

1.4. Outline of the report

The report is structured according to four major themes:

- The landscape of the mining industry in Indonesia – highlights the landscape of the mining sector, including key players involved in this industry.
- The development of Indonesia's mining regulatory framework – describes the evolution of mining regulations in Indonesia.
- The current mining regulatory framework – analyses changes as a result of the introduction of current mining Law 4/2009 and its implications on the environment, CSR and artisanal mining.
- Mining and local development – examines the issue of mining and local development under regional autonomy in terms of mining governance at the sub-national level and the nature of CSR/CD impacts and impacts on local development.

2. THE LANDSCAPE OF THE MINING INDUSTRY

2.1. The socio-economic context

The Republic of Indonesia has extensive mineral reserves and has become the world's largest exporter of thermal coal, as well as second in tin, third in copper and fourth in nickel (Lieokomol, 2011). The Indonesian mining industry value of production is expected to almost double from USD82.6 billion in 2010 to USD143 billion in 2016 and it is predicted that growth will be from coal and nickel production, with annual growth rates of 10.4 per cent and 9.1 per cent, respectively (Business Monitor International, 2012). Growth rate forecasts for other metals will be low, but Indonesia is expected to be a dominant mineral exporter in Asia and retain its status as the largest global thermal coal and tin exporter in the world.

Indonesia's economy has developed rapidly in the last few decades, other than the contraction following the Asian Financial Crisis in the late 1990s. The structure of the economy has changed significantly. In the 1960s, the economy was largely agricultural and service based (51 per cent and 30 per cent respectively as illustrated in Table 1); however, urbanisation and industrialisation have seen a move towards the manufacturing sector. Agriculture remains a major industry, particularly in rural areas, although low levels of modernisation mean that levels of productivity and income are low. Unlike its regional neighbours, Indonesia's manufacturing sector is focussed on food, tobacco and textiles, rather than more complex manufactured goods (e.g. mechanical and electronic products) (Elias and Noone, 2011).

Table 1: Sector share of GDP, per cent (Elias and Noone, 2011)

	1967	1982	1996	1999	2009
Agriculture	51	23	17	20	16
Construction	na[(a)]	10	10	8	11
Manufacturing	8	13	26	26	27
Mining and utilities	na[(a)]	17	8	9	11
Services	36	37	40	37	35

(a) In 1967 the combined share of construction and mining and utilities was 5 per cent
Source: CEIC; RBA; World Bank; United Nations

The total exports of Indonesia in 2010 were valued at USD157.7 billion, of which the oil and gas industry accounted for 17.8 percent and the mineral industry, 16.9 percent. The major export markets were China, India, Japan, the Republic of Korea, Malaysia, Singapore, Taiwan and the United States. On the other hand, Indonesia's total imports were valued at USD135.6 billion, and the import items included crude petroleum, iron and steel, and

petroleum products. The major import partners were China, Japan, the Republic of Korea, Malaysia, Singapore, Thailand and the United States (Kuo, 2012).

2.2. The mining sector

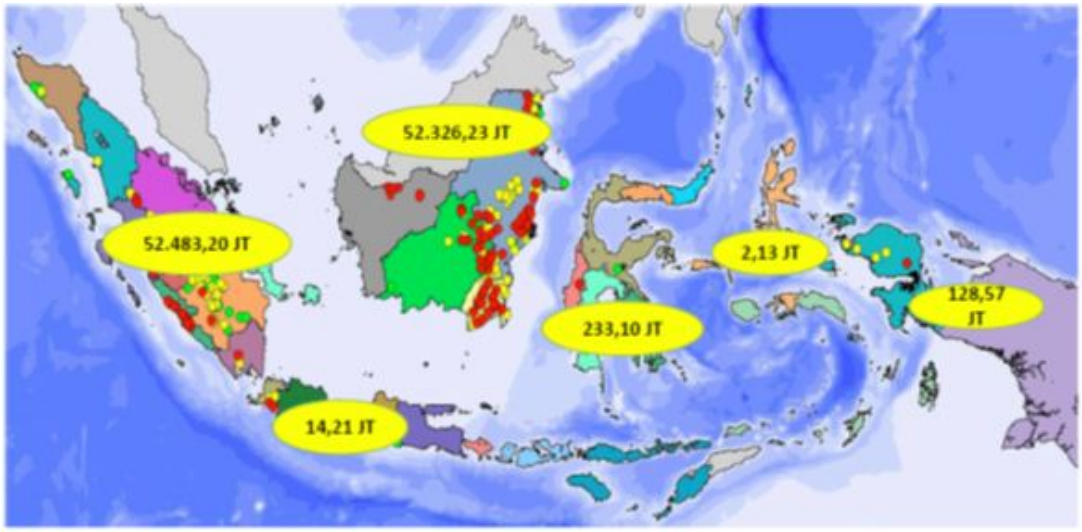
The mining and utilities output in Indonesia is much larger than in neighbouring countries, and it has consistently contributed between 8 per cent and 13 per cent of GDP since the late 1980s. It has accounted for the extraction of 27 per cent of the world's tin, 15 per cent of nickel and 6 per cent of copper (in 2009) and 4 per cent of the world's coal (in 2010) (Elias and Noone, 2011).

Indonesia's mineral reserves are distributed throughout the country, with mining production contributing most significantly to the provinces of Papua, Bangka-Belitung, West Nusa Tenggara and East Kalimantan. Many mining locations in Indonesia are remote with few prospects for economic development and mining-related businesses provide some of the only paid employment opportunities for local communities. These locations are also often of significant biological and environmental value, such as small islands and tropical rainforests.

The Indonesian coal industry is in a period of rapid expansion, while production of other minerals is developing more slowly. Gold and copper production decreased in 2011 due to operation and market issues, and investor interest remains cautious (PwC, 2012).

Indonesia produced about 257 million tons of coal in 2010 and is the second largest coal producer globally and the largest exporter of thermal coal. The distribution of coal resources in Indonesia (illustrated in Figure 1) is concentrated in the provinces of Kalimantan and Sumatera. As reported by the Ministry of Energy and Mineral Resources – MEMR (Geology Agency) in November 2011, the total coal resources and coal reserves in Indonesia are approximately 105,187 million tons and 21,131 million tons, respectively. A breakdown of this by the most abundant minerals is provided in Table 2.

Figure 1: Coal mineral resources, reserve and distribution (2011)



Coal resources: 105,187.44 million tons; Coal reserves (2011): 21,131.84 million tons
Source: Geology agency of MEMR (status in November 2011)

Table 2: Mineral Resources and Reserves of the Top 14 Mineral Commodities in Indonesia, 2010

No	Commodity	Mineral Resources [2] (million tons ore)	Mineral Reserves[3] (million tons ore)
1	Copper	4,925	4,161
2	Bauxite	551	180
3	Nickel	2,633	577
4	Iron Sand	1,649	5
5	Lateritic Ore	1,462	106
6	Primary Ore	563	30
7	Sedimentary Ore	18	-
8	Manganese	11	4
9	Alluvial Gold	1,455	17
10	Primary Gold	5,386	4,231
11	Silver	3,406	4,104
12	Zinc	577	7
13	Tin	354	0.7
14	Lead	363	1.6

Source: Geology agency – MEMR, 2010[4]

[2] "Natural consentrations of minerals or, bodies of rock that are, or may become of potential economic interest due to their inherent properties". (http://www.bgs.ac.uk/planning4minerals/Resources_4.htm [Retrieved on 29th November 2012].

[3] "The part of a mineral resource, which has been fully evaluated and is deemed commercially viable to work and has a valid planning permission for extraction" (http://www.bgs.ac.uk/planning4minerals/Resources_5.htm [Retrieved on 29th November 2012].

[4] The information is extracted from the power point presentation material, "Implementation of MEMR Regulation no 7/2012 related to Enhancement of Mineral Added Value through Mineral Processing and Refining Activity", Jakarta June 2012 received during the AusAID scoping mission in June/July 2012.

2.3. Mining prospects

Mining in Indonesia is undertaken by both domestic companies (state-owned and private) and multinational companies (Appendix A identifies the major players in Indonesia and their mine sites). The mining prospects of Indonesia remain high due to the country's extensive mineral reserves and exploration activities. For example, despite the current internal issues in the Tujuh Bukit joint venture[5], the discovery of the giant Tujuh Bukit deposit in East Java Province is expected to lead to mining growth in Indonesia (Business Monitor International, 2012).

The recent findings of the Fraser Institute Annual Survey of Mining Companies for 2012-13 (Wilson et al., 2013) identified that investor confidence in Indonesia is low.

Notwithstanding these findings, for the Southeast Asia region, Business Monitor International (2012) predicts that, Indonesia, Philippines and Vietnam will experience the highest mining growth rates in the region through 2013 due to their respective estimated mineral reserves. Knowing the potential of high growth in mining, several Southeast Asian countries, including Indonesia, have identified mining as an avenue for growth and responded by legislating key reforms in mining regulation. In addition, China and India are also restructuring their mining industries to ensure their raw material supply security as they continue with their infrastructure development plans.

Although the mining reforms in Southeast Asian countries (Indonesia, Philippines and Vietnam) have been seen as positive regulatory developments in mining sector (Business Monitor International, 2012), the Fraser Institute's 2012-13 survey results (Wilson et al., 2013) show that Indonesia, Philippines and Vietnam sit within the bottom 10 countries in terms of attractiveness their mining policies. The survey found that on overall policy attractiveness, Indonesia ranks last out of the 96 jurisdictions examined. On policy/mineral potential (assuming no land use restrictions in place and assuming industry 'best practices'), Indonesia ranks fourth. In terms of 'room for improvement', Indonesia is second to Mongolia out of the 96 jurisdictions.

The Fraser Institute surveys for 2011-12 (McMahon and Cervantes, 2012) and 2012-13 (Wilson et al., 2013) find that investors in Indonesia face a number of obstacles, including:

- Uncertainty concerning the administration, interpretation, and enforcement of existing regulations.
- Uncertainty concerning environmental regulations.
- Uncertainty regarding engagement of local stakeholders.
- Regulatory duplication and inconsistencies between and within levels of government
- Issues in the legal processes regarding fairness, transparency, corruption, and inefficient administration.

[5] http://www.northernminer.com/news/update-intrepid-frustrated-at-tujuh-bukit/1001572561/ [Retrieved on 29th November 2012].

2.4. Key players

2.4.1. Government

Sub-national governments see mining as a source of revenue, and increasingly as an engine of economic development, but also as disruptive activity. In the short term, local authorities obtain direct revenues from mining companies for provision of services and permission to operate. In the longer term they benefit most from ensuring that the mine contributes to sustainable local development.

National and provincial governments have broad interests in securing social harmony and economic growth, and in providing a well regulated business environment enabling an environment that encourages investment on fair terms. Government has sought to promote forward and backward linkage for downstream processing and local inputs. The responsibility for governance of mining is discussed in greater detail in the later sections of this report.

2.4.2. Mining companies

Indonesia's mining sector is operated by a wide-range of domestic (state-owned or private) companies and International companies (see Appendix A). At a glance, domestic companies that currently dominate the Indonesia mining sector include:

- PT Bumi Resources Tbk owns Indonesia's largest and fourth-largest coal miners, Kaltim Prima Coal (KPC) and Arutmin, respectively.
- State-owned PT Antam Tbk, produces bauxite, gold, nickel and silver.
- PT Bukit Asam produces coal for export and generates electricity.
- Adaro Energy is a large coal producer with investment in electricity generation.
- PT Tambang Timah is the world's largest integrated tin mining company. It is the tin-rich Bangka region's largest operator, followed by PT Koba Tin. PT Tambang Timah has 25 percent share in Koba Tin, while the remaining stake is held by the Malaysian Smelting Corporation.

2.4.3. Industry associations

Indonesia has two major industry associations, the Indonesian Mining Association and the Indonesian Coal Mining Association, as well as other professionals associations. The associations are non-governmental, non-profit organisations which focus on representing the interests of their member companies to the relevant government institutions. They also represent the Indonesian mining industry internationally and provide professional development, networking opportunities, conferences and training.

2.4.4. Non-governmental organisations

Non Governmental Organisations (NGOs) in Indonesia that are involved in the mining sector include but are not limited to:

- Jaringan Advokasi Tambang (Mining Advocacy Network) or JATAM and Wahana Lingkungan Hidup Indonesia (Indonesian Forum for the Environment) or WALHI, both of whom oppose all mining activities in principle. Both have played a major

role in influencing public perceptions, government and industry about the negative impacts of mining in Indonesia including human rights violations, conflict with communities, negative health impacts and environmental damage.

- National and international NGOs focussed on specific agendas, including anti-corruption (e.g. Indonesia Corruption Watch), conservation (e.g. World Wildlife Fund Indonesia), environmental law (e.g. Indonesian Centre for Environmental Law - ICEL) and revenue transparency (e.g. Transparency International).
- Foundations created by the private companies to support their social investment and community development programs (e.g. Yayasan Tambuhak Sinta in Central Kalimantan).
- Partnerships between International NGOs and the private sector (like that of BHPB's IndoMetCoal project in Kalimantan) which has seen the development of a partnership with Flora and Fauna International to promote sustainable land use planning.

To support mining for development, each of the key players is required to perform their functions and roles, for example:

- Government has its role to promote good governance in mining with less regulation burdens.
- The mining company needs to balance its business interests and to support programs for poverty alleviation where they operate, as well as to mitigate environmental risks.
- Civil society organisations act as agents that could promote the check and balance in the mining sector as well as private and public interests.

In reality, however, it is difficult to get all parties to agree on all aspects in mining for development due to competing and conflicting interests. Nevertheless, there are some drivers that may bring parties together (as discussed during the AusAID scoping mission), as illustrated in Table 3.

Table 3: Drivers for community development by mining companies

Mining Company	Communities	Government
• Social license to operate • Access to land • Risk and reputation management • Productivity gains • Positive legacy • Company of choice (for next project)	• Long-term improvements in quality of life • Access to livelihoods opportunities • Community better off due to company presence	• Greater benefit sharing from private sector • Reduced pressure on government for local community investment • Utilisation of effective implementation system held by company • Retained support at local level for industry responsible for generating significant GDP contribution

Source: AusAID scoping mission - community component (June - July 2012).

3. THE DEVELOPMENT OF INDONESIA'S MINING REGULATORY FRAMEWORK

This chapter describes the evolution of mining regulations in Indonesia through the socio-historical context of Indonesian politics and societies together with their implications in shaping current Indonesian mining regulations. The current mining policies in Indonesia have evolved from the Dutch mining policies during the colonial era. For this reason, it is important to appreciate the way mining was governed in the colonial era, which lasted for over 350 years, until independence in 1945 (see Appendix B). There have been four periods of mining regulatory development in Indonesia:

- The Dutch colonial period.
- The Post-colonial period (1945-1966).
- The New Order period (1966-1998).
- The reform and regional autonomy period (1998 – today).

3.1. The Colonial period and the Indies mining law (Indische Mijnwet 1899)

During the colonial period, the Dutch had all mining rights (Karim and Mills, 2003). The policy was gradually relaxed due to pressures from the private sector to include the Netherlands Indies (present day Indonesia) and the increased needs of coal in the 1850s (Saleng, 2002). As a response, the colonial government created a Special Committee for Mining in 1852, which later became the Colonial Mining Office (*Dienst van het Mijnwezen*). The main task of this organisation was to conduct geological exploration in several areas expected to have coal deposits. As a result, Ombilin mining,[6] located in Sawahlunto, West Sumatera (1866) commenced operation in 1891. It is important to note that during this period, there had been some rejection in the Dutch Parliament of the involvement of the private sector in mining, which led to the direct involvement of the colonial government in this industry.

In 1899, the *Indische Mijnwet* (Indies Mining Law) was introduced, to provide basic classification of the minerals and authorities to govern the mining of minerals, including oil and gas. This law was amended twice, in 1904 and 1918 to further govern mining in the Dutch Indies areas. Similarly, in 1907, the colonial government introduced a set of operational regulations (*Mijnordonnantie*) targeting mining safety.

The amendment of 1904 provided that concession rights could only be granted to Dutch citizens, residents of the Netherlands East Indies or companies established under the laws of the Netherlands or of the Netherlands East Indies. The main purpose was to limit the number of companies applying for exploration concessions, particularly gold tenements (Karim and Mills, 2003).

[6] After independence of Indonesia, Ombilin mining was taken over by the new government and named as PT Tambang Batubara Ombilin and later liquidated to be a subsidiary of PT Bukit Asam. This area has experienced a growth in community mining since the reformation era started as they felt compelled to participate in coal mining.

Later, the amendment of 1918 significantly reduced the mining concession from 75 years to 40 years. This amendment also opened the possibility for non-Dutch foreign interests to obtain concession rights. The concession holders then had to pay a four per cent excise duty for crude oil production and a 20 per cent tax on oil profits and 20 per cent of tax on corporate profits to the colonial government. As the concession holders paid all taxes, they owned the oil that they drilled.

