

## Chapter 11

# Forests and mining legislation in Indonesia<sup>1</sup>

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Mining and forest legislation cannot help but cross paths in Indonesia, since a large portion of the country's mineral wealth lies under forests or areas classified by the state as 'forest area'. Recently the relationship between the two has come under public scrutiny and in 2004 the fate of a large area of Indonesia's forests and the future of a large number of forest-dependent communities, hung in the balance. Sadly, this controversy was resolved to the detriment of Indonesia's dwindling forest through a series of laws passed that year.<sup>2</sup>

At issue was the legality of open-pit mining in forests classified under the Indonesian forest classification system as 'protection forests' – a clash between what mining companies see as their legally-agreed right to operate as set out in their contracts and the Forestry Law, which prohibited them from doing so. This conflict affected around 150 mining companies and, according to the government, billions of dollars of badly-needed investment. It also affected a large number of communities whose customary lands and resources overlap both protection forests and mining leases, and whose livelihoods are at risk from mining.

The protracted struggle between forest protection and mining illustrates the complex international context in which Indonesian forest and mining legislation is played out and how it may be swept along by strong national or international political currents. Specifically, it illustrates the divide between the interests of the international mining industry (for all its public commitments to sustainable development) and the interests of resource protection – especially for communities who live in or around mineral-rich areas.

The issue came to a head at a time when Indonesia's *masyarakat adat* (indigenous peoples or customary communities) were becoming more organised and persistent in challenging legislation that has worked against their livelihoods and cultures for so many years, including forestry and mining laws. The key problem they face is disposal of indigenous-owned land and resources by successive

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1 This chapter was written in 2004. Changes which have occurred since then have been noted, mainly in footnotes.

2 In 2004, then President Megawati issued Perpu No 1 of 2004 amending Forestry Law No 41 of 1999, which allowed thirteen companies given permits before 1999 to continue their mining operations in protected forests. This was followed by Presidential Decision (Keppres) No 41 of 2004 which allowed mining operations in several protected forest areas around Indonesia (Bachriadi, 2004). The Perpu was later confirmed as Law No 19 of 2004. See <[www.wg-tenure.org/file/Peraturan\\_Perundangan/UU\\_19\\_2004.pdf](http://www.wg-tenure.org/file/Peraturan_Perundangan/UU_19_2004.pdf)>.

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Implementation of these reforms has, however, been non-existent in reality. Instead, the sectoral approach (mining, forests, fisheries, water and so on) persists. On the ground, many communities living in forests or mineral rich areas remain vulnerable to loss of livelihood, impoverishment and marginalisation. There has been no redress or even proper investigation of current and past violations.

Unless the fundamental issue of *adat* rights is properly addressed by Indonesia, conflict and human rights abuses in the forests and mines are likely to continue long into the future.

