## **Chapter 11**

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

## Carolyn Marr

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>

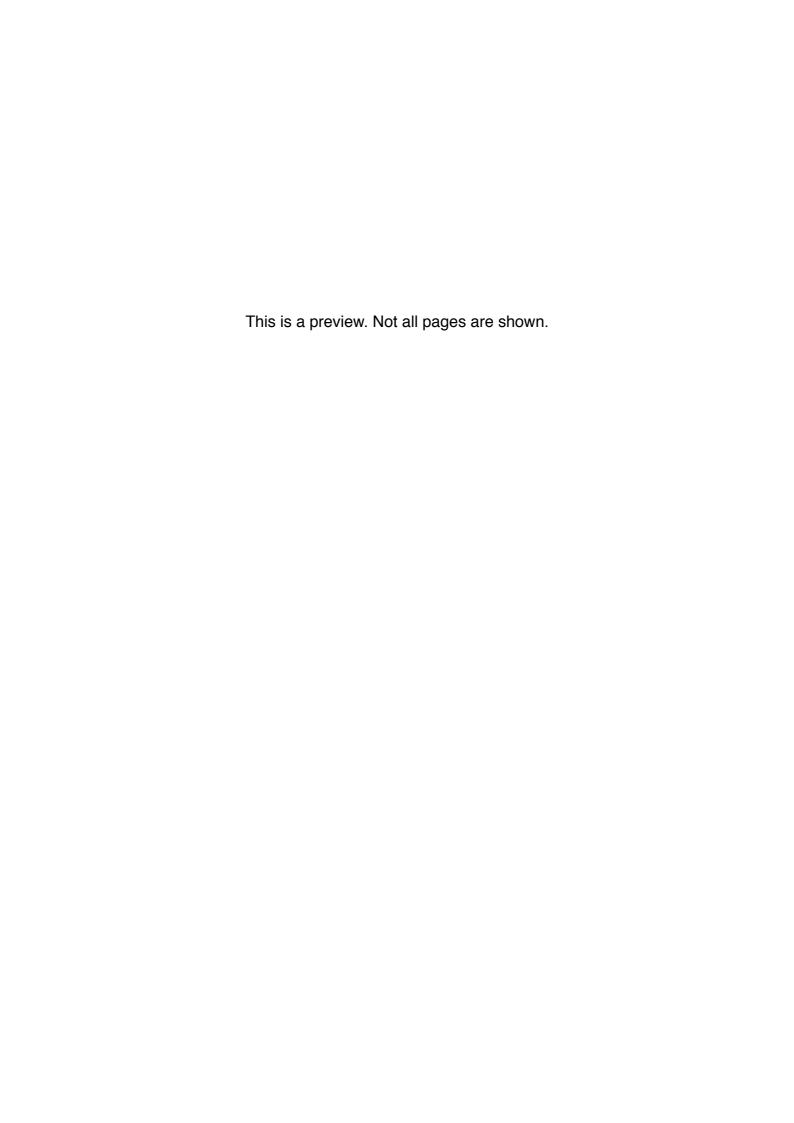
At issue was the legality of open-pit mining in forests classified under the Indonesian forest classification system as 'protection forests' – a clash between what mining companies see as their legally-agreed right to operate as set out in their contracts and the Forestry Law, which prohibited them from 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

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

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 <a href="www.wg-tenure.org/file/Peraturan\_Perundangan/UU\_19\_2004.pdf">www.wg-tenure.org/file/Peraturan\_Perundangan/UU\_19\_2004.pdf</a>.



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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.

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