As the approval of foreign interests came about, within five years there were 119 concessions granted by the Dutch colonial government to foreign companies (Karim and Mills, 2003).

During the implementation of the Indies Mining Law, there were no records of any local companies (Indonesian companies) involved in the mining industry. Essentially, the mining activities conducted by the colonial government were exploitative and oppressive practices – both in terms of natural resources and forced labour (e.g. using prison labour) (Erwiza, 2005).

3.2. The Post-colonial period (1945-1998)

The struggle to defend Indonesia's independence following the 1945 proclamation had a widespread social and political impact. Liberation movements against all forms of colonialism and anti-colonialist sentiment were prominent and this strongly influenced all socio-political practices, (including state administration) especially in the mining industry. The initial step was to nationalise all the country's natural resources, including mineral resources, and all Dutch-owned private and public assets. Ownership of assets by other foreign nationals was maintained, although slightly disrupted by the political changes of the nationalisation process.

3.2.1. Nationalisation of mineral resources

Indonesia declared its independence on 17th August 1945 and created a new constitution in the same year. For natural resources management including mineral resources, the 1945 Constitution states:

> *The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people* (Article 33.3 – Basic Constitution of Indonesia).

This illustrates a strong nationalism spirit, as this was created immediately in the post-colonial era of Indonesia. Nationalism within this new country influenced state administration, whereby the government followed up with the nationalisation of all Dutch-mining assets.

The mining sector, however, began to suffer and declined during the early days of independence when Sukarno was President of Indonesia (1945-1966). This government did not produce any operating regulations for Article 33.3 of the Constitution for the mining sector.

It took until 1959 for President Sukarno and his government (often referred to as the 'Old Order') to implement regulations that strengthened the role of the state in administering mining (including oil and gas) resources. Specifically Law 44/1960 regarding the Oil and Gas Mining stipulated that:

- *All oil and gas found within the territory of Indonesia is national property and controlled by the state* (Article 2).
- *Oil and gas mining operations should only be conducted by state enterprises* (Article 3).
- *Other parties other than state may be appointed to involve in mining operation as contractors of the state enterprises if necessary* (Article 6.1).

Until the end of 2012, the legal principles above were applied in the oil and gas industry under the existence of Badan Pelaksana – Kegiatan Usaha Hulu Minyak dan Gas Bumi (BP MIGAS), as the state authority that controlled all oil and gas industry with private components as the contractors of BP MIGAS. In November 2012, the Indonesian Constitutional Court invalidated the laws that underpinned BP MIGAS and, as a consequence, the Government transferred its role and responsibility to MEMR [7]. Subsequently, the Minister has announced a new body called: Satuan Kerja Sementara Pelaksana Kegiatan Hulu Minyak dan Gas Bumi (SKSP Migas) to temporarily replace the function of BP MIGAS (with Ministerial Decree 3135 K/08/MEM/2012).[8] It is expected that the legal requirements and overall governance of the oil and gas sector will experience further changes due to the current decision of the Constitutional Court that has seen the disbanding of this institution.

The issuance of Government Regulation in Lieu of Law 37/1960 was one of the first regulations for minerals mining in Indonesia, replacing the Indies Mining Law of 1899. Similar to Law 44/1960, this law also provides that all mining resources at surface and below surface within Indonesian territory are 'national wealth' and are controlled by the state (Article 2 of the Law 37/1960). Unlike Law 44/1960, this regulation mentions that provincial and regency governments are given chances to receive parts of mining resources that are found in their areas based on criteria given on the operating regulations. This law categorised the mining resources into three groups: strategic, vital and neither of these. This law, however, was not promulgated until the enactment of Law 11/1967.

3.2.2. Nationalisation of Dutch mine infrastructure and assets

The nationalisation of Dutch infrastructure and assets was done with the enactment of Law 10/1959 on the Revocation of Mining Rights. This legislation intended to revoke all rights granted under the Indies Mining Law, the Dutch-made *Indische Mijnwet* 1899. One year later, Law 37/1960 on Mining was enacted, to then fully terminate the implementation of

[7] Information is available at http://www.esdm.go.id/berita/migas/40-migas/6068-bp-migas-sksp-migas-bukan-hanya-sekedar-ganti-baju.html [retrieved on 18th December 2012].

[8] In 2013, the President of Indonesia through Presidential Regulation 9/2013 established Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi (the Special Work Unit for Upstream Oil and Gas Activities) or SKK MIGAS.

the *Indische Mijnwet* 1899[9]. The Law 5/1960 (Agrarian Law) was also enacted, nationalising all lands and plantations then under Dutch control, and regulating land use for mining enterprises.

The nationalisation was followed by a centralisation of political power, at a time of rebellions against the central government leaded by President Soekarno. During that period, the political scene was dominated by a spirit of nationalism and anti-imperialism in all forms, including foreign capital. As mining activities demanded large scale investments, and there were no national entrepreneurs possessing the required capital, it became very difficult to develop the industry without foreign assistance. In addition, the central government refused any Western aid or investment, therefore stalling Indonesia's economic growth.

The Old Order Regime eventually capitulated due to its anti-Western stance (especially towards Western interests in Indonesia's minerals and petroleum) and its communist ideology. This saw the 'New Order' Regime (President Suharto in 1966) take control of the state administration and thus open the country to foreign investment in mining by enacting Law 1/1967.

3.2.3. **Law 1/1967**

Suharto in his New Order government (1966-1998) was pro-West for the same interests of combating communism and the urgent need for foreign aid to boost the national economy.

In 1967, two laws were enacted: Law 1/1967 on Foreign Investment and Law 11/1967 on Basic Provisions of Mining, to allow foreign capital to enter the mining sector in Indonesia. The immediate result was the arrival of Freeport mining operations. The company began to invest in gold and copper mining in Papua and developed the first generation of Contracts of Work (CoW) (see Box 1).

Law 11/1967 introduced the CoW scheme, under which mining investors and operators are defined as 'contractors' of the Indonesian Government (Gandataruna and Haymon, 2011, OCallaghan, 2010). The CoW was defined as a contractual agreement between the Indonesian Government and foreign mining investors. It established rights and obligations such as taxes, royalty production and import duties, and employment of Indonesian nationals (Gandataruna and Haymon, 2011).

[9] The significance of this law was to terminate the Indische Mijnwet 1899, but this law was in abeyance until the introduction of Law 11/1967.

Box 1: Freeport and the 1st CoW

Freeport Indonesia Inc. forced the creation of a form of foreign investment contract called the Contract of Work (*Kontrak Karya*) or CoW. It was granted the first generation of CoW for Ertzberg gold/copper deposit in Papua Province on 7 April 1967, upon the enactment of 1967 Mining Law. In fact, Freeport had reached a 'preliminary arrangement' with Indonesia to mine Ertzberg in April 1965 and wrote the 1st generation of CoW in 1967 prior to the signing (Leith 2003). Consequently, the CoW was believed to benefit them in controlling yield and minimising taxes (Soehoed, 2005).

Freeport's CoW remains problematic for the Indonesian Government, giving only a small amount of its yield to the Indonesian Government, resulting in pressures to revise the contract. The problem is that since Indonesia became independent in 1945, there has been no comprehensive ruling regarding this issue.

Generally, the involvement of foreign investment in mining was expected to provide increased tax revenue to the national government. In exchange, the government provided favorable conditions for industry growth, including secure land tenure and stable royalty rates for the investors (Gandataruna and Haymon, 2011).

However, taxes from mining have tended to have a close connection with the corruption and crony-ism that exists in Indonesia. Deals and negotiations on CoWs were done with limited participation of other parties except the central government. For three decades, the law 11/1967 and its Government Regulation 32/1969 created a strong position for the central government, through the Ministry of Mining Affairs (now the Ministry of Energy and Mineral Resources), in managing minerals and mining resources, and the governance system.

Furthermore, in the past regime of Suharto, centralisation of power due to the dominance of the central government was highly perceptible, including in mining activities. The national government controlled this industry for the purpose of economic development as well as to sustain its military power. The government needed financial support and the petroleum industry was one of the pillars: in this era, oil production grew exponentially and the profits were absorbed mainly to cover army expenditure as well as by siphoning off by a small group of Indonesia's elite.

Notwithstanding the development of the petroleum industry over several decades, the mining sector remained underdeveloped until the mid-1980s, when large deposits of gold and other minerals were found. These deposits were exploited by major players of global mining such as Newmont, Thiess, Rio Tinto and Meares Soputan. The legal architecture around mining exploration and exploitation remained untouched, allowing the government to maintain its control and direct intervention over contracts and joint ventures between foreign and domestic corporations.

In 1986, a new government regulation (No. 37) was enacted, transferring some authority of the central government in mining affairs to sub-national governments. This policy, however,

did not include vital and strategic mineral resources. Sub-national governments were only given responsibilities to manage the C-grade minerals such as nitrate, granite, phosphate, marble and the like. Vital and strategic mining commodities remained under the control of the central government. In this decade, there was new exploration of gold and copper in Minahasa – North Sulawesi, North Sumatra, Sumbawa, Maluku and other regions. Coal mining did not develop much, as petroleum was relatively cheap and Indonesia's oil deposits were high, remaining as one of the major sources of national income.

During the 1990s, with increasingly scarce reserves and the expensive cost of petroleum and gas, new sources of cheap energy became more in demand. Coal production, which in the previous era was not very attractive to investors, rose due to high demand and high prices in the international market.

By then, the Indonesian mining Law of 1967 was stagnant with no major changes, leaving the coal industry with no regulations. It was only in 1996, that a new Presidential Decree on Principles of Coal Contract of Work (CCoW or PKP2B) was enacted.

While copper, gold and other metal mines are regulated under the CoW, coal mining was regulated under the CCoW. On this basis, coal mining concessions developed particularly towards the end of the 1990s, included a proliferation of small local companies such as coal mining cooperatives. Until the early 2000s, coal mining permit applications were dominant, and applications numbered in the thousands.

3.3. Mining during the reform era and regional autonomy (1998 – current)

The Indonesian reform era began in 1998 after the fall of President Suharto, with a significant change in Indonesia's political and administrative system. The most notable policy change was the shift from a highly centralised system of administration to a decentralised and democratic system. In the decentralised architecture, full autonomy[10] is being placed at the regency/municipal level, with limited autonomy power at the provincial level. Under this arrangement, the authority of central government has also been reduced.

Transferring political and administrative powers from the national government to sub-national governments was not an easy task in the mining sector. Competing interests between different levels of government and other parties involved, e.g. the private sector and civil society, over natural resources delayed the enactment of Indonesian mining law 4/2009 by almost a decade from the commencement of the reform era.

Law 4/2009, however, has unified the regulation of mining (ores and minerals) and coal (previously regulated under the Presidential Decree 75/1996). The implementation of this law was an effort to accommodate changes occurring due to political reform and decentralisation of government administration. In this period, the government enacted a number of new regulations (see Appendix B).

[10] Full autonomy means regency/municipal governments have "their own discretion to create and implement local policies as far as they do not violate national law and disturb public interests" (Rasyid, 2002: p 1)

It is important to appreciate how regional autonomy has shaped the current mining governance regime. Four important features of this are: the origin of decentralisation in mining; the relationship between national and sub-national governments; the sense of localism; and the mining and forestry sector.

3.3.1. The origin of decentralisation in mining

The 1967 legal architecture on mining development and the openness to foreign investment had made Indonesia one of the major tin, copper and nickel producers by the end of the 20th century. The mineral industry positioned itself as a major source of employment and tax revenue (Gandataruna and Haymon, 2011, OCallaghan, 2010). However, the financial crisis in 1997 badly affected the country. Within a very short period, industries which were dependent on imported materials closed down and this was the causal factor in the high unemployment rate. Mass unemployment led to social unrest, anti- government demonstrations, violence and an uncontrollable communal confrontation. This situation marked the end of Suharto's New Order regime, as well as the centralisation of national government (Rasyid, 2002).

Subsequently, along with the fall of Suharto's regime in May 1998, there were political changes on a large scale as well as the promotion of decentralisation in the central and regional government relations. One of the drivers of decentralisation was to reduce the tensions from natural resources rich provinces that were demanding to be independent and separate from the national government (which would therefore result in the disintegration of the Unitary Republic of Indonesia [RI]).

3.3.2. The relationship of national and sub-national government

To anticipate the potential breakdown of the Unitary RI, Law 22/1999 on Regional Autonomy and Law 25/1999 on Financial Balance between Central and Regional Governments were introduced and are commonly referred to as the 'Decentralisation Laws'. As a result, the position of the sub-national governments became stronger, subsequently reducing the authority of the central government. With this new power, the sub-national governments began to initiate policies that were aimed at bringing the public administration services closer to communities and their constituents. In addition, it was perceived that by doing so, local problems could be rectified much quicker.

The interpretation of decentralisation, however, has been distorted from its original purposes. The national government viewed the sub-national governments' policies as not aligning with the national development goals. Therefore, Law 22/1999 on Regional Autonomy was revised by Law 32/2004, which to some degree limits the freedom of the regions, and brings national integration into its contents.

In the mining sector, Government Regulation (GR) 75/2001 was introduced to accommodate the implications of decentralisation into the implementation of GR 32/1969 (under Law 11/1967). GR 75/2001 for the first time recognised decentralisation in the Indonesian mining sector. The elucidation of this law stated that Indonesian mining was previously managed with centralistic and monopolistic orientation. Therefore, due to the introduction of the

decentralisation laws, GR 75/2001 was enacted to balance the national and sub-national interests. Each level of government was provided with certain authorities such as deciding the mining areas, issuing mining authorisation, issuing people's mining, supervising/reporting, etc. Nevertheless, the CoW and CCoW were still under the power of national government. These arrangements, however, were not easily manageable, and its implementation created further uncertainties in the regulatory environment surrounding mining licence authority.

3.3.3. Sense of localism

Besides reforming government administration, decentralisation has also encouraged a paradigm shift in natural resources and economic wealth among local communities. Communities surrounding mining areas are now increasingly demanding their rights for natural resources which has in turn created 'a sense of localism'. In many cases, they no longer see themselves as 'stakeholders' or the passive beneficiaries, but as 'shareholders' of the mining activities. They desire to have voices in the decision making of the local resources surrounding them. Consequently, as shareholders, local communities surrounding mining operations believe that they should be the first priority to receive benefits from mining, ranging from direct employment, business opportunities and specific CSR programs.

This sense of localism has, however, exacerbated tensions between mining companies and communities in a number of locations. In recent times, conflicts between corporations and local communities have increased in their magnitude and frequency (Resosudarmo, 2005, Prayogo, 2008). Amongst many, conflicts increasingly revolve around environmental issues and land tenure, as well as social problems in and around mine areas. The tensions between companies and local communities in many cases tend to be triggered by the actions of 'local elites' (or local leaders) that use mining for their specific political agenda and have vested interests.

3.3.4. Mining and forestry

Almost all mining deposits in Indonesia are located within forested areas. Many of those are regarded as critical and significant tropical rainforests. In the decentralisation era, Law 41/1999 on forestry was introduced. This law strongly prohibited open mining in protected forests and mandated the revocation of all mining licenses that had been granted in protected forests. Fierce lobbying by the mining sector resulted in the issuance of the GR in Lieu of Law 1/2004 under President Megawati's regime. This law clarified that all mining contracts or licenses made prior to the issuance of the 1999 Forestry Law remained valid. As a result, a total of 13 mining companies that had acquired a mining contract or license for protected or conservation forest areas before the enactment of the Forestry Law, were thus allowed to continue with their activities as legalised under the Presidential Decree 41/2004 on License or Agreement for Mining within Forested Areas.

3.4. State control rights and resource nationalism

Throughout the history of Indonesian mining regulatory framework, from the post-colonial to the current regional autonomy, it is apparent that the regulations are framed within two

strong features: the state control rights or '*Hak Penguasaan Negara* (HPN)' and resource nationalism.

The first feature, HPN, is implicitly reflected in the article 33.3 of the Basic Constitution for resource management (see Section 3.2.1) and through the issuance of Law 5/1960 on Basic Agrarian Law. By all means, the state government has the authority to regulate and consolidate the utilisation of land, water and airspace. The HPN allows the state government to revoke the customary (*adat*) power of society 'when necessary' in order to ensure the existence of the nation (Lestari, 2011). The existence of HPN has become one of the central debates when the state government uses its HPN to take communities' rights over customary lands and give them to the multinational companies, allegedly for the purpose of national interests.

As the mining law is rooted to article 33.3 of the Basic Constitution, the concept of HPN also applies. The debate surrounds 'who is the owner of the local natural resource'. That is, the HPN does not specifically mean that the state owns the resources (Saleng, 2002).

Article 33.3 was formulated with the concept that the state is given the authority to manage resources, including minerals and mining, for the benefit of the Indonesian citizens. However, this is widely debated, particularly under the regional autonomy era where local communities believe that they have more rights to manage local resources. This is a topic where further research needs to be undertaken to fully understand the issues and extent of this debate.

