



Improving Mining Governance



An abandoned mine in Samarinda | Photo: Jatam East Kalimantan

“The land, the waters and the natural resources within shall be under the power of the State, and shall be used to the greatest benefit of the people.” The 1945 Constitution of Indonesia Article 33

The SETAPAK program promotes good forest and land governance as fundamental to achieving sustainable forest management, reducing greenhouse gas emissions, and supporting low carbon economic growth. Ensuring that the licensing processes associated with exploring for and extracting minerals are complied with, that they include effective provisions for mitigating social and environmental impacts, and that government revenues are fully collected, are vital aspects of good land governance. Any failures in these processes risks harming communities and the environment, and damaging valuable national assets.

Mining provides one of the Indonesian government’s most important sources of revenue, but significant losses occur because of poor governance. SETAPAK partners have been working to improve governance across the mining sector – including oversight and enforcement of environmental and social safeguards – in order to ensure that the negative impacts of mining do not outweigh the development benefits.

Mining For Revenue

Extracting mineral resources – primarily coal, nickel, gold, copper and tin – accounted for almost 7 percent of Indonesia’s gross domestic product in 2010, equivalent to around US\$50 billion. In 2011, with coal mining permits alone covering over 21 million ha in Indonesia, equivalent to almost the entire land area of the United Kingdom, the country produced 376 million tons of coal, and exported 309 million tons, making it the world’s fifth largest coal producer, and the top exporter.

Government revenue from mining has similarly increased, reaching IDR 12.5 trillion (around US\$1 billion) in 2010, and as mining expands across Indonesia, two national priorities emerge. First, revenue ‘leakage’ must be eliminated: mining governance must be improved in order to ensure that all companies pay their financial dues in full. Currently significant government revenue is lost due to poor governance in issuing licenses and permits and monitoring mining operations. Second, all the relevant laws and regulations must be enforced in order to ensure that revenues gained from mining outweigh environmental and social harm, and are deployed to mitigate those impacts.

Mining in Indonesia usually involves clearing forests or farmlands to dig deep, open pits which are often abandoned when they are exhausted, and significant environmental damage often results. Other impacts include land grabs (failure to respect the land rights of local people and indigenous groups), ineffective benefit sharing mechanisms, reduced fertility of local crops due to pollution, and simple physical dangers such as abandoned mine pits. Addressing these crucial matters hinges on improving governance in the sector, and maintaining it.

However, due largely to Indonesia’s rapid and extensive decentralization, and particularly the 2009 Minerals and Coal Mining law, which transferred substantial licensing authority to provincial and district administrations, the proliferation of mining permits, coupled with poor monitoring, has led to increased rates of corruption, illegal mining and inadequate revenue collection, as well as pollution, environmental degradation and conflict with affected communities. With local government capacity low, coordination between different levels of government poor, and oversight and accountability mechanisms weak, licensing processes have been abused by district officials for personal gain, or to support election campaigns. Licenses have in many cases been issued to more than one company to exploit overlapping areas, or to prospect and mine in protected and community-owned areas, and illegal licenses have been issued to companies that are not registered for tax.

Official estimates suggest that almost half of Indonesia’s businesses with mining permits pay no royalties, that a similar proportion lack obligatory tax reference numbers (NPWP), and that the state may suffer the equivalent of US\$1.2 billion of losses annually from the mineral sector. A new law on regional governance (No. 23/2014) has recentralised the authority for granting new permits for concessions to central and provincial authorities, and there is some optimism that this may, in due course, improve civil society oversight of the permit issuing process.



A mining site in an area designated as a wildlife reserve in Morowali | Photo: Jatam Central Sulawesi

KPK Crack Down Yields Results

From their investigations, the KPK found that more than 4,500 mining companies owed the government revenues of IDR5.43 trillion (US\$468 million). According to the KPK, of the 10,776 IUP mining permits issued nationally, only 5,969 are ‘clean and clear’, meaning that they don’t overlap with other license areas, and comply with financial regulations and key aspects of national laws. In West, North and East Kalimantan, Central Sulawesi and South Sumatra – provinces SETAPAK partners had significant influence – 265 permits were cancelled and a deadline of December 2014 was set for local administrations to review a larger number.