## References

- Abrash, Abigail (2002) *Development Aggression, Observation on Human Rights Conditions in the PT Freeport Indonesia Contract of Work Areas with Recommendations*. Washington: Robert F Kennedy Memorial Center for Human Rights <[www.rfkmemorial.org/](http://www.rfkmemorial.org/)>.
- Aspinall, Clive (2001) *Indonesian Mining Risk Analysis: The Clive Aspinall Report*. English Edition No IMRA. 4/2001, <[www.minergynews.com/opinion/aspinal28mei01.shtml](http://www.minergynews.com/opinion/aspinal28mei01.shtml)>, accessed 18 April 2007.
- Bachriadi, Dianto (2004) 'Mining in a State Forest? This is Indonesia! The Forestry Law Has not Stopped Mining in Indonesia's State Forests', *Inside Indonesia*, No 80, October-December.
- Ballard, Chris (2001) *Human Rights and the Mining Sector in Indonesia: A Baseline Study*, Mining, Minerals and Sustainable Development. England: Institute for Environment and Development, <[www.iied.org/mmsd/mmsd\\_pdfs/indonesia\\_hr\\_baseline.pdf](http://www.iied.org/mmsd/mmsd_pdfs/indonesia_hr_baseline.pdf)>, accessed on 3 April 2007.
- Chidley, L (2002) 'Forests, People and Rights'. London: *Down to Earth*, <<http://dte.gn.apc.org/srfn.htm>>.
- Colchester, Marcus; Sirait, Martua and Wijardjo, Boedhi (2003) *The Application of FSC Principles 2 & 3 in Indonesia: Obstacles and Possibilities, a Discussion Document*. Bogor: Wahana Lingkungan Hidup (WALHI), Aliansi Masyarakat Adat Nusantara (AMAN) and The Rainforest Foundation.
- Danielson, Vivian and Whyte, James (1997) *Bre-X: Gold Today, Gone Tomorrow: Anatomy of the Busang Swindle*. Toronto: Northern Miner.
- Down to Earth* (1999) 'New Act Thwarts Reformers', No 43, November, <<http://dte.gn.apc.org/news.htm#con>>.
- Down to Earth* (2000), 'Mining in "Protected" Forests', No 47, November, <<http://dte.gn.apc.org/47mpf.htm>>.
- Down to Earth* (2001a) 'Indigenous Small-Scale Mining under Threat', No 48, February. (Translation of Jidan, 'Bila Orang Muluy Menambang Emas', *Gaharu*, No 06-07/1/2000.), <<http://dte.gn.apc.org/news.htm#con>>.
- Down to Earth* (2001b) 'Confusion and Delay', No 48, <<http://dte.gn.apc.org/news.htm#con>>.
- Down to Earth* (2001c) 'Communities and Companies', No 50, August, <<http://dte.gn.apc.org/news.htm#con>>.
- Down to Earth* (2001d) 'Court Orders Freeport to Clean Up its Act', No 51, November, <<http://dte.gn.apc.org/news.htm#con>>.
- Down to Earth* (2002a) 'No Mining in the Forests!', No 53/54, August, <<http://dte.gn.apc.org/news.htm#con>>.
- Down to Earth* (2002b) 'The Logging of West Papua', No 55, November, <<http://dte.gn.apc.org/news.htm#con>>.
- Down to Earth* (2002c) 'Wonosobo Community Forestry to be Cancelled', No 55, November, <<http://dte.gn.apc.org/news.htm#con>>.
- Down to Earth* (2002d) 'Green Light for Mining in Forests', No 55 November, <<http://dte.gn.apc.org/55min.htm>>.
- Down to Earth* (2003) 'All-Out Campaign to Stop Mining in Protected Forests', No 58, August, <<http://dte.gn.apc.org/news.htm#con>>.
- Down to Earth* (2003b) 'International Concerns over Illegal Logging Dominate Indonesian Forest Policy', No 58, August, <<http://dte.gn.apc.org/news.htm#con>>.