The second feature that strongly influences the Indonesian mining regulatory framework is resource nationalism. The nationalism spirit has been a central feature of the state interest since the early days of Indonesia. The idea of resource nationalism is driven by the intention of the state to protect its national interests.

Through the history of the CoWs[11] and today under the new mining regulatory regime, it is clear that the Indonesian government does not consistently apply the concept of resource nationalism or protectionism for its resources. During tough economic times, the government has tended to relax the requirements for foreign mining companies to invest in Indonesia. Conversely, during good economic times, the government has implemented tough policies for foreign mining companies (Bhasin and McKay, 2002). This has contributed to the uncertainties in the foreign business environment and has been a key inhibitor to long-term economic growth in Indonesia[12].

It is clear, within current mining governance, that despite allowing the foreign investors to obtain full mining licenses, for the first time the Indonesian government has re-introduced

[11] The application of CoWs in Indonesia was conducted through the 1st generation to the 8th generation of CoWs. Amendments were made to accommodate policy changes imposed on foreign mining companies.
[12] Buehler, M. 2012. "Resource Nationalism" clouds Indonesia's Economic Prospects. The Diplomat (7 September 2012). http://thediplomat.com/asean-beat/2012/09/07/resource-nationalism-clouds-indonesias-economic-prospects/ [Retrieved on 8th October 2012].

protectionist measures (e.g. divestment policy, ban on raw material exports and domestic value added policy) of which some are discussed in the next section.

4. THE CURRENT MINING REGULATORY FRAMEWORK

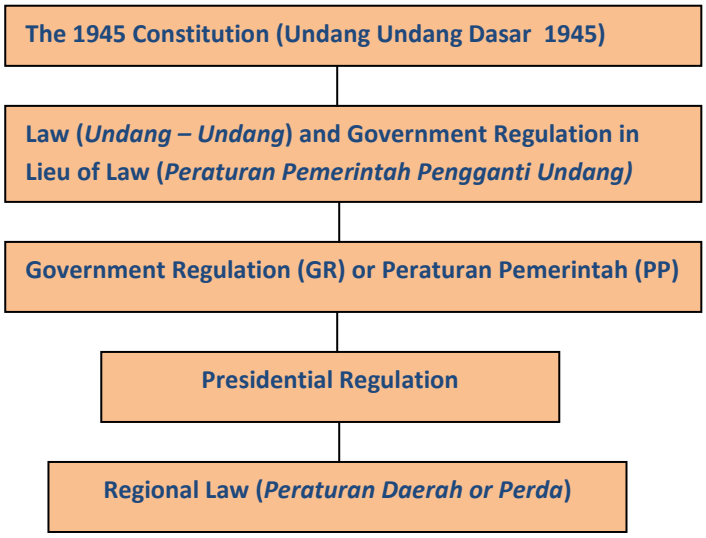
This chapter covers the current mining regulatory framework with reference to:

- The sources of laws, to assist in understanding the regulatory hierarchy in Indonesia.
- Principle legislation in current mining regulatory architecture and key changes.
- Environmental aspects and mining.
- CSR aspects and mining.
- Artisanal and small scale mining.

4.1. Sources of laws

The official hierarchy of sources of law in Indonesia is as follows:

Figure 2: The hierarchy of sources of law



Additional sources of law include: Presidential Decree; Presidential instruction; Ministerial Decree; and circular letters. It is commonly known that these regulations sometimes conflict with one another.

Indonesian Laws generally only provide brief guidelines. The implementing regulations are subsequently followed to provide the detailed implementation rules. Ideally, the implementing regulations should be enacted immediately after a particular law is enacted. In many cases, the implementing regulations are not ready for several years, which creates uncertainty as all Indonesian laws depend on the operating regulations, including the subsequent ministerial or presidential decrees, to determine exactly how they are implemented.

In addition to the civil law system, Indonesia's Laws are intermixed with customary law (known as *adat* law in the Indonesian language) and Dutch Law. *Adat* law has its origins before the Dutch colonial period which, in some instances, can be traced back to the indigenous kingdoms that ruled the archipelago independently with their own customary laws. Modern Indonesia law recognises *adat*, as long as *adat* does not interfere with the national interest. The interaction between *adat* and modern Indonesian laws is complex and is often a causal factor in the exacerbation of conflicts between mining companies and communities in Indonesia.

4.2. Principal mining legislation

Principal legislation in mining is summarised in Table 4.

Table 4: Source of law and principal legislation

Source of Law	Legislation	Description
Basic Constitution	The 1945 Constitution (*Undang– Undang Dasar 1945*)	Article 33.3 – "*land and water and natural resources therein shall be utilised for the greatest benefit of or welfare of the people*"
Law	4/2009	Minerals and coal mining
Government Regulations	22/2010	Mining areas
	23/2010	Mining business operations
	78/2010	Mine reclamation and closure
	55/2010	Mineral and coal mining direction and supervision

In addition, mining companies need to consider the following:

- Law 22/1999 on Regional Government.
- Law 25/1999 on The Fiscal Balance between the National and Sub-national Governments.
- Law 34/2000 on Regional Taxes and Levies.
- Law 25/2007 on Investment Law.
- Law 41/1999 on Forestry.
- And many others based on specific topics (environment, spatial planning, CSR, etc.).

An additional list of relevant legislation is in Appendix B. This report focuses on the environmental, CSR and artisanal mining components of the legislation.

4.3. The legislative impact of the implementation of Law 4/2009

Law 4/2009 on Mineral and Coal Mining is the principal legislation that governs the mining sector in Indonesia, replacing its 1967 predecessor. The main triggers of this change were:

- The introduction of regional autonomy in Indonesia where the central government devolved significant powers to the sub-national governments (province and regency/city).
- The introduction of the equal treatment principle to foreign and domestic investors, as mandated by the 2007 Investment Law.

Consequently, the 2009 mining law provides the framework for all of the country's mining concessions and has brought about numerous changes to the previous mining regulatory

regime of Indonesia. Most notably, this includes: the change of Contract of Work regime (CoW/CCoW) to a licensing regime (*Ijin Usaha Pertambangan* or IUP), the designation of mining areas, recognition of the 100 per cent foreign investment (with its divestment policy); a tender process; the utilisation of local content; as well as a ban on raw material exports and its value added policy.

4.3.1. The change from CoW/CCoW to IUP

The CoW/CCoW framework for foreign investors and the mining authorisation (*Kuasa Pertambangan* or KP) framework for Indonesian investors were replaced by a single area-based licensing system that is applicable to both foreigners and local investors (see Table 5). This meant that the arrangement of the previous contract-based system (between the investors and the central government) was abolished. For previous CoW/CCoW, there were a series of negotiation processes between the central government and the concession holders of CoW and CCoW.

Table 5: Current mining licences and their role

Type of License	Role
Mining business license or *Ijin Usaha Pertambangan* (IUP)	A general licence to conduct mining activities in a commercial mining area that is reserved for large-scale mining
Special mining business license or *Ijin Usaha Pertambangan Khusus* (IUPK)	A specific license to conduct mining activities in specific state reserve areas for a national strategic interest
People's mining license or *Ijin Pertambangan Rakyat* (IPR)	A license for mining in an area of limited potential that is served for small-scale mining. This category is available only to domestic investors

Under the licence-based system, each level of government can issue a mining license dependent upon each government's authority (as highlighted in the mining law). These are illustrated in Table 6.

Unlike the previous CoW/CCoW arrangements that combined the licenses for all stages in mining business cycles, the current mining license (IUP and IUPK) is granted in two separate phases: exploration and production operations. The exploration IUP/IUPK is for conducting general survey, exploration and feasibility studies within the authorised mining areas. The production IUP/IUPK is for construction, mining, processing, refining, hauling and selling within the authorised mining areas.

Table 6: A break-down of mining area responsibilities by government tier

Government Tier	Responsibilities
National Minister	Responsibilities for mining areas that belong to more than one province, or off-shore areas that are more than 12 nautical miles from shore
Provincial Governor	Responsibilities for mining areas that belong to more than one regency/city within the same province, or seawater areas between 4 nautical miles and 12 nautical miles from shore
Regent/Mayor	Responsibilities to mining areas within a regency/city or within seawaters up to 4 nautical miles from shore

The license-based system has been seen as a positive improvement (Business Monitor International, 2012). However, this system is also believed to provide less certainty to companies, particularly large investors, as it provides less protection against future changes in the law, e.g *lex specialis*, and has eliminated contractual distinction between foreign and domestic companies (Gandataruna and Haymon, 2011).

The law, however, preserves the validity of the existing CoW/CCoW, but it now requires negotiation with the central government to ensure its content and the applicability are sound. The re-negotiation commenced in August 2010 for 37 companies with CoW and 74 companies with CCoW. The re-negotiation covers six points: mining areas, contract extension, royalty, company's responsibility in processing and refining, divestment strategy, and the use of domestic mining services and materials. The re-negotiation of CoW/CCoWs is being conducted as part of Presidential Decree 3/2012 on the Evaluation and Adjustment of CoW and CCoW. A team was established and is expected to finalise the re-negotiation task by the end of 2013[13].

In the IUP system, companies may acquire larger areas, but for reduced terms. The maximum areas for IUPs have been significantly increased. Coal IUPs can be up to 50,000 hectares and 15,000 hectares for exploration and production phases, respectively. For mineral IUPs, the maximum areas are 100,000 hectares for exploration and 25,000 hectares for production. However, the term of production phase IUPs has been reduced to 20 years, with the possibility of two 10-year extensions. The predecessor production license was for 30 years, with two 10-year extensions.

4.3.2. Divestment policy

The divestment policy is highlighted in the GR 24/2012 on the Obligation of Divestment (the amendment of GR 23/2010). Based on this regulation, the government requires foreign investors to divest their shareholding in the IUP to at least 51 per cent by the tenth year of production. This requirement is higher than the previous one stated under the GR 23/2010

[13] http://www.indopos.co.id/index.php/index-catatan-hatta-rajasa/24996-renegosiasi-kontrak-tambang-.html [Retrieved on 9th September 2012].

that required the foreign company to divest its 20 per cent of its shares after the fifth year of production. The divestment starts five to ten years after the mine production to its domestic partners that may be governments, state-owned enterprises or domestics companies. The new share divestment requirements are:

- 20 per cent after 5 years of production.
- 30 per cent after 7 years of production.
- 37 per cent after 8 years of production.
- 44 per cent after 9 years of production.
- 51 per cent after 10 years of production.

The Business Monitor International (2012) highlights several risks with this policy, such as the negative development in Indonesia, uncertainties due to the unclear basis for calculating the price that must be paid to divesting parties and the ordering of divestment procedures. In terms of the offer for divestment, the regulation provides that the offer will go in the following order to:

1) Central government.
2) Provincial or regency government.
3) State-owned companies.
4) Regional government owned companies.
5) Private national legal entities through a tender process.

For this matter, the Business Monitor Indonesia (2012) warns of the complexity in the implementation of the tender process with a fair price.

The operating legislation of this PP has yet to be seen, and is expected to create new distortions as experienced by PT Newmont Nusa Tenggara. The process of divestment of this company has been slow. It has been burdened by various interests and disputes taking place between central and regional governments, and the national private sector, in order to determine who can control a majority stake in the company.[14]

4.3.3. Designation of mining areas

Under Law 4/2009, mining will only be permitted in areas that have been designated as Mining Areas (*Wilayah Pertambangan*) by the central government after consultation with the Indonesia parliament and regional governments.

In November 2012, the Constitutional Court of Indonesia has amended that the regional governments have the first rights to determine areas under their jurisdiction to be allocated as Mining Areas as well as: Mining Business Areas (*Wilayah Usaha Pertambangan*) or Mining Business License Area (*Wilayah Ijin Usaha Pertambangan*). The central government will then consider these for final approval.

The issuing of IUP license is based on a request for specific areas (*permohonan wilayah*) for mining by a company or cooperation or individual who wants to get the IUP. The request

[14] Jakarta Globe, 14 September 2012. NNT Plans $500m IPO Once Divestment issue ends. http://www.thejakartaglobe.com/business/nnt-plans-500m-ipo-once-divestment-issue-ends/544321 [Retrieved 18 September 2012].

will be sent to the Minister, Governor or Regent/Mayor according to each responsibility (see Table 6).

4.3.4. Tendering processes

A tender process needs to be conducted for the granting of the mining licenses for both coal and minerals. This replaces the previous system of direct application. This process is likely to attract genuine investors that are financially ready for the mining business. This process will probably result in the removal of license brokers.

4.3.5. Domestic value added obligation

Based on the MEMR Ministerial Regulation 7/2012, Indonesia has announced its policy to ban raw material exports by 2014, in order to develop higher value-adding downstream industries. The driver of this policy is the increased exports of several mineral materials. For example, iron ore and iron sand exports in 2011 increased 800 per cent (13 million tons) in comparison to 2009. With its current export pace, the MEMR predicts that iron ore reserves will be completely diminished within ten years.[15] Subsequently, as part of the new mining law, as highlighted in the MEMR Ministerial Regulation 7/2012, companies are required to develop downstream refining and processing industries within Indonesia. This is aimed at reducing mining material exports and to provide more flow-on benefits of mining wealth to the nation. Originally, coal thresholds were not included in this raw materials ban policy, but a late decision by the government saw them also included.

As a consequence of this policy, several Indonesian miners have been vocal in claiming that this policy may result in company bankruptcy as companies would no longer have the capacity to meet their commitments with overseas buyers. This in turn would see the withdrawing of funds from financial institutions. Nevertheless, the Indonesian Government continues to emphasise the domestic value-added obligation, and notes the country's capacity is limited for mineral processing and refining (MEMR, 2012).

The MEMR has developed a smelter development plan across Indonesia (Table 7) to meet the current shortages in the implementation of value-added policy on raw minerals. Currently, Indonesia has limited mineral processing and refining plants and their allocation is not widespread. The majority are listed as:

- PT Smelting Gresik (Mitsubishi Flash) in Gresik, East Java for copper cathode and anode slime.
- PT Antam in Southeast Sulawesi for ferro nickel smelter.
- PT Logal Mulia (PT Antam) in Bangka Belitung for tin ingot.
- 29 registered tin smelters in Bangka Belitung.
- PT Inco in Sorowako, Southeast Sulawesi for nickel and cobalt in matte.
- PT Inalum in Asahan, North Sumatera for Aluminium (raw material (alumina) is imported from Australia and Japan).

[15] The information is extracted from the MEMR power point presentation material, "Implementation of MEMR Regulation no 7/2012 related to Enhancement of Mineral Added Value through Mineral Processing and Refining Activity", Jakarta June 2012

Table 7: Smelter Development Plan (MEMR, 2012)

Company	Location	Production
PT Herald Resources, Ltd	Dairi, North Sumatera	Lead-zinc concentrate
PT Agincourt Resources	Tapanuli Selatan, North Sumatera	Dorebullion plant
PT Timah	Bangka Belitung	Tin chemical
PT Antam	Mempawah, West Kalimantan	Smelting grade alumina (1 million ton SGA/year)
PT Sumber Bumi Kalbar	West Kalimantan	Manganese smelter
PT Harita Prima Abadi Mineral	West Kalimantan	Smelter grade alumina
PT Indonesia Chemical Alumina (PT Antam, Showadenko & Marubeni Corp.)	Tayan, West Kalimantan	Chemical grade alumina (300,000 ton CGA/year)
PT Nusantara Smelting	Bontang, East Kalimantan	Copper cathode (200,000 ton/year)
PT Meratus Jaya Iron & Steel (PT Antam & PT KS)	Batu Licin, South Kalimantan	Sponge iron (315,000 ton/year)
PT Silo Group	South Kalimantan	Pig iron
PT Tin Chemical	Cilegon, Banten	Tin chemical
PT AGB/Hyundai	Kupang, East Nusa Tenggara	Ferro silicon – manganese (60 – 100,000 ton/year)
PT Antam	North Konawe, Central Sulawesi	Nickel pig iron (120,000 ton/year)
PT Sinosteel Indonesia	Central Sulawesi	Nickel pig iron plant
PT INCO	Central Sulawesi	Nickel pig iron plant
PT INCO	Pomalaa, Southeast Sulawesi	Hydroxide nickel (48,800 ton/year)
PT Position (Solway Group)	North Maluku	Nickel pig iron plant
PT Antam	Halmahera, North Maluku	Nickel pig iron plant (27,000 ton/year)
PT Weda bay Nikel	Weda, North Maluku	Hydroxide nickel (60,000 ton/year)
PT Batutua Tembaga Raya	Wetar, Maluku	Heap leach copper cathode
PT Nabire Bhakti Mining	Nabire, Papua	Dorebullion (500,000 ton ore)
PT Global Perkasa Investindo	Timika, Papua	Copper cathode (400,000 ton/year)

4.3.6. Local content and domestic sale (coal)

The law requires that mineral and coal mining activities in Indonesia shall include the use of domestic goods, services and technology and the development of the Indonesian workforce. It also stipulates that mining operators shall give priority to local manpower and domestic goods and that a mining company is not allowed to use an affiliated mining services contractor, unless it receives ministerial approval (Hadinoto and Partners, 2009).