Digging Deep

In the last decade, civil society oversight has been vital in highlighting environmental damage, land conflicts, and the extraordinary numbers of permits issued by district heads. Other groups have focused on the revenue losses associated with corruption. In 2014 these efforts bore fruit when the national Corruption Eradication Commission (KPK) turned its attention to the mining industry. Working with the Supreme Audit Agency, the Ministry of Energy and Mineral Resources, and other agencies, the KPK investigation has focused on the 12 provinces with the highest number of mining permits. The aim of the continuing investigation is to review the legality of the permits, check if mining companies have valid tax identity numbers and are paying their taxes fully, and investigate whether permits overlap with other concessions, or protected forest areas.

SETAPAK partners have been instrumental in supporting the KPK’s investigations. At the formative stage, Silvagama provided technical assistance which identified regions and companies most prone to corruption. The study revealed that mining permits had been issued for 1.3 million ha of protected state forest, and 5 million ha of conservation forest, and that permits covering 24 million ha of production forest lacked the necessary authorization from the Ministry of Forestry.

On the ground, Silvagama accompanied the KPK on their initial visits to the four SETAPAK regions – Central Sulawesi, South Sumatra, and East and West Kalimantan – facilitating meetings with local civil society organizations and encouraging public participation. The organization also provided technical support to verify the ‘clean and clear’ status of permits, analyzing spatial data such as concession maps and forest zone boundaries. During subsequent follow up visits, Silvagama and other SETAPAK partners such

as Indonesia Corruption Watch (ICW) and Publish What You Pay (PWYP) produced and disseminated information on the importance of legal licensing. Silvagama is also working with the KPK to establish a permanent online reporting mechanism for forest and land use violations. The Indonesia Forest Monitoring (Indonesia Memantau Hutan - IMH) system aims to improve law enforcement by strengthening public participation. As part of the initiative, Silvagama is establishing regional staff in North and West Kalimantan and South Sumatra who will supply concessions maps, permits, environmental impact assessment (AMDAL) documents and other information to the KPK for verification, possible investigation and online publication.

SETAPAK NGO partners and their networks also supported the KPK investigation by compiling a database to check the ‘clean and clear’ status of permits, and NGO partners in Aceh, South Sumatra, West, East and North Kalimantan and Central Sulawesi also compiled position papers to provide data on permit violations and the resultant state losses across the province which was formally presented to the KPK and the provincial government.

SETAPAK partners have also been active in Central Sulawesi where JATAM (the Mining Advocacy Network), working with the YTM (Yayasan Tanah Merdeka) coalition, engaged with social media, academics and journalists in advance of the KPK’s official visit in February to announce that in Morowali district 177 companies were involved in illegal mining on over 600,000 ha of public land. JATAM alleged that licenses had been illegally issued by the district government, that 43 licenses covered overlapping areas, and that five licenses covered protected forest areas.



Mining cutting into an area of forest | Photo: Muhammadiyah

Following its visit, the KPK instructed the Morowali District Head to review all mining permits for compliance, and subsequent to a public meeting organized by the YTM coalition in May, 179 permits and licenses, largely related to nickel mining, were canceled. In June, the Ministry for Energy and Natural Resources permanently revoked a further 50 permits in the district, and announced in November that 1,027 out of 1,339 listed operators in four provinces in Sulawesi still owed IDR 347.1 billion (around US\$28 million) in unpaid tax and royalties.

Aside from the financial benefits to the nation, clear, clean and transparent licensing and monitoring regimes bring significant environmental and social benefits, and encourage legitimate investment. In early 2015, as the KPK announces its intention to investigate the oil and gas sector, SETAPAK partners are pressing for the extension of future investigations into the forestry and plantation sectors.

The Asia Foundation's SETAPAK program, funded by the UK Climate Change Unit, is focused on improving forest and land governance in Indonesia. As well as reducing greenhouse gas emissions to mitigate global climate change, the program helps Indonesia's decentralized governance ensure transparency and accountability in the management, protection and distribution of benefits from natural resources with the intention of achieving sustainable economic growth.