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- Down to Earth* (2003c) 'Indigenous rights in West Kalimantan', No 58, August, <<http://dte.gn.apc.org/news.htm#con>>.
- Down to Earth* (2004) 'Brutal Crackdown at Newcrest's Halmahera Mine Leaves One Dead', No 60, February, <http://dte.gn.apc.org/news.htm#con>.
- Down to Earth* (2005b) 'Legal or Sustainable?', No 67, November, <<http://dte.gn.apc.org/67for.htm>>.
- Francis, Diane (1997) *Bre-X: The Inside Story*. Toronto: Key Porter Books.
- Goold, Douglas and Willis, Andrew (1997) *The Bre-X Fraud*. Toronto: McClelland & Stewart.
- Gross, Stuart (2003) 'Inordinate Chill: BITS, non-NAFTA MITS and Host State Regulatory Freedom – an Indonesian Case Study', 24 *Michigan Journal of International Law* 893-960.
- Guerin, Bill (2004) 'Mining to Resume in Protected Indonesian Forests', *Asia Times Online*, 17 March, <[http://www.atimes.com/atimes/Southeast\\_Asia/FC17Ae03.html](http://www.atimes.com/atimes/Southeast_Asia/FC17Ae03.html)>
- Holmes, D. (2000) *Deforestation in Indonesia: A Review of the Situation in Sumatra, Kalimantan, and Sulawesi*. Jakarta: World Bank.
- JATAM (2003) 'Save Indonesia's Protected Forest Areas from Mining', Urgent Action, June, <<http://dte.gn.apc.org/jatam03.htm>>
- Jidan (2000), 'Bila Orang Muluy Menambang Emas', *Gaharu*, No 06-07/1/2000. Translated in *Down to Earth*, February 2001, No 48, as 'Indigenous Small-Scale Mining under Threat'.
- Krisnantari, Ika (2007) 'Miners Issue "White Paper" against Draft Mining Law', *The Jakarta Post*, 21 March.
- Leith, Denise (2003) *The Politics of Power: Freeport in Suharto's Indonesia*. Honolulu: University of Hawai'i Press.
- Marr, Carolyn (1993) *Digging Deep: The Hidden Costs of Mining in Indonesia*. Special Report No 2. London: Down to Earth and Minewatch.
- Marr, Carolyn (2003) 'Indonesia: Growing Pressure for Mining in Forests', *WRM Bulletin* No 71, June, <[www.wrm.org.uy/bulletin/71/Asia.html](http://www.wrm.org.uy/bulletin/71/Asia.html)>.
- O'Neill, Igor (2003a) 'Public Outcry over Mining Threat to Indonesian Protected Forests', Mineral Policy Institute Campaigns, 23 June, <[www.mpi.org.au/campaigns/protected/mipa\\_sonny\\_kerai/](http://www.mpi.org.au/campaigns/protected/mipa_sonny_kerai/)>, accessed 4 April 2007.
- O'Neill, Igor (2003b) 'Mining in Protected Areas a Crime, say Lawyers, Protestors', Mineral Policy Institute Campaigns, 3 July, <[www.mpi.org.au/campaigns/protected/mipa\\_crime/](http://www.mpi.org.au/campaigns/protected/mipa_crime/)>, accessed 4 April 2007.
- O'Neill, Igor (2004) 'One shot dead, hundred arrested and beaten at Newcrest mine in North Maluku', Mineral Policy Institute Campaigns, 8 January, <[http://www.mpi.org.au/campaigns/militarism/newcrest\\_shooting/](http://www.mpi.org.au/campaigns/militarism/newcrest_shooting/)>, accessed 4 April 2007.
- Robinson, Kathryn M (1986) *Stepchildren of Progress: The Political Economy of Development in an Indonesian Mining Town*. New York: State University of New York Press.
- Saltford, John (2002) *The United Nations and the Indonesian Takeover of West Papua*. Oxford: Routledge-Curzon.
- WALHI (2003) 'Masyarakat Sipil Menolak Keras Dilanjutkannya Rencana Pertambangan di Kawasan Hutan Lindung', Press Release, 23 June, <[www.walhi.or.id/kampanye/tambang/hutanlindung/tam\\_stoplin\\_230603](http://www.walhi.or.id/kampanye/tambang/hutanlindung/tam_stoplin_230603)>.
- WALHI (2005) 'Kebijakan SBY-JK Anti Rakyat', 18 May, <[www.walhi.or.id/kampanye/hutan/shk/050518\\_perda\\_wnsobo\\_sp](http://www.walhi.or.id/kampanye/hutan/shk/050518_perda_wnsobo_sp)>.
- Wells, Jennifer (1998) *Fever: The Dark Mystery of the Bre-X Gold Rush*. Toronto: Viking Penguin.
- Witular, Rendi A (2002) '6 Mining Firms Can Resume Operations in Forest Areas', *The Jakarta Post*, 7 October, <[www.thejakartapost.com](http://www.thejakartapost.com)>.
- World Bank (2003) *Decentralizing Indonesia: A Regional Public Expenditure Review: Overview Report*. World Bank Report No 26191-IND. np: East Asia Poverty Reduction & Economic Unit, June, <<http://siteresources.worldbank.org/INTINDONESIA/Resources/Publication/03-Publication/RPR-DecInd-June03.pdf>>, accessed 18 April 2007.