Furthermore, Indonesian coal producers are required to sell at least 24.17 per cent of their output to the domestic market, commencing in 2011. The domestic market for coal was mainly PT Perusahaan Listrik Negara (Persero), the State Electricity Company, and this provides 90 per cent of the power generated in Indonesia. The new regulation would affect 53 coal-mining companies involved in 42 coal contracts of work, 10 mining rights and mining license holders, and PT Tambang Batubara Bukit Asam (Kuo, 2012).

4.4. Environmental aspects of the new regulatory framework

All business activities, including mining projects, which potentially have significant impacts on the environment, are required to carry out Environmental Impact Assessments – EIA (known as AMDAL). This provides the basis for the government (Minister, Governor or Mayor/Regent) to issue the environmental license. For projects that have no significant impacts (e.g. supporting mining facilities), the IUP holder must undertake Environmental Management Efforts (UKL) and Environmental Monitoring Efforts (UPL). The evolution of this legislation and the current approvals are analysed below.

4.4.1. The evolution of environmental legislation

It is widely considered that Mining Law 11/1967 was severely lacking in providing appropriate safeguards for the environment. Hamilton (2005) states that there were no requirements for preservation of topsoil, contemporaneous reclamation, or control of onsite or offsite environmental effects such as water pollution during mining operations. Similarly, financial guarantee and bonds were not required to assure proper land reclamation and any habitat restoration, particularly should the company become insolvent or at the mine closure stage.

To ensure appropriate environmental safeguards in mining, the first environmental regulation of mining operations in Indonesia was enacted through the MEMR Ministerial Regulation 4/1977 (under the 1967 Mining Law) on the prevention and handling of disturbance and pollution of the environment caused by general mining. This regulation imposed on mine operators the necessity to prevent disturbance and pollution of the environment where possible and to mitigate any damage caused by mining. This regulation was brief in nature and lacked specific performance standards or operational requirements. Subsequently, the Director-General of Mines released Decrees 7/1978 and 9/1978 for the prevention and mitigation of damage cause by surface mining, mineral processing and refining (Hamilton, 2005). These two regulations were seen as a significant improvement in highlighting environmental requirements and concerns in mining. However, there was no requirement for comprehensive management and maintenance systems. In addition, the government had difficulties in enforcing mining companies to comply with these requirements.

To take another step in directing the operations of surface mines, the mines department (now MEMR) announced another Decree, 1211/1995, that replaced and expanded the three regulations: 4/1977, 7/1978 and 9/1978. The 1211/1995 Decree imposed an obligation directly on the Mine Technical Manager to take preventive measures against the possibility of environmental damage and pollution. If damage should occur, the Technical Manager was required to undertake corrective measures immediately. Monitoring and environmental management plans were required to be submitted to the MEMR as the Chief Mine Inspector and to the head of the appropriate provincial mine inspection agency. Similarly, the decree addressed the obligations of the Technical Manager, prevention and mitigation of environmental damage, and the management of mines after closure and guarantee of reclamation. Reclamation obligations were later regulated in 2008 through Ministerial Decree 18 of Reclamation and Mine Closure. This decree covers principles, procedures, assessment and approval, guarantee of reclamation and closure of mines. Through this decree, environmental management in mining enterprises became more tightly controlled by the government.

In the broader environmental development of Indonesia, the enactment of Law 4/1982 on Basic Provision of Living Environment was the significant foundation for environmental management in the country. This law covered the basic provisions of preservation, conservation and the utilisation of natural resources and their environment. The later implementation of GR 29/1986 established an EIA process (AMDAL). These regulations, however, did not specify the requirements for particular sectors of development, such as mining.[16]

Following the international release of the Brundtland Report in 1987, Indonesia was influenced by international movements toward sustainable development. As a result, institutions (mainly academic and government) focused more on the environment and existing environmental issues. This saw the creation of a Centre for Environmental Study (PSL) in several universities and the creation of the Indonesian Environmental Impact Management Agency (BAPEDAL) based on Presidential Decree 23/1990. Moreover, environmental NGOs began to appear, including NGOs that specifically monitored the environmental activities of mining operations, namely the mining advocacy network JATAM. JATAM's stance is very clear, being anti-mining, observing that mining activities negatively impact the environment (see Section 2.4.4).

Since 1990, the pressure to have better environmental protection and management has become stronger. Law 4/1982 was replaced with Law 23/1997 on Environmental Management and later, revised with Law 32/2009 on Environmental Protection and Management. AMDAL has also evolved in many ways[17] and has become a requirement in major project approvals. Most recently, the government has required major projects to acquire an environmental permit as part of the AMDAL process.

[16] http://wwwnew.menlh.go.id/home/index.php?option=com_content&view=article&id=60%3Asejarah-dan-latar-belakang&catid=37%3Aprofil-klh&Itemid=99&lang=id [Retrieved 5th September 2012].

[17] As highlighted in the previous section, AMDAL was recognised in Indonesia in 1986 through its regulation of 29/1986. This regulation was replaced with the Government Regulation No 51/1993 on Environmental Impact Analysis. To accommodate changes due to the enactment of Law No 23/1997, No 51/1993 was subsequently replaced by Government Regulation No 27/1999.

4.4.2. Environmental approvals: AMDAL and the new environmental license

The legal provisions for mining projects to consider the environment are described in the GR 23/2010:

- Article 23 – environmental consideration is one of the criteria for companies to obtain the exploration and operation production licences.
- Article 26 – the environmental criteria (as mentioned in article 23) are the approvals of environmental documents as provided under the environmental legislation.

Subsequently, mining projects are required to meet the legal requirements of environmental approvals in Indonesia that are based on:

- Law 32/2009 on Environmental Protection and Management.
- GR 27/2012 on the Environmental License.
- Ministerial (Environment Minister) Decree 11/2006 on types and activities of investment plans that need to conduct the AMDAL.

A significant feature of the current environmental approval regime in Indonesia is the requirement for business entities to obtain an environmental license as part of AMDAL and the UKL/UPL process (see Box 2). Furthermore, the environmental license is a prerequisite for a business entity to obtain other relevant business permits. The environmental license can be granted by the Minister for the Environment, Governor or Regent/Mayor as applicable.

Other features that are necessary for consideration with regards to the current issuance of environmental approvals are:[18]

- Mandatory environmental audits – periodic environmental audits must be carried out by businesses that are likely to have a significant impact on the environment and are suspected of non-compliance with environmental regulations. If a company fails to carry out an environmental audit, the Minister for the Environment is authorised to carry out or appoint a third party to undertake the audit.
- Security funds – the environmental license holder must set aside funds (an environmental bond) that will be used for environmental rehabilitation and recovery. The funds must be deposited in a government bank designated by the Minister for the Environment, Governor or Regent/Mayor, as applicable.

[18] http://asia.legalbusinessonline.com/industry-updates/indonesia-soemadipradja-taher/new-environmental-law-better-protection-or-more-legal-hurdles-for-industry/46199

Box 2: Environmental Permit under Government Regulation 27/2012

The environmental license is a new requirement as part of AMDAL and UKL/UPL's approval, mandated through the GR 27/2012. This regulation imposes mandatory environmental audits and security funds for the purpose of environmental rehabilitation and recovery. The intended purposes of environmental license are to:

- Provide better protection for the environment.
- Impose new requirements and restrictions on industries whose activities are considered to be a high environmental risk, including manufacturing, construction, mining, oil and gas, and pulp and paper industries.
- Impose harsher penalties on polluters and violators.

The environmental license may be revoked if:

- The supporting documents submitted with the application are incorrect or false,
- The granting of the environmental license fails to follow the required procedure, or
- The holder fails to meet the requirements in the AMDAL or UKL/UPL.

If the environmental license is revoked, the relevant business and or activities permits, which allow the business to operate, will also be revoked.

Source: GR 27/2012

The implications of the new environmental law for the general public are: the community and NGOs have greater rights in filing legal claims concerning environmental pollution or damage. Furthermore, Law 27/2012 provides immunity to any person who fights for a sustainable and healthy environment from any criminal charges or civil claims. In addition, the environmental law provides stronger administrative and criminal penalties for any violations of various provisions (e.g. criminalisation of actions where quality standards have been exceeded). The new law imposes penalties on local or central government officials who grant environmental permits without following the proper procedures.

Complaints were raised by the industries due to the onerous provisions of the environmental permit as well as the AMDAL approval and UKL/UPL recommendation (Kandar and Sidharta, 2010). Similarly, the environmental permit will increase complexities and potential delays following the involvement of regional governments in issuing permits, the requirement to undertake mandatory environmental audits, the creation of the security fund and the requirement to comply with stricter provisions on quality standards.

Furthermore, this law has been seen as a misconception of the meaning of environmental licence. The original push from the environmental NGOs in Indonesia (e.g. ICEL) was to integrate all environmental permits together, as currently there are many permits that need to be obtained by mining companies. All environmental permits are supposedly reflected in the AMDAL document as the basis for issuing an environmental license. In fact, rather than

bringing together requirements in an integrated way, the new regulation simply adds a new permit on top of other existing permits under the name of an environmental licence. [19]

4.4.3. EIA or AMDAL process

Under the current government administration, the responsibility for environmental policy rests with the Ministry of the Environment and its implementation is conducted by the regional environment office.[20] This Ministry makes the environmental decision whether to grant a potential project with the environmental license, which is based on the outcomes of AMDAL. A diagram of the EIA processes in Indonesia is provided in Box 3[21] with its explanation provided below.

The EIA (AMDAL) processes in Indonesia are conducted in two ways:

- For projects with significant impacts, it is compulsory to conduct AMDAL.
- For projects with non-significant impacts, it is compulsory to conduct the UKL/UPL.

As outputs of the AMDAL process, there are several documents, such as:

- KA – ANDAL (the EIA guideline).
- ANDAL (Environmental Impact Statement or EIS) and RKL/RPL (Environmental Management Plans/EMPs).
- UKL (Environmental Management Efforts) and UPL (Environmental Monitoring Efforts).

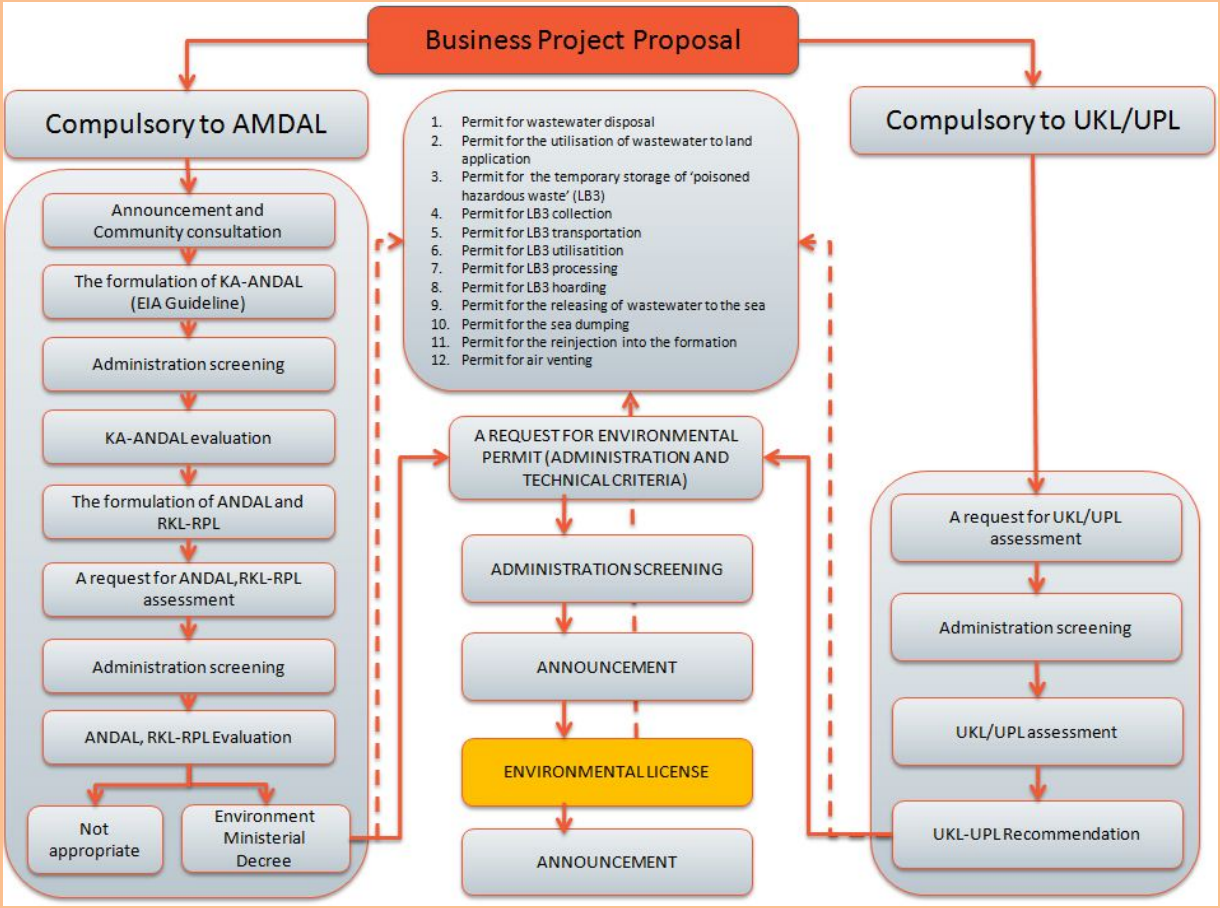
The procedures for AMDAL consist of:

- Screening whether projects need to conduct AMDAL.
- Announcement and public consultation (10 days).
- Scoping: the formulation and evaluation of KA – ANDAL (30 days).
- The development and evaluation of AMDAL documents (75 days).
- The issuance of an Environmental Decree (10 days) or UKL/UPL recommendation (14 days).

After the issuance of the Environmental Decree or UKL/UPL recommendation, a company needs to follow the next procedure for the issuance of an environmental license. The request will be publicly announced for 10 days (ANDAL, RKL and RPL) and 3 days (UKL/UPL).

[19] A private discussion with ICEL during the AusAid Scoping Mission in June 2012.
[20] In the past, BAPEDAL as a non-departmental agency reporting directly to the President of Indonesia was a specific body that had the responsibility for EIA (based on Presidential Decree No 23/2993). The regional BAPEDAL was created in 1994. BAPEDAL was consolidated in 2002 to the Minister for the Environment. The regional BAPEDAL was then transformed as the local government entity of the environment office.
[21] Information provided in Box 3 is extracted from the presentation material of the Ministry of the Environment (Deputy of Environmental Governance) on PP 27/2012 of the environmental license/permit.

Box 3: Diagram of EIA processes in Indonesia



For the GR 27/2012 to effectively function, it requires additional legislation which is yet to be developed. Essentially, the DoE needs to develop eleven new ministerial decrees to support the implementation of this regulation, of which some are:

- A new guideline for the development of AMDAL documents (Article 6).
- A new procedure to involve community in the AMDAL process (Article 9).
- A procedure in the issuance of an environmental permit (Article 52).

4.5. CSR and community development

4.5.1. Legal requirement

CSR and community development have been legally mandated by Law 40/2007 on Limited Liability Company Law. As provided by article 74 of this law, *'companies doing business in the field of and/or in relation to natural resources must put into practice environmental and social responsibility'*. In addition, it stipulates that companies are required to allocate budgets for environmental and social responsibility as a cost of the company performance with due attention to decency and fairness. Sanctions will be made to companies that are not obligated to these requirements.

Further provisions under this law are yet to be stipulated in government regulations, so the law itself is unenforceable, and implementation of ESR is on the basis of sectoral law requirements. In the case of mining, the relevant regulation is the mineral and coal mining law 4/2009.

Articles 95 and 108-9 of the mineral and coal mining law 4/2009 require that mining license holders prepare a program of Community Development and Empowerment (CDE). The government, local government and the community should be consulted in preparation of plans and programs.

The government regulations referred to in Article 109 regarding requirements for the CDE are issued in Articles 106-109 of GR 23/2010.

The main drivers for including ESR/CDE in the revised law are:

- The increased global focus on sustainable development and social responsibility.
- Perceptions that communities bear significant negative impacts from mining, while mining companies obtain excessive profits (Herry-Priyono, 2007).
- Significant levels of conflict relating to environmental and human rights (Waagstein, 2011).

4.5.2. Processes

The process of implementing CDE requirements is currently unclear, as no additional regulations have been issued. A draft MEMR Ministerial Decree was issued in March 2011 (PwC, 2011) containing a range of information about how MEMR foresees implementation, but gaps remain. For example, the draft decree does not include a budget formula, noting instead that this 'will be adjusted based on the mining scale held by the mining permit holder'.

Some companies are already undertaking significant CDE programs in spite of the lack of clear requirements, although implementation tends to vary in practice (discussed further in Chapter 5).

4.6. Artisanal mining

Artisanal and small scale mining (ASM) in Indonesia has existed for more than 700 years (Andiko, 2006, Lestari, 2011). It is important to note that there is no universal definition for artisanal mining. In the context of Indonesia, ASM can be defined as small scale, non-mechanised and labour intensive mining activities and often in the informal sector of the economy. That is, artisanal miners in Indonesia can be attributed with other terms such as: informal miners (Lestari, 2011, Lahiri-Dutt, 2004), small-scale miners (Aspinall, 2001) or *pertambangan rakyat,* or people's mining, as stated in the Indonesian mining laws. Much artisanal mining can be characterised as illegal, in that it is not formally authorised by government.

ASM activities are viewed as important as large scale mining activities, due to the large number of people employed. ASM has a role in rural development and communities'

livelihoods (particularly for the poor, where mining becomes the most promising economic activity for survival). In areas that have limited or degraded natural resources, ASM becomes the only alternative income available. Whether or not ASM contributes to sustainable development, it is important to note that ASM will still play a significant role in areas where poverty exists. It is therefore pivotal to maximise benefits from ASM and mitigate the incurred costs.

4.6.1. Legal base

There have been some changes in the legal recognition of ASM in Indonesia. Prior to the decentralisation and reformation era, ASM was governed centrally through Law 11/1967 and its subsequent regulations. Under this law, matters in relation to ASM were governed under the power of the MEMR. Governors were given limited authority to issue people's mining licenses (*Ijin Pertambangan Rakyat* – IPRs), but not Regents or Mayors.[22] The regency/city could only assist to register the artisanal mining activities under its jurisdiction, to establish groups, and report artisanal mining activities to its respective Governor.

These arrangements changed due to regional autonomy. The Regent/Mayor now has the power to manage the ASM as a manifestation of a greater role in local participation.[23] The Regent/Mayor now has the authority to:

- Issue artisanal mining licenses or *Ijin Pertambangan Rakyat* (IPR) (article 8.1 of the Law 4/2009).
- Decide the people's mining areas (*Wilayah Pertambangan Rakyat* – WPR) for small scale mining (Law 22/2010).
- Supervise and enforce artisanal mining activities (Law 55/2010).

Even though ASM is recognised within the mining legal framework, this sector has not been a priority in government policies, as large scale mining is favoured (Andiko, 2006, Lestari, 2011). Because of this, Andiko (2006) states that artisanal and small scale miners have faced uncertainties, particularly as the areas where people mine can be given away to larger companies. Consequently, this has created conflict between ASM miners and larger companies. In some cases, the ASM miners were forced to vacate the areas they previously utilised, but as many have no other alternative livelihood, they remain and are recognised as *penambang tanpa ijin* (PETI) or illegal miners.

PETI is a term given to people who extract minerals without a formal permit from the responsible government or as defined by MEMR as:

> "mining business conducted by individuals, groups of people or companies/which have legal recognition but which in their operation do not have the required permit

[22] The governor can issue permits for artisanal mines, but the minister can revoke or refuse to prolong the permit if considered in the national interest (see Decision No. 206/M/Pertamb/65 on the Implementation of Decision of *Wakil Panglima Besar III Koti Operasi Ekonomi* No. Kpts.20/WPB-KOTOE 1965 and GR 32/1969 on the Implementation of Law 11/1967).

[23] Article 2.3 of the Government Regulation 75/2001 on the second amendment of Law 11/1967.

from government agencies according to the law" (Zulkarnain et al. Cited in Lestari 2011).

There are approximately 109,000 people directly involved in ASM in Indonesia (Hentschel et al., 2002). According to Aspinall (2001), 90 per cent of the small scale miners in Indonesia are considered illegal miners by the government. It is, however, difficult to ascertain accurate data on artisanal mining in Indonesia because of its magnitude, scale and distribution.

4.6.2. The implications of decentralisation for ASM

The emerging issues/problems associated with ASM in Indonesia are:

- *Marginalised and vulnerable communities:* ASM is usually conducted by marginalised and vulnerable people. Once their traditional income sources disappear or diminish, these groups view mining as the most promising activity to sustain their subsistence needs. They are likely to conduct ASM activities without considering the associated environmental and health risks (which may often result in a much lower life expectancy for ASM workers).
- *Changing nature of ASM:* the original concept of 'small scale' mining is not clear within regional autonomy. ASM is undertaken by many people for their subsistence, but now ASM may involve the use of heavy machinery and equipment by some miners, who have a reasonably high financial capacity. In addition, 'brokers' are involved in ASM to connect the ASM miners with the market. This has negative implications, such as the low price paid to the miners, loss of local revenue and an increase in bribery activities with local authorities to ensure the sale of 'illegal' mine products.
- *Informal, small scale versus 'illegal' terms*: this terminology can become hazy if an ASM receives local government 'approval' to conduct their activities by bribing the officials, e.g. artisanal miners in Central Kalimantan (Spiegel, 2012). Further, the government and general public often stigmatise the small scale and informal miners as 'illegal' miners.
- *Migrant versus indigenous miners*: ASM miners are not always indigenous or native workers that have a spatial attachment where ASM is conducted. The socio-political aspects and geological endowment are two important factors affecting the movement of ASM miners. Many ASM miners work far away from their original place of birth in order to work where the minerals are located and where the regulations and enforcement are relaxed. This has created tensions between ASM 'insiders and outsiders' which in many cases have led to serious community conflicts.
- *Unregulated industry*: despite the recognition of people's mining in the current Indonesian regulations, ASM seems now to be unregulated particularly due to uncontrolled activities of ASM at the regional level. The uncontrolled activities have caused significant environmental damage (e.g. mercury pollution in some rivers). In addition, ASM activities have resulted in conflicts and disputes for mining plots, as

well as the creation of social diseases such as crime, gambling, alcoholism and prostitution in the mining site and its surroundings (Djajadi et al., 2012).

The overall negative impacts from ASM activities may be minimised if sub-national governments play a greater role in managing and monitoring ASM practices. It is apparent that sub-national governments currently have limited involvement in managing ASM. Rather, the sub-national governments tend to publish IPRs in order to gain as much income as possible, and continue to allow ASM to proceed without strictly monitoring its impacts. This is a prime reason for the continual gap that exists in the institutional capacity of sub-national governments in performing their requisite authority in managing ASM following decentralisation.

5. MINING AND LOCAL DEVELOPMENT

This chapter examines the issue of mining and local development under regional autonomy including:

- Governance of mining, including: issues related to national and sub-national disputes; the fast proliferation of regional IUPs; and issues surrounding mining levies.
- The positive and negative impacts of mining on local economies.
- CSR practices by mining companies in Indonesia; both state-owned companies and foreign companies.

5.1. Governance of mining

Governance of mining in decentralised Indonesia has become a challenge across each level of government. To a large extent, this is because there has been disconnection between national and sub-national government in implementing policies. Essentially, the national government has difficulty in supervising the sub-national government, whereas the sub-national government has gone to extremes in undertaking their 'given' powers for managing the mining sector. Collectively, this is evidenced in the distortion of the fast proliferation of regional IUPs and uncontrolled *Peraturan Daerah* (regional laws), or PERDA(s), that legalise the local levies and third party contributions in the mining sector.

5.1.1. Proliferation of regional IUPs

In a decentralised system, sub-national governments have greater authority in the issuance of mining licenses (especially the IUPs).[24] As a result, the number of IUPs issued by the government continues to increase every year. Until 1999, the mining authorisations (*Kuasa Pertambangan* or KP) across Indonesia totalled approximately 5,000 licenses. By mid-2012, this number had risen to 10,566 licenses (IUPs). This illustrates the propensity for sub-national governments to foster the distribution of IUPs for local (and administrative) wealth creation.

IUPs recently released have been identified by the MEMR to have a number of associated problems. Data from the MEMR (mid-2012) showed that amongst the 10,566 regional IUPs:

- Only 5,940 IUPs (56 per cent) were declared as 'clean and clear', meaning that the IUPs are 'free' from administrative problems (e.g. not overlap with other IUPs). These pertain mostly to coal mine IUPs.[25]
- The remaining 4,626 IUPs (44 per cent) were categorised as 'non-clear and clean', due to: failure to comply with environmental/administrative requirements (e.g. problems with AMDAL documents, exploration reports, results of feasibility studies, tax issues, etc.); and land-use issues, where mining areas overlapped with agriculture or protected forest areas, or overlapped IUPs issued by sub-national governments.

[24] Prior to the issuance of Law 41/2009, the mining license was known as KP or mining concessions (Government Regulation 75/2001) and as IUPs or mining business licenses (Article 8 of the Law 41/2009).
[25] February 2012 data showed that 4,151 out of 10,235 coal mine IUPs were categorised as 'clean and clear'.

In relation to overlapped IUPs, as at May 2012, there were at least 1,029 documented cases of overlapping IUPs across Indonesia.[26] They were identified as:

- 455 overlapped IUPs for the same commodity, of which 61 cases were found in Central Sulawesi.
- 401 overlapped IUPs for different commodities, of which 92 cases were found in West Kalimantan.
- 173 overlapped IUPs released by different authorities, of which 40 cases were found in Central Kalimantan.

Box 4 provides three examples of overlapped IUPs that currently exist.

Box 4: Three examples of companies that have overlapped IUPs

1) PT Bukit Asam, a government-owned company, and PT Adaro Energy Tbk, both have a mining coal license in Lahat, South Sumatra. PT Bukit Asam has spent about IDR203 billion since 1990 to explore the coal deposits in the location.

2) The overlapping of IUPs for nickel mining is found in Konawe Utara regency, Southeast Sulawesi between PT Antam (state-owned company) and two private companies: PT Duta Inti Perkasa Mineral and PT Sriwijaya Raya. This occurred as the regent allowed IUPs for the private corporations on land concessions of PT Antam.[27]

3) In Tempilang, Bangka Barat Regency, PT Timah Tbk has an overlapped IUP with the palm oil plantation company.

The overlapping of IUPs appears to be caused by two factors. The first reason is a lack of administrative and bureaucratic capacity at the sub-national level in governing mining. The powers and responsibilities in governing mining have been transferred to sub-national governments with inadequate capacities in place to understand and address the specific challenges that come with extractive industries. A lack of capacity can lead to poor investment decisions which led to the duplication of IUPs, mismanagement of revenues or spending allocations as well as poor monitoring, surveillance and law enforcement (The Revenue Watch Institute, 2012).

In the end, the limited human resources and institutional capacity means that the sub-national governments are unable to control mining activities and their associated impacts occurring within their administrative jurisdictions. Gandataruna and Haymon (2011) state that lack of institutional capacity at the sub-national level has led to legal uncertainty, poor administrative practices and the increase in illegal mining activities. Cases similar to that in

[26] Yozami, M.A. 2012. Izin Usaha Tambang Tak Sebanding Persoalan. http://www.hukumonline.com/berita/baca/lt4f1019e9a42d6/izin-usaha-tambang-tak-sebanding-persoalan [Retrieved on 16th July 2012].

[27] Ambalika, I. 2012. Kebablasan Otonomi Daerah: Obral Izin Pertambangan. http://www.ubb.ac.id/menulengkap.php?judul=Kebablasan%20Otonomi%20Daerah%20:%20Obral%20Izin%20Pertambangan&&nomorurut_artikel=583 [Retrieved 16th July 2012].

East Kalimantan are a regular occurrence (a civil servant was arrested for allegedly allowing two mining companies to operate illegally in the province after the central government revoked and suspended their licenses[28]).

The second reason for overlapped IUPs, is the practice of issuing an IUP as a political and economic machine during Regent/Mayor elections; for example:[29]

- Local political leaders (Regent/Mayor) may utilise the issuance of IUPs to raise local revenues within a five year period of leadership. Within this period, if they come across land that has not been utilised for mining (producing mine materials and development of infrastructure), they will issue an IUP for other companies.
- IUP issuance is often done to finance the needs of prospective leaders (an incumbent or new candidate) to win elections. The potential leaders may receive 'upfront money' as 'a political debt' from businessmen interested in mining. As a return gesture, when the funded candidate (an incumbent or a new candidate) is in power, the political debt payments are made through issuance of IUPs, including on lands actually used by other corporations. The leader knows about it, but cannot refuse the request of the investor who contributed in his/her election.

5.1.2. Regional government mining levies

The regencies/municipalities have released a substantial number of PERDAs, as regulated by Law 34/2000 that is still subject to national government approval. Butt (2010) states that the creation of many PERDAs has led to a 'legal disorder' due to a lack of institutional capacity. He states that by late 2006, the national government had received more than 12,000 PERDAs for review. Within the period of 1999-2007, 1,406 PERDAs were annulled. In 2008, the Finance Ministry received 7,200 PERDAs and recommended the revocation of approximately 2,000 of those (mostly due to the imposing of illegal taxes or user charges). Dwiarto (2012) identified that in 2011, the Ministry of Home Affairs (MoHA) evaluated 9,000 ineffective PERDAs and about 351 PERDAs were revoked. The PERDAs were created mostly to legalise local tax, levies and fees. The mining sector is the most affected by this.

Recently, President Yudoyono instructed the Ministry of Home Affairs (MoHA) to conduct an evaluation of 1,000 PERDAs pertaining to coal mining. In addition, the MoHA has been tasked with the re-evaluation of 2,000 PERDAs in the minerals and coal sector.[30] This is because if there is a likelihood that a PERDA has become ineffective or violates the Law 28/2009 on Regional Tax and Regional Retribution, the MoHA will request the local people's representative body (Dewan Pertimbangan Rakyat Daerah or DPRD) to amend or withdraw this PERDA (Dwiarto, 2012). The head of the Legal Affairs Bureau (MEMR) *cited in* Dwiarto (2012) stated that there are many ineffective PERDAs due to the illegal fees created by the sub-national government and because of disputes and conflicts over mining areas caused by

[28] http://www.steelguru.com/raw_material_news/Kalimantan_civil_servant_arrested_in_illegal_mining_case/277886.html [Retrieved 30 September 2012].
[29] Lubis, T.M. 2012. Tumpang-Tindih Lahan:Siapa Yang Salah. http://www.tempo.co/read/kolom/2012/06/29/614/Tumpang-Tindih-Lahan-Siapa-yang-Salah- [Retrieved 16th July 2012].
[30] The legal basis is the President Instruction (Inpres) 1/2012.

regional partitions. Similarly, there are PERDAs that cover the domain of a provincial administration or the central administration, as regulated by Law 32/2004.

Table 8 provides examples of regional laws and their provisions regarding levies and fees charged to mining companies by different sub-national governments. Currently, there is no single guideline that provides standards and formulas for the sub-national government to draft the PERDAs associated with mining charges, as each regency/municipality created their own charges, which may not necessarily support a good environment for investment at the regional level.

Table 8: Examples of PERDAs and related mining charges

Regency/City	PERDA	Description
Kutai Regency	2/2001	Third party contribution: 5 per cent of the company proceeds
Tapin Regency	5/2000	Third party contribution: IDR2,500/ton for coal that is brought out from the regency
Barito Utara Regency	6/2000	Third party contribution for local development: IDR250/ton
Samarinda Regency	20/ 2000	- Exploration permit fee: IDR10,000/hectare - Exploitation permit fee: IDR50,000/ton - A levy for coal transported on rivers in Samarinda: IDR1,000/ton
Bangka Regency	21/2001 6/2001	No formula, but companies are obliged to pay levies on general mining activities and related minerals produced Fee in issuing IUP and IUPR *Note: these PERDAs have been revoked by the national government*
Bengkulu Utara Regency	Regent Decree 394/ 2001	Exploitation and exploration levies: USD0.5-0.8/ton
Karimun Regency	27/2001 on Mining	Mining levy: IDR500/m^3 for community development programs
	25/2007 on Regional and Community Development	- levies: IDR5,000/ton of Manganese (international and national corporations) - IDR2,000/ton of manganese (local corporations) Levies have to be paid before or at the time of sale of commodities

Information received during the AusAID scoping mission in Indonesia (July 2012), indicated that the Bangka Regency PERDA 21/2001 was revoked by the national government as it conflicted with Law 28/2007 on taxes. In light of this, the Bangka Regency established a Memorandum of Understanding with companies to regulate the third party contribution for supervision (using PP 55/2010). For example, PT Timah Tbk is obliged to pay IDR1,000 per kilogram of tin produced. The money is to be transferred per quarter to the specified

government account. This arrangement commenced on 1st January 2011 and is subject to review every two years. This effort was assisted by a local NGO in Indonesia to promote local government transparency and accountability of revenues received from mining activities.

5.2. Impacts of mining

Although the mining levies have been actively promoted by the local government, the impacts on local development have been minimal. Nevertheless, the benefit of mining can be analysed through its direct contribution to the local economy, as well as the initiatives of mining companies to promote their CSR/CD programs as elaborated below.

5.2.1. Local economy

The benefit of mining to the local economy can be observed through two indicators: contribution to the development of local suppliers and local employment. A comparison of monetary value between local suppliers' contracts and regional development budgets contextualises the benefits of mining industry partnering with local suppliers. For example:

- In the East Kutai regency, the local suppliers that work together with PT Kaltim PrimaCoal (PT KPC) have increased from 104 (2008) to 133 (2009), with total contracts valued at USD30,019,279.76 (PT Kaltim Prima Coal, 2009). Compared to the local development budget of East Kutai regency in 2009, the total of PT KPC's contract value was equal to about 21 per cent of the entire regional budget.
- In South Kalimantan Province, PT Adaro has worked together with 504 suppliers,[31] from surrounding mine sites and across Kalimantan. The contracts totalled USD54,891,814.33 or equivalent to IDR570 billion (PT Adaro Indonesia, 2009). Added to the external relations and community development activities, the total value of PT Adaro expenditure in support of the local economy reached about USD64,521,957 in 2009 (PT Adaro Indonesia, 2009). Compared to the sub-national government budgets, PT Adaro Indonesia's budget was:
    - 30.5 per cent of the budget of South Kalimantan Province.
    - Greater than the regional budget of Tabalong regency (approximately USD64,000,000) in 2009.[32]

. The benefits of direct employment provided to local people are obvious; however, this can sometimes be a point of conjecture as it is subjective as to who the real 'local' recipients may be. For example:

- In East Kutai Coal Mine, PT KPC reported that 75.6 per cent of its total workers (4,973) were recruited from Sangatta, the town where the company operates.
- At Batu Hijau Gold Mine, PT. Newmont Nusa Tenggara (PT NNT) has employed about 63 per cent of 'local' people for its total workforce, which was more than its stated goal (MacDonald et al., 2007). However, a break-down of this found that only 30 per cent was given to the 'local-locals', while the remainder was granted to other 'local people', a definition that includes anyone from the Province of West Nusa Tenggara.

[31] PT Adaro Report in 2009 however did not provide specific years for this data.
[32] PERDA Kabupaten Tagalong 1/2009 on Regency Local Revenues and Expenditures (APBD Kabupaten)

According to MacDonald et al. (2007), PT NNT's definition of 'local' people was contested by 'local-locals' (i.e. those that live closest to the mine). They believed that the jobs should only be granted to them and not to people from other districts (even if they are from the same province).

- In South Kalimantan, PT. Adaro (2009) reported that 513 employees (76 per cent) were locals. However, the company did not define the meaning of 'locals'.

For local people, working in the mining sector is favourable due to its higher salaries compared to other sectors. Referring to PT KPC's report, the minimum monthly wage received by workers was IDR1,637,000 in 2009. This figure was 15 per cent higher than the minimum wage provisions of the regency for the mining sector (IDR1,387,500). Salaries paid were also higher than the minimum wage for the region (IDR1,000,000) and the province (IDR955,000). In total, PT KPC spent approximately USD90.7 million on salaries and associated benefits, of which USD68.5 million was for local employees. Comparatively, the East Kutai Regency had only USD59 million[33] of its entire 2010 budget allocated to staff salaries.

Although the contribution of mining companies to the local economy is significant, it often triggers problems due to the unclear definition of 'locals', as has happened to PT NNT (see above example). The discourse about who are regarded as 'locals' continues to grow and generally has not been agreed upon by stakeholders. Subsequently, the recruitment of 'local-locals' varies across districts and companies, even though they operate in the same district. Therefore, in many cases, 'locals' may comprise workers from other cities within the same province/district. This can lead to conflict between 'local-locals' and locals from nearby cities (as evidenced in West Sumbawa). For example, the local people who live surrounding mining sites protested to the West Sumbawa Government and PT NNT, asking for both parties to conduct a fair and non-discriminative process in worker recruitment. In particular, they requested not to restrict them by seeking formal education certificates.[34]

As it stands, the recruitment of 'local-locals' can be hindered by their lack of formal education,[35] skills and experience. This requires a strong policy from local government and willingness from mining companies to train 'local-locals' to meet the required skills for employment within the mining industry.

Unfortunately, the emergence of higher salaries in a mining community can result in higher prices for goods and services. At the Batu Hijau gold mine in West Sumbawa Regency, goods

[33] IDR559,837,579.235 with USD rate of 9,500 (source: East Kutai regional law 1/2010 on the 2010 regional budget).

[34] http://www.pulausumbawanews.com/daerah/ptnnt-dianggap-diskriminatif-rekrut-naker-eksplorasi/

[35] A wide salary gap between skilled migrant workers and unskilled local workers resulted in high tension and conflicts between companies and local workers. Many local workers have demanded a pay rise recently and companies have responded after long protests by local workers; e.g. Freeport increased its local workers' salary by 37 percent after three months of protests and PT NNT has increased the local salary by 25 percent over the recent year (Chatterjee 2012).
Recent news reported that both companies seem to have cut back these increased salaries, even with some cuts of local jobs, due to their high operation costs resulting from lower grades of ore and high labour costs (24/7 Wall Street 2012).

and services prices have increased and become inaccessible for non-mine workers (MacDonald et al., 2007). For this reason, mining has created a serious affordability dilemma for some locals. Mining employment can bring about a good salary, even higher than the regional minimum wage to local people who work for the company. However, for those not locally employed in mining, this can be a serious problem. That is, the benefits generated from mining are often not distributed equally to all 'local-locals'. The low quality employability of most 'local-locals', in conjunction with higher prices for basic goods and services may severely constrain the likelihood of 'local-locals' redeeming the benefits of mining.

5.2.2. Mining Industry CSR/CD programs

Beside direct employment for local people, mining can lead to better standards of living for local people if natural resource extraction occurs responsibly, is well managed and meets government and community requirements. Corporate Social Responsibility and Community Development (CSR/CD) can be the vehicles for this; however, in Indonesia CSR/CD tends to be used to secure the mining business and to cover up (or avoid) tension and conflicts between companies and local communities. In such circumstances, CSR programs are developed in the form of charity[36], which tends to provide only short term benefits. In some cases, it may even escalate the pre-existing and unresolved issues. Subsequently, it could be said that the trend for CSR/CD in Indonesia is for companies to give a greater focus on their own business security rather than genuinely attempting to promote better community welfare.

Nevertheless, there is a growing influence of international pressures and initiatives in CSR/CD programs for application in Indonesia. These drivers are identified as (but not limited to):

Sustainability reporting: the Global Reporting Initiative (GRI) and the requirement for sustainability reporting have had a positive effect in the increasing of fund allocation for CSR in Indonesia (although the value may fluctuate, depending on the financial performance of mining companies). In general, during the period 2005 – 2010, the CSR fund allocation amongst companies has aggregately increased about 17 per cent annually.[37] For example:

- PT Antam (2010) increased its funds for the Partnership and Community Stewardship Program (Dana Program Kemitraan Bina Lingkungan or PKBL) by 76 per cent in 2010 (IDR283.6 billion), compared to 2009 (IDR161.3 billion).
- PT Bukit Asam (2010) increased its environmental development program allocation by 114 per cent in 2010 (IDR26.1 billion), compared to 2009 (IDR12.2 billion) (Kitadin, 2008, LabSosio-UI, 2010).
- PT Kitadin has had a constant increase in its annual CSR/CD budget and at one stage, reached an increase of 600 per cent (PT Kitadin, 2008). However, when LabSosio confirmed this finding with a relevant respondent, it was found that this budget is not only for the CSR/CD allocated budget, but also the calculation of monetary value

[36] PT Adaro (2009) in its report states that the company focused more on charity programs in earlier times.
[37] http://www.tambangnews.com/serba-serbi/opini/834-csr-pada-subsektor-pertambangan-umum-.html [Retrieved on 16th July 2012].

of second hand and no longer needed equipment and goods that were given to communities.

Evidently, the CSR/CD budget allocations may appear to be significant in monetary terms; however, they do not necessarily contribute to the development and sustainability of a community. In addition, the significant amount of company reported CSR/CD budgets has enticed governments (especially sub-national governments) to directly manage the CSR/CD budget as well as to formalise it within regional budgets (e.g. this has been found to have taken place in the Riau Archipelago regency (LabSosio-UI, 2010)).

International and national certification: the international certification of ISO14000 and ISO26000 and the national certification of the CSR Award have collectively influenced some mining companies to consider CSR/CD in their operations (LabSosio-UI, 2008a).

Internal organisational change: Internally, mining companies have begun to increasingly recognise CSR/CD in their organisational structure. In Indonesia, this has seen some companies:

- Allocate management responsibility for CSR/CD programs; in some cases, CSR committees (at the commissioner level) have been established to monitor and evaluate CSR performance.
- Develop strategic partnerships with third parties in conducting CSR/CD; this is typically with local NGOs, universities, or a consortium formed by several companies (Bandu, 2001, MacDonald et al., 2007, LabSosio-UI, 2010, PT Adaro Indonesia, 2009).
- Employ CSR/CD staff on a full-time basis and the employment of international professionals from this field. This change has led to the emergence of specialised training institutions (e.g. Lead Indonesia and CSR Indonesia) to assist mining company staff in conducting CSR/CD.

5.1.3. CSR/CD themes

There are six themes for CSR/CD conducted by mining companies in Indonesia. These are summarised in Table 9.

Table 9: Variations of CSR/CD programs in Indonesian mining companies

Theme	Program contents
Infrastructure and basic utilities	Roads, water supply, construction (sports halls, village/government halls, mosques/churches or other religious facilities), village electricity facilities
Economy	Training on alternative livelihoods, including small scale business support, capital assistance, seeds/livestock assistance
Education	Scholarships, training for teachers, assistance with teaching facilities, additional school 'physical' facilities, cultural programs
Health	Medicine supply, surgeries, health training and campaigns, construction of health centres
Environment	Environmental education, including campaigns, solid waste programs
Donation	Emergency relief donation, donation during religious events, revolving funds program, allowance (money or goods) and allowing communities to use company facilities

Source: PT Antam (Persero) Tbk (2010), LabSosio UI (2010), Prayogo (2012), PT Kitadin (2004), PT Adaro Indonesia (2009), PT Kaltim Prima Coal (2009) and PT Bukit Asam (Persero) (2010).

A breakdown of these themes and their positive or negative implications (below) illustrates that more work needs to be done to ascertain the best performing aspects of CSR within Indonesia and how these can be applied across the mining industry.

Infrastructure:

- Infrastructure is the most common aspect of a CSR program. Roads, irrigation/water supply, electricity, schools and health centres are frequently constructed by the companies operating in Indonesia. However, facilities such as health centres are often mismanaged by locals, often due to a limited ability to operate, manage and maintain them on an ongoing basis. In addition, some infrastructure is delivered with limited participatory planning (Dananjaya, 2001), which does not reflect community needs and therefore reduces the likelihood of long-term benefits to the community as uptake and management may be poor.

Economy:

- Some companies focus their CSR programs on empowering micro-economic activities to promote small scale enterprises. Similarly, economic programs are considered in relation to the extent of poverty existing in communities around the mine sites. Hence, the economic programs revolve around local issues such as agriculture, animal husbandry, fishery, service, trade and many others.
- The implementation of an economic plan is considered to increase the capacity and skills of citizens and communities (LabSosio-UI, 2010, Prayogo et al., 2012) and these are mainly used as an indicator of the success of CSR. However, there has been limited evidence for the success of economic programs, especially those in the form of capital assistance (e.g. revolving funds). Often, capital assistance in the form of 'cash in-kind' is used for consumptive goods rather than for supporting community economic activities (LabSosio-UI, 2010).

Education:

- Scholarships are the most common education support provided by companies. Almost all mining companies in Indonesia provide scholarships programs but on differing scales in terms of money spent and the level of educational assistance provided for. The scholarships are generally given for marginalised community members (primary, secondary and high school assistance) and local students that have obtained good academic results to enable them to pursue their higher degree education (LabSosio-UI, 2010). Some educational programs are also conducted, and these tend to take the form of skill enhancement training for teachers, teaching facilities and cultural programs.

Health:

- Health CSR programs are associated with the dominant pattern of disease in the given region. In malaria endemic areas, malaria eradication programs are dominant, as is also the case with HIV/AIDS. Several companies have also implemented child nutrition programs, health education and assistance to health facilities at a village or within a district. The success rate of health programs is reasonably high due to the

tangible targets. Also, health institutions and resources are found in almost all villages across Indonesia.

Environment:

- Environmental programs are not commonly promoted in the CSR field by mining companies in Indonesia, as the environment, health and safety divisions of mining companies tend to focus on this in their operations. Most environment programs for CSR are done outside the company's environmental management activities. Environmental education, sea turtle conservation programs, re-vegetation and beach cleaning are some examples. However, it is often found that environmental programs (e.g. conservation) are not widely supported by communities and environmental NGOs. The criticism is that these programs tend to attempt to 'hide' the negative impacts that may result from the mining activities.

Donation:

- Donation activities are popular amongst mining companies as they can immediately provide a response to community demands and defuse tensions that may arise between a company and a community. However, the donation/charity programs often have no long-term view for sustainability. They tend to escalate the unsolved problems and tensions due to the limited coverage of beneficiaries and the temporal nature of the assistance (LabSosio-UI, 2010).

5.1.4. Impacts of CSR/CD

In conducting CSR/CD, mining companies often do not fully appreciate the necessity for sustainability of the programs they create and implement. Many companies focus heavily on the security aspect of their business while ignoring the sustainability of their social investments. This is an attributing factor to the disappointment and distrust of communities from poorly implemented CSR/CD programs and exacerbates negative viewpoints about mining companies (Labsosio-UI, 2008b, LabSosio-UI, 2010). To maximise outcomes, it is vital for mining companies to fully understand and appreciate the objectives, design and implementation of their CSR/CD programs and their impact.

Donations and infrastructure are two themes that are frequently found within mining company CSR/CD programs in Indonesia (see Table 10). The view of the community as a passive recipient, the limited skills of the CSR/CD community relations staff and the legacy of 'project-oriented' applications are some reasons for this (Ariesandi, 2002, Labsosio-UI, 2000, Labsosio-UI, 2003). Furthermore, from a business perspective, the charitable output of monetary donations and essential community infrastructure are more tangible than other themes and may provide immediate benefits to the community and create a positive image for the company. However, mining companies may mistakenly believe that this will lead to equitable distribution across the community and a sense of community empowerment (such as those derived from education programs). Unfortunately, in reality this is often not the case and there are many examples of this actually resulting in low levels of community participation and an inequitable distribution of resources.

Table 10: Impacts of CSR/CD programs

Criteria	CSR Themes					
	Infrastructure	Economy	Education	Health	Environment	Donation
Level of empowerment	None	High	High	Low	Medium	None
Level of community participation as the program executors	Low	High	Medium	Medium	Medium	None
Level of sustainability after not becoming direct beneficiary	Low	Medium	Low	Low	Low	None
Level of difficulty of implementing	Low	High	Medium	Low	Medium	Low
Number of beneficiaries	High	Medium	High	Low	Medium	High
Distribution of beneficiaries	High	Medium	Low	Medium	Medium	Medium
Time span of perceived benefits since the implementation of the program	Instant	Medium to long term	Medium to long term	Medium to long term	Long term	Instant
Impact on the company's image in general in the local community	High	High	Medium	Medium	Medium	High

5.1.5. CSR/CD by state owned and foreign companies

It is found in Indonesia that state-owned enterprises (SOE) and private companies (mostly multinational and foreign companies) have some principle differences in conducting CSR/CD (Table 11). Based on the literature (Ngadisah, 2002, Prayogo et al., 2012), publicly available company reports and Ministerial Regulation of SOE PER-05/MBU/2007, these differences are summarised below.

The structure of implementation:

CSR/CD programs conducted by SOE are standardised under two regulations:

- SOE Ministerial Regulation PER-05/MBU/2007 about the SOE Partnership Program with Small Enterprises and Community Development Programs.
- SOE Ministerial Circular Letter SE-07/MBU/2008 on the implementation of PKBL (Partnership Program and Community Development), whose substance is adapted to Law 40/2007 on Limited Liability Companies.

The legal requirements above are not applied to private companies (whether domestic or foreign owned). Privately owned companies have flexibility in determining their CSR/CD programs, but are subject to Law 40/2007 and other relevant mining regulations.[38]

[38] The required regulations are Law 4/2009 on Mineral and Coal Mining, GR 23/2010 on the Implementation of Mineral and Coal Mining Enterprises, and Ministerial Regulation 28/2009 on the Implementation of Mineral and Coal Mining Service Enterprises. The MEMR decree on community development and empowerment is still being drafted since March 2011.

Source of funding:

In terms of CSR/CD funding sources, there is more variation among private companies compared to SOEs. Some examples of these are:

- A percentage of products (tonnage); e.g. in Karimun Regency, granite and bauxite mining companies are required to allocate IDR 5,000/ton and in East Kutai, coal mining companies are required to allocate USD 8 cents/ton (PT Kitadin, 2004).
- Production costs; e.g. PT. Adaro as stated in its 2009 sustainability report.
- Percentage of gross revenues; e.g. PT. Freeport Indonesia in Papua sets aside one per cent of its gross revenues for seven tribes surrounding the operational area and the fund is managed by a foundation (Ngadisah, 2002).
- PT Adaro has included its CSR/CD budget in the production cost (PT Adaro Indonesia, 2009).

For state owned enterprises, the sources of CSR/CD funding are regulated by the SOE Ministerial Regulation PER-05/MBU/2007. These are from:

- Net profits (maximum two per cent).
- The net profit of the PKBL programs; e.g. interests resulting from loan, bank giro/deposits, etc.
- The contribution or sharing of PKBL budgets from other state owned companies.

Beneficiaries:

Domestic and foreign privately owned companies tend to focus their CSR programs on communities residing in the immediate vicinity of their mine sites. On the other hand, state-owned companies do not have controls for the distribution of their CSR/CD funding, as the national government controls the distribution of this funding, which in many cases does not go to the most impacted communities. Therefore, this has led to poor social and environmental performance of the state owned companies with nearby communities.

Table 11: Differences between private and state-owned mining corporations

Aspect	Private	SOEs
Implementing structure	Flexible, adaptable to the needs of the company	Standardised, refers to the regulatory and organisational structure of the existing state-owned enterprises
Source of funds	Varied: a percentage of the tonnage of products, allocated in the production costs, or a certain percentage of company profits	Up to 2 per cent of net profits, net results of PKBL fund management, and transfer of PKBL funds from other SOEs
CSR/CD program beneficiary location	Mostly communities in the vicinity of the area (Rings 1, 2 and 3); or the affected population	Mostly the local community, but also includes communities outside the area, even reaching the national level

Overall, it is commonly found that CSR/CD performance, as stated by mining companies in their reports, does not accurately reflect the outcomes of the programs within the communities. The effects on the local economy and community welfare are far from the idealistic situation mentioned in company reports. Two plausible causes that may explain this are:

- The local economy and community welfare are often considered within a regional economy macro where the approach is to generalise the outcomes.
- Indicators used for reporting and assessment of CSR/CD performance, such as GRI, ISO or awards from various agencies, tend to focus more on the management aspect, rather than on the results or beneficiaries.

6. SUMMARY AND RECOMMENDATIONS

6.1. Summary

This project has provided an overview of the history of mining legislation and policies in Indonesia and an analysis of the current legislation and its impact upon the mining industry. Listed below is a summary of the key points for consideration by policy makers, private enterprise and other stakeholders to assist mining and development within Indonesia.

1) *Prior to the decentralisation era, the Indonesian mining regulatory framework was governed under Law 11/1967 and consisted of:*

   - A strong nationalism ideology that provided rights for the state to control all resources in Indonesia.
   - Limited operating regulation (established by the old order regime), which hampered the development of mining within Indonesia.
   - A centralised mining administrative system that proved ineffective in administering the mining sector.
   - Minimal recognition of local actors (sub-national governments, NGOs and communities) in the mining sector, which hindered the flow-on benefits of mining to regional and local communities.

2) *Decentralisation and political reform resulted in significant changes to the Indonesian mining regulatory framework*

Law 4/2009 reflects the political reform and decentralisation that has taken place within Indonesia and the greater role of sub-national government, in particular regencies/cities, in governing mining in Indonesia. This law introduced a range of significant policy changes to the mining industry that have been widely criticised. The critiques focus on the introduction of strong protectionist measures such as: share divestment, export bans and value-added policies, as well as the unstable situation of mining at regional levels and the uncertainty in implementation of existing mining policies in Indonesia.

The most significant change provided by Law 4/2009 is that sub-national governments have greater authority in the issuing of mining licenses. Together with ineffective fiscal decentralisation policy, mining licenses (in particular IUPs) have been used to increase local revenues as well as to fund local elections. This has caused a fast proliferation of IUPs as well as PERDAs that require mining companies to provide further local taxes and revenue.

As Indonesia is still in a transition period, it is likely that the mining regulatory architecture will keep changing to respond to the socio-economic as well as political environment changes. The role of bureaucratic institutions and vested economic interests will continue to shape current Indonesian mining policies. Uncontrolled changes in the mining regulatory framework, however, contribute to the current uncertain investment climate in Indonesia. This hinders the flow-on benefits of mining to society as it encourages inefficiency in governing (including law enforcement) the mining sector in Indonesia.

Therefore, significant opportunities exist for the involvement of AusAID and/or IM4DC in enhancing the technical capacity of national and local bureaucrats to implement regulation efficiently. IM4DC can also play a role in encouraging bureaucrats to amend mining policies in order to provide greater certainty to the mining industry and to ensure environmental protection is prioritised and that the benefits of mining development equitably reach local communities in Indonesia.

3) *Decentralisation has encouraged a paradigm of 'localism' in natural resources and economic wealth for local communities*

At the local level, many communities now see themselves as local shareholders of nearby mining activities. As shareholders, local communities surrounding mining operations believe that they should be the first priority to receive benefits from mining including direct employment and business opportunities, and as recipients of CSR programs. In many cases, this sense of localism has triggered tension and conflict between mining companies and communities.

Local communities are more frequently demanding a fair benefit sharing of profits from mining companies. As a response, some companies have recently allowed local communities (including sub-national governments) to hold a certain percentage of their securities (e.g. PT Kaltim Prima Coal in East Kalimantan allocated 10 per cent of its shares to the local government). As this trend is likely to continue, it is important to develop and implement guidelines that deal with this issue. This may be enabled through an open dialogue with responsible parties. Researchers in social science and community development could provide advice on negotiation structure, agreement content and governance arrangement. However, it is anticipated that the current mining regulations may still require changes to accommodate this issue. Therefore, it is crucial for mining companies to prepare and promote a benefit-sharing agreement with the local communities for their profits as well as being adaptive to regulatory changes in the 'long' transition of Indonesia. The benefit-sharing agreement is common practice for mining companies in developed countries like Australia (e.g. Rio Tinto).

4) *Forestry and mining areas often overlap and there are conflicts between government agencies over their control*

Significant mining deposits are mostly found in forested areas in Indonesia, but Law 41/1999 on Forestry prohibited mining activities in protected forest areas and revokes prior licenses for those areas. However, Law 1/2004 (which came about through fierce mining sector lobbying) re-instated all prior licenses.

The Indonesian Ministries of Environment and of Forestry have become more stringent in scrutinising requests for new mining licenses in forested areas. Mining activities (especially open pit mining) is most likely to be banned within protected forests, due to strong pressures from anti-mining NGOs such as WALHI and JATAM.

5) *Companies are required to obtain relevant environmental approvals as well as the 'new environmental license' as part of an Environmental Impact Assessment*

Environmental approvals are essential for mining in Indonesia. This is done by conducting an Environmental Impact Assessment (AMDAL). For mining, this is mandated by GR 23/2010 and subsequently, all mining exploration and extraction projects need to meet the legal requirements of environmental approvals as highlighted by Law 32/2009. The recent GR 27/2012 requires mining operations to obtain an environmental license or permit. This recent regulation is believed to provide more protection for communities and NGOs that file legal claims against mining activities, but puts an extra burden on companies to obtain an additional environmental permit besides the existing long list of other permits required. It is well-known that the enforcement of those permits has been problematic in Indonesia.

6) *Social and Environmental Responsibility has been legally mandated in Indonesia; however, the outcomes of its implementation have been mixed*

Article 74 of Law 40/2007 provides that *'companies doing business in the field of and/or in relation to natural resources must put into practice Environmental and Social Responsibility'*. In the mining sector, mining license holders have been required to maintain a program of Community Development and Empowerment – CDE (Articles 106–109 of Law 23/2010) as part of their CSR. The process of implementing CDE requirements is currently unclear, as no additional regulations have been issued. A draft decree for CDE was issued by the MEMR in March 2011; however, at the time of this report there had not been any further information on the enactment of this draft.

In recent times, companies have conducted CSR programs with many variations in practice. Evidently, many state-owned companies have different principles and rules in conducting CSR in comparison to private local and foreign companies.

It is commonly found that the intention of CSR activities has been abused by many companies (e.g. CSR budgets tend to be used for bribing and entertaining local elites). On the other hand, local communities have sometimes been too demanding for the implementation of activities that are not directly related to CSR/CD programs and have often utilised the funds for their own individual/group benefits. It is recommended that CSR programs are developed with a clear structure/approach and are part of a widespread positive organisational culture that genuinely promotes sustainable communities in which they operate, rather than simply responding to pressure/conflicts due to their activities. CSR programs should be part of the cost of mine site establishment and operation and presented clearly within a company business case.

IM4DC, in cooperation with the Indonesian institutions of higher education (e.g. Trisakti University and LabSosio UI) as well as support from UQ/UWA, could develop training programs to educate mining companies operating in Indonesia about the business case for CSR in mining. This could ensure that local communities are aware of the likely benefits from mining and will improve the probability of those communities providing their support once those benefits are communicated early in the process.

7) *Indonesian mining regulatory framework and practices are still in transition but there is clear intent at ensuring greater benefits to indonesia's citizens*

This research has illustrated that the evolution of regulatory frameworks for mining in Indonesia has been pronounced during the past century and will continue to evolve. Notably, the key factors in this regulatory framework pertain to:

- Economic benefits that could be enjoyed by local people through the development of local suppliers and the creation of direct employment.
- Corporate Social Responsibility through community development and empowerment programs that can benefit communities, in particular those near mining operations, as well as the broader society in the long run.
- The importance that mining activities, both large and small-scale, mitigate their impacts on the environment. In this space, ASM activities have been identified to be an emerging issue in the decentralisation era where the existence of the ASM miners should not been neglected, rather, they should be incorporated as part of the overall development of the mining industry.

Nevertheless, although limited, local communities experience a widespread range of impacts as a result of mining. The most obvious positive impacts that are widely reported are: local employment, priority given to local suppliers, infrastructure development and other CSR/CD programs. At the macro level, mining activities have contributed to the Indonesian economy by providing taxes and royalties. However, challenges remain to further distribute the benefits from mining to the most needed and impacted communities. Ideally, better CSR/CD planning and management, an appropriate quota system for 'local-locals' employment and a continuous effort to empower local suppliers are collectively desirable objectives that must be continuously promoted to ensure mining can positively contribute to development in Indonesia.

6.2. Recommendations

In order to assist government, investors and other stakeholders to develop a sustainable mining industry in Indonesia, we make the following recommendations:

1) The collaboration of UQ with LabSosio – UI during the course of this research has been very valuable and has enabled important local insights to be gained into the mining sector in Indonesia. LabSosio – UI has actively shared their research findings in the field of community development, CSR and mining. It is suggested that this working relationship could be strengthened with a formal university partnership via IM4DC or CSRM for further collaborative works, such as in-country training, researcher exchanges and other research works. Furthermore, this can also be used as an entry point to strengthen the in-country university linkage in mining for the purpose of human capacity development at the regional level.

2) This research has been conducted through a desktop study to understand the evolution of Indonesian mining regulatory framework. To further gain insights and validate findings discussed in this report, it is suggested that further research be

conducted using a combination of case study/studies focussed on several regions and interviews with the key people involved in designing the mining regulatory framework in Indonesia. Potential next steps in this research comprise:

- Further understanding about the sub-national capacity in governing mining.
- Examining regional autonomy and mining licensing.
- Case studies of CSR implementation in decentralised Indonesia, including the nature of community-company conflicts/disputes and methods to resolve these.
- Detailed analysis of artisanal mining in Indonesia.

3) It is suggested that this report be used:
    - To inform the design of mining-related capacity building activities for Indonesia.
    - To inform training materials developed by IM4DC.
    - To inform training and lecturing materials conducted by Labsosio–UI.
    - As the basis for academic journal publications.

REFERENCES

ANDIKO 2006. Tambang Rakyat: anak tiri pertambangan nasional. http://images.andiko2002.multiply.multiplycontent.com/attachment/0/SFTRywoKCjsAAC6oJgI1/Tambang%20Rakyat.pdf?nmid=101118746

ARIESANDI, R. 2002. *Tanggungjawab sosial PT. Tambang batubara Bukit Asam (Persero) (in Indonesian Language).* Doctor of Philosophy Doctor of Philosophy, The University of Indonesia.

ASPINALL, C. A. 2001. Small-Scale Mining in Indonesia. *Paper prepared for the Mining, Minerals and Sustainable Development (MMSD) Project. .* Internal Institute of Environment and Development (IIED) and World Business Council for Sustainable Development (WBCSD).

BANDU, D. 2001. *Tanggung jawab PT Newmont Nusa Tenggara terhadap masyarakat lingkar tambang (In Indonesian Language).* Doctor of Philosophy, The University of Indonesia.

BHASIN, B. & MCKAY, J. 2002. Mining Law and Policy in Indonesia: reforms of the contract of work model to promote foreign direct investment and sustainability. *Mining law and policy in Indonesia,* 21.

BUSINESS MONITOR INTERNATIONAL 2012. Indonesia Mining Report Q3 2012. London: Business Monitor International.

BUTT, S. 2010. Regional Autonomy and Legal Disorder: The Proliferation of Local Laws in Indonesia. *Sing. J. Legal Stud.***,** 1.

DANANJAYA, U. 2001. Community development in Indonesia (*in Indonesian Language*). Jakarta: BDL, ESDM dan PPSML UI.

DJAJADI, I., PRAYOGO, D., DARMAJANTI, L., BESRAL, NOVRIATY, S., SULASTRI, CHOLID, S., CAHYADI, R., HILARIUS, Y., IRVAN, M., MUGIS, A. & YUDHA, S. W. 2012. Elang Social Baseline Study: laporan penelitian (in *Indonesian Language*). Jakarta: LabSosio - Universitas Indonesia and PT Newmont Nusa Tenggara.

DWIARTO, D. 2012. *Home Affairs Ministry to review 1,000 mining Perda* [Online]. Available: http://www.ima-api.com/index.php?option=com_content&view=article&id=622%3Ahome-affairs-ministry-to-review-1000-mining-perda&catid=47%3Amedia-news&Itemid=98&lang=en [Accessed 10th October 2012].

ELIAS, S. & NOONE, C. 2011. The Growth and Development of the Indonesian Economy. Sydney: Reserve Bank of Australia.

ERWIZA, E. 2005. *Membaranya batubara, konflik kelas dan etnik, Ombilin, Sawahlunto, Sumatera barat (1892 - 1996),* Depok, Desantara.

GANDATARUNA, K. & HAYMON, K. 2011. A dream denied? Mining legislation and the Constitution in Indonesia. *Bulletin of Indonesian Economic Studies,* 47**,** 221-231.

HADINOTO AND PARTNERS. 2009. *Indonesia's New Mining Law* [Online]. Asialaw. Available: http://www.asialaw.com/Article/2121729/Indonesias-New-Mining-Law.html?Print=true&Single=true [Accessed 18th September 2012 2012].

HAMILTON, M. S. 2005. *Mining Environmental Policy: comparing Indonesia and the USA,* Hampshire Ashgate

HENTSCHEL, T., HRUSCHKA, F. & PRIESTER, M. 2002. Global Report on Artisanal & Small-Scale Mining. *Paper prepared for the Mining, Minerals and Sustainable Development (MMSD) Project. .* Internal Institute of Environment and Development (IIED) and World Business Council for Sustainable Development (WBCSD).

Author. 2007. CSR - charity or democratic accountability? . *The Jakarta Post*, 27 July, 2007.

KANDAR, F. & SIDHARTA, D. 2010. *New Environmental Law - better protection or more legal hurdles for industry* [Online]. Asian Legal Business. Available:

http://asia.legalbusinessonline.com/industry-updates/indonesia-soemadipradja-taher/new-environmental-law-better-protection-or-more-legal-hurdles-for-industry/46199 [Accessed 18 September 2012 2012].

KARIM, M. A. & MILLS, K. 2003. Indonesian legal framework in the oil, gas energy and mining sectors including dispute resolution Available: http://www.arbitralwomen.org/files/publication/4907092548666.pdf [Accessed 20 September 2012].

KITADIN, P. 2008. Laporan *Community Development* 2001 - 2007 (*in Indonesian Language*). Jakarta: PT Kitadin.

KUO, C. S. 2012. 2010 Minerals Yearbook: Indonesia [Advance Release]. *In:* US DEPARTMENT OF THE INTERIOR & US GEOLOGICAL SURVEY (eds.). Washington DC: US Geological Survey.

LABSOSIO-UI 2000. Evaluation of Community Development Program: PT Newmont Nusa Tenggara, Sumbawa, NTB (the community's perception) Jakarta: Sociology Department - The University of Indonesia.

LABSOSIO-UI 2003. Pelaksanaan program pendampingan community development PT Kaltim Prima Coal (*in Indonesian Language*). Jakarta: PT KPC and Sociology Department - UI.

LABSOSIO-UI 2008a. Corporate Social Responsibility Master Plan PT Indo Tambangraya Megah TBK. Jakarta: Sociology Department - The University of Indonesia.

LABSOSIO-UI 2008b. Corporate Social Responsibility Master Plan PT. Indo Tambangraya MEgah Tbk (*in Indonesian Language*). Jakarta: Sociology Department - The University of Indonesia.

LABSOSIO-UI 2010. Studi evaluasi dan rencana pengembangan program *community development* TPPWPM pada perusahaan tambang granit dan bauksit di Kabupaten Karimun, Kepulauan Seribu, Jakarta (*In Indonesian Language*). Jakarta: Sociology Department - The University of Indonesia.

LAHIRI-DUTT, K. 2004. Informality in mineral resource management in Asia: raising questions relating to community economies and sustainable development. *Natural Resource Forum,* 28**,** 123-132.

LESTARI, N. I. 2011. *Mineral governance, conflicts and rights: case studies on the informal mining of gold, tin and coal in Indonesia.* Doctor of Philosophy Doctor of Philosophy, Australian National University.

LIEOKOMOL, P. 2011. ASEAN Mining Opportunities *AIMEX 2011.* Australian Trade Commision.

MACDONALD, C., ARDIE, A. & FERRARO, L. 2007. Newmont Community Relations Review: Batu Hijau Mine, Sumbawa Barat, Nusa Tenggara Barat. *In:* SMITH, G. A. & FELDMAN, D. (eds.) *Community Relationships Review: Global Summary Report.* Boston and Washington DC: Foley Hoag LLP.

MCMAHON, F. & CERVANTES, M. 2012. Survey of Mining Companies 2011/2012. *Fraser Institute Annual.* Vancouver: The Fraser Institute.

MEMR 2012. Mining Development in Indonesia (*a presentation material*). *Australian Mining Exhibition and Conference (Ozmine 2012).* Jakarta.

NGADISAH. 2002. *Gerakan sosial di Kabupaten Mimika: studi kasus tentang konflik pembangunan proyek pertambangan Freeport.* Doctor of Philosophy Doctor of Philosophy, The University of Indonesia.

OCALLAGHAN, T. 2010. Patience is a virtue: Problems of regulatory governance in the Indonesian mining sector. *Resources Policy,* 35**,** 218-225.

PRAYOGO, D. 2008. *Konflik antara korporasi dengan komunitas lokal: sebuah kasus empirik pada industri geotermal di Jawa Barat,* Depok - Jakarta, UI Press.

PRAYOGO, D., IRVAN, M., HILARIUS, Y. & YUDHA, S. W. 2012. Formulasi pedoman pelaksanaan dan penilaian program CSR dalam upaya pengentasan kemiskinan (In

Indonesian Language). Jakarta: Direktorat Riset dan Pengabdian Masyarakat Universitas Indonesia.
PT ADARO INDONESIA 2009. Sustainability Report PT Adaro Indonesia, 2009.
PT ANTAM (PERSERO) TBK 2010. Laporan keberlanjutan (*in Indonesian Language*). Jakarta: PT Antam (Persero) Tbk.
PT BUKIT ASAM (PERSERO) 2010. Laporan Keberlanjutan. Jakarta: PT Bukit Asam (Persero).
PT KALTIM PRIMA COAL 2009. Laporan Pembangunan Berkelanjutan (*In Indonesian Language*).
PT KITADIN 2004. Laporan akhir pendampingan program *community development* tahun 2004 (*in Indonesian Language*). Jakarta: PT Kitadin.
PT KITADIN 2008. laporan Community Development 2001 - 2007. Jakarta: PT Kitadin.
PWC 2011. Mining in Indonesia: Investment and Taxation Guide.
PWC 2012. Mining in Indonesia: Investment and Taxation Guide.
RASYID, M. R. 2002. The Policy of Decentralisaiton in Indonesia. *The GSU Conference: can decentralisation help rebuild Indonesia?* Atlanta - Georgia.
RESOSUDARMO, B. P. 2005. *The politics and economics of Indonesia's natural resources*, Inst of Southeast Asian Studies.
RESOSUDARMO, B. P., RESOSUDARMO, I. A. P., SAROSA, W. & SUBIMAN, N. L. 2009. Socioeconomic conflicts in Indonesia's mining industry. *In:* CRONIN, R. & PANDYA, A. (eds.) *Exploiting Natural Resources: growth, instability, and conflict in the Middle East and Asia.* Washington: The Henry L. Stimson Center.
SALENG, A. 2002. *Hukum Pertambangan (in Indonesian Language),* Yogyakarta, UII Press.
SOEHOED, A. R. 2005. *Sejarah Pengembangan Pertambangan PT Freeport Indonesia di Propinsi Papua: membangun ambang di ujung dunia (Jilid 1) (in Indonesian Language),* Jakarta, Aksara Karunia.
SPIEGEL, S. J. 2012. Governance Institutions, Resource Rights Regimes, and the Informal Mining Sector: Regulatory Complexities in Indonesia. *World Development,* 40**,** 189-205.
THE REVENUE WATCH INSTITUTE 2012. The Revenue Watch Institute: concept note for sub-national capacity building work in 2013 - 2015 prepared for AUSAID.
WAAGSTEIN, P. R. 2011. The Mandatory Corporate Social Responsibility in Indonesia: Problems and Implications. *Journal of Business Ethics,* 98**,** 455-466.
WILSON, A., MCMAHON, F. & CERVANTES, M. 2013. Survey of Mining Companies 2012/2013. *Fraser Institute Annual.* Vancouver.
24/7 WALL STREET. 2012. *Gold Miners Not Sharing the Wealth* [Online]. Available: http://247wallst.com/2012/09/28/gold-miners-not-sharing-in-the-wealth/ [Accessed 9 September 2012].

Appendix A: STRUCTURE OF THE MINERAL INDUSTRY 2010

Mine	Province	Resource	Ownership	Est
Kijang (closed 2009)	Riau	Bauxite	PT Antam Tbk	1935
Pomalaa	Southeast Sulawesi	Nickel	PT Antam Tbk	1938
Grasberg/Ertsberg	Papua	Copper/Gold	Freeport-McMoRan (60%), Rio Tinto (40%)	1967
PT Inco	South Sulawesi, Southeast Sulawesi, Central Sulawesi	Nickel	Vale S.A. - 59.2% Sumitomo Metal Mining Company Ltd - 20.3%	1968
Cilacap	Central Java	Iron Sand	PT Antam Tbk	1971
PT Koba Tin	Kepulauan Bangka Belitung	Tin	Malaysia Smelting Corporation Berhad (MSC), a public-listed company in Malaysia (75%) and PT. Timah Tbk (25%), a public-listed Indonesia mining company.	1973
PT. Fajar Bumi Sakti (FBS)	East Kalimantan	Coal	PT Bumi Resources Tbk	1978
PT Kelian Equatorial Mining (KEM)	East Kalimantan	Gold	Rio Tinto	1985
Batu Hijau (PTNNT)	West Nusa Tenggara	Copper/Gold	Newmont (45%), Nusa Tenggara (Sumitomo) (35%), PT Pukuafu (20%)	1986
Kaltim Prima Coal (KPC)	East Kalimantan	Coal	PT Bumi Resources Tbk (formerly BP and CRA/Rio Tinto)	1988
Pongkor	West Java	Gold	PT Antam Tbk	1992
Gosowong Complex	North Maluku	Silver/Gold	PT Nusa Halmahera Minerals (PTNHM) (82.5% Newcrest / 17.5% PT Aneka Tambang)	1997
PT Weda Bay Nickel (WBN) [proposed]	North Maluku	Nickel/Cobalt	ERAMET, with Mitsubishi Corporation and Antam as the other shareholders (plus MIGA (IFC) insurance)	1998
Toka Tindung Gold Project	North Sulawesi	Gold	Archipelago Resources, Plc	2002
Cibaliung	Banten	Gold	PT Cibaliung Sumber Daya (CSD) (subsidiary of PT Antam Tbk)	2010
Tapunopaka	Southeast Sulawesi	Nickel	PT Antam Tbk	
Tanjung Buli	North Maluku	Nickel	PT Antam Tbk	
Sarolangun	Jambi	Coal	PT Antam Tbk	
Tayan	West Kalimantan	Bauxite	PT Antam Tbk	

Appendix B: A SUMMARY OF INDONESIAN MINING REGULATIONS AND THEIR MAIN SUBSTANCE

YEAR	REGULATION	MAIN SUBSTANCE
COLONIAL PERIOD: Netherlands Indies – the early exploitation		
1899	*Indische Mijnwet*	Set the key points of mining activities, mainly classification of minerals and executors of mining concessions (private or government)
1910 & 1918	Amendment of a number of articles in *Indische Mijnwet*	Amendments were made in 1910 and 1918, regarding the role of government and the private sector in mining concessions. The 1918 amendment introduced the *5a contract* (the article 5a of this amendment) that allowed foreign investments in exploration and exploitation of mining businesses
POST COLONIAL PERIOD (Old and New Orders) – the period of nationalisation and centralisation		
1959	Law 10/1959 on Cancellation of Mining Rights	All mining rights issued before 1949 that had not been implemented were cancelled
1960	GR in Lieu of Law 37/1960 on Mining	The *Indische Mijnwet* 1899 was revoked and this regulation allowed the government to attract foreign capital based on *Production Sharing Contracts,* in particular for oil and gas
1960	Law 5/1960 on the Basic Agrarian Law	This law is still active until now. This regulates land administration, utilisation (including for mining development) and land ownership (including the customary lands). This law also emphasises the idea of state control rights
1966	MPRS Decision XXIII/MPRS/1966 on the Renewal of Economic Policy	Considering the importance of capital, technology and foreign expertise, this law opened up opportunities for the establishment of legislation on foreign investment
1967	Law 1/1967 on Foreign Investment	In reference to MPRS Decision XXIII/MPRS/1966, a law allowing foreign investment in the mining industry in Indonesia was enacted
1967	Law 11/1967 on Basic Provisions of the Mining	This law was the first mining law published after the independence of Indonesia and became a reference for mining activities for three decades in Indonesia. The law contained several aspects such as: classification of minerals (vital, strategic and other minerals), the nature of mining corporations and changes in the mining concession system into *Kuasa Pertambangan* (Mining Authorisation)
1969	GR 32/1969 on the implementation of Law 11/1967 on Basic Provisions of Mining	This law was the operational legislation for Law 11/1967 and consisted of: rules on mining rights, mining area, rights and obligations, end of mining rights, as well as other related

YEAR	REGULATION	MAIN SUBSTANCE
		implementing rules
1969	GR 33/1969 on the Establishment and Composition of the Mining Board	This regulated the mining board along with its responsibilities, duties and authority
1980	GR 27/1980 on the Classification of Minerals	This law covered the classification of minerals that were divided into 3 groups: a) strategic, including petroleum, natural gas, bitumen, coal, uranium, nickel, tin, etc; b) vital, including manganese, bauxite, copper, lead, zinc, gold, platinum, silver, mercury, diamonds, other rare metals and sulphur, etc; c) other minerals not included in a and b, among others: nitrate, phosphate, asbestos, granite, marble, sand, stone, etc.
1986	GR 37/1986 on the Partial Transfer of Government Authority in the Mining Sector to Level II Regional Governments	This law gave the local government the authority to issue licenses on C-grade mineral mining
1993	GR 51/1993 on Environmental Impact Analysis	This law regulated environmental management and environmental impact analysis, especially for major development activities that potentially have significant physical, biological and social impacts on the surrounding environment and communities
1995	MEMR Ministerial Decree 1211/1995 on the Prevention and Control of Environmental Destruction and Pollution in General Mining Enterprises	This decree sets the basic provisions for the obligations of mining entrepreneurs and technical head of mines, prevention and mitigation, and post-mining and guarantee of reclamation
1996	Presidential Decree 75/1996 on the Basic Regulations on Contract of Work in Coal Mining Enterprises	This decree regulated the main provisions of contract of work agreements and capital investments and development. This decree is no longer in force, following enactment of Law 4/2009.
1996	Ministerial (Minister for Home Affairs) Decree 180/1996 on the Procedures for Distribution and Use of Regional Government Receipts from State Charges of General Mining	This decree sets rules on the division and distribution of revenues from mining activities, including the division between provinces and regencies/municipalities
POLITICAL REFORM PERIOD – The beginning of decentralisation and democratisation		
1999	Law 25/1999 on the Financial Balance between Central Government and the Regional Government	This law provides a fiscal balance mechanism between the central and regional governments. Although some items in this law are still considered by the sub-national governments to be unfair, the enactment of this law has opened space for the regions to gain a financial share from the mines that operate in their territories. By this law, MEMR

YEAR	REGULATION	MAIN SUBSTANCE
		issued an annual Ministerial Decree on the determination of producing areas and the basis for calculation for the regional share of general mining, oil and gas
1999	Law 41/1999 on Forestry	The main content of this law is the classification, utilisation and management of forests, as well as the ban of open pit mining in protected forests
2000	MEMR Ministerial Decree 1453/2000 on the Technical Guidelines on the Implementation of Governance Tasks in General Mining	This decree provided the basic rules on mining exploitation, environmental management, regional development and community development, as well as partnership and implementation of governmental tasks, and guidance and supervision.
2001	GR 75/2001 on the Second Amendment to Government Regulation 32/1967 on the Implementation of Law 11/1967 on the Basic Provisions of Mining	This regulation was enacted to accommodate the spirit of decentralisation. Through this regulation Regents/Mayors were given the authority to issue mining authorisation in their respective regions, as well as Governors based on their respective responsibility
2003	MEMR Ministerial Decree 1603/2003 on Guidelines for Areas Reserved for Mining	This decree provided the basic principles of reservation of mining areas, the rules on information systems and methods of reservation
2004	GR in Lieu of Law 1/2004, Amendments to Law 41/1999 on Forestry	This regulation in lieu of law was very short (two pages), containing a cancellation of the prohibition of open pit mining in protected forests, having considered previously issued permits. This regulation was very controversial, as it was passed with the financial support from mining companies harmed by Law 41/1999
2004	MEMR Ministerial Decree 1614/2004 on the Application Processing Guidelines for Contract of Work (CoW) and Coal Contract of Work (CCoW) in the Framework of Foreign Investment	This decree provides rules on the processing of requests of CoW and CCoW, as well as the responsibility of implementation and supervision, and guidance of implementation of the agreements
2008	MEMR Ministerial Regulation 18/2008 on Reclamation and Mine Closure	This regulation provides the obligations and procedures for reclamation and mine closure. It regulates methods of reclamation, assessment and approval of reclamation plans, execution and reporting, and reclamation guarantee. With this decree, regulation of mining activities became more comprehensive, as the closure stage is now regulated by an official regulation
2009	Law 4/2009 on Mineral and Coal Mining	This law replaces the mining law 11/1967 and creates a new mining regulatory regime in Indonesia under the current democratisation and decentralisation. The law regulates mining in Indonesia, including the provisions regarding the control of minerals and coal, management authority, mining areas, mining enterprises and the issuance of mining

YEAR	REGULATION	MAIN SUBSTANCE
		licenses
2010	GR 22/2010 on Mining Areas	This regulation regulates planning for mining areas, including the determination of traditional mining areas and also the procedure for data and information collection for mining areas
2010	GR 23/2010 on Implementation of Mineral and Coal Mining Activities	This is the implementing regulation for Law 4/2009
2011	Ministerial (State Minister for the Environment) Regulation 5/2011 on the Corporate Performance Rating Program in Environmental Management	This regulation provides an assessment of corporation environmental management
2011	MEMR Ministerial Regulation 12/2011 on the Procedures for Determination of Mining Regions and Information Systems for Mineral and Coal Mining Regions.	This regulation provides procedures for the determination of mining areas (minerals and coal) and their information systems
2012	GR 24/2012 on the Obligation of Divestment of Foreign Mining Companies	This regulation provides that foreign mining companies need to divest at least 51 per cent of their shares in stages to their domestic partners, starting from the 5th through the 10th year of production. The Indonesian partners are classified as the central, provincial, district governments, as well as state enterprises and domestic private companies
2012	MEMR Ministerial Regulation 7/2012 on Adding Value to Minerals Through Minerals Processing and Refining Activities	This regulation restricts mining companies on export of raw materials and requires them to increase domestic value-added processes in Indonesia. The deadline will be in 2014
2012	Ministerial (State Minister for the Environment) Regulation 5/2012 on the Types of Business Plan and/or Activities that are Obliged to Perform Environmental Impact Analysis	This regulation provides the types of businesses or development activities that must be complemented with an environmental impact assessment
2012	GR 27/2012 on Environmental License/Permit	This regulation requires the granting of an environmental license/permit for major development activities falling under the Ministerial (State Minister for the Environment) Regulation 5/2012