Mining Law and Policy in Indonesia: Issues in Current Practice that Need Reform

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In a recently completed doctoral research, 'Foreign Direct Investment in Gold Mining in Developing Countries: Analysis of Award and Implementation of the Contract of Work System in Indonesia', it was found that the mining industry in Indonesia is poised for a major reform effort which is necessary in order to sustain foreign direct investment and rescue the industry from serious decline. In this follow up work, the authors discuss the areas that need reform and suggest possible action in restructuring policy for optimum results.

Proposed 8th Generation Contract of Work

More than two years have passed since the government first proposed severe changes to the 7th Generation Contract of Work (CoW) as the new format for implementation as the 8th Generation CoW. Not one company has signed it. The seven major changes proposed are:

(1) a requirement for government approval of individuals and activities presently left to the discretion of the contractor;
(2) the participation of local and/or regional government groups through the offering of shares, by the company, following the signing of the CoW;
(3) a 10 per cent share of the company for the government, on a free carried interest basis, would be required in carrying out a feasibility analysis, with such a share reflecting the state's ownership of the nation's mineral resources;
(4) a requirement for stock exchange regulations on 'capital gains' derived from foreign exchanges and domestic exchange listings by shareholders, for capital raising purposes;
(5) an increase in the government share, proportionate to economic benefit on deposits which exceed feasibility study levels of production, that develop additional extractable reserves and/or generate additional profits;
(6) regional development planning consultation requirements with respect to the company's budget and plans in compliance with changing laws and regulations, and

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(7) requirements for Indonesian nationals to hold specific posts with narrowly defined terms and conditions.

Clark (1997) suggests that these changes fundamentally alter the basic provisions that existed in the previous seven generations. The two critical provisions which are indispensable in attracting foreign investment are:

- conjunctive title – which gives security of tenure to the investor; and
- *lex specialis* treatment – which guarantees that once approved by the Government, the terms and conditions of the CoW are not subject to changes in the general laws and regulations.

Clark argues that these changes are not necessary and that they are based on wrong perceptions and concerns:

First, the decisions the Indonesian Government is making are based on two key assumptions:

(1) a 'gold rush' mentality, based on the misconception that a major exploration and development effort is towards gold; and
(2) that huge deposits have recently been discovered, such as Grazberg, Batu Hijau and ironically Busang.

Both of these deposits are 'anomalies' among major mineral deposits worldwide and are exceptions which are not likely to be found elsewhere in Indonesia.

Secondly, the Indonesian Government believes that both the domestic and international mining industry's structure and *modus operandi* have changed dramatically and that they need to address these changes. The Government feels a need to respond to the greater role being played by junior mining companies in exploration and their increased funding through various stock exchanges.

Thirdly, Indonesia, as with a majority of countries with an expanding mineral sector, is having to face the impact of globalisation and the privatisation of existing mining activities. There is also growing domestic nationalism. Indonesia is having to make the transition from what was a predominantly national mining industry to a private sector mining industry, involving both domestic and foreign mining companies.

Finally, Indonesia has forgotten lessons learnt in the past. The first is that the mining industry and mineral prices are cyclical in nature. In the last two decades there has been an emphasis on copper and gold, which is based on a strong bias worldwide. The second is that when changes were made with the 3rd Generation CoW in 1977, only four contracts were signed but when the revisions required were made in the 3rd and 4th Generation and the issue of the 5th Generation, 94 CoWs were granted between 1986 and 1988.

The weakening of the system began as early as 1972 when no contracts were signed. The Government had become confident that it had a strong bargaining position. Multinational corporations (MNCs) were accepting more onerous terms in other countries; fewer options were available to potential investors in other parts of the world

due to instability; metal prices had improved since 1971; and strong growth had taken place in the Indonesian economy, especially in the export of oil and gas (IMA, 1994: 9). The 3rd Generation introduced in 1976, therefore reflected this new policy:

(1) foreign mining companies were made subject to general mining and tax regulations and a windfall profit tax was also added;
(2) foreign investors were also required to transfer at least 51 per cent of equity to Indonesian nationals within ten years after the commencement of exploration; and
(3) processing of the material within the country, where feasible, also became a necessity.

The subsequent lack of response necessitated a rethink, which led to the revised 3rd Generation and 4th Generation – the removal of the windfall profits tax and restrictions on foreign remittances and the inclusion of more favourable depreciation and amortisation provisions, debt-equity ratios, and flexibility in the choice of location of exploration.

A similar rethink became necessary from 1988 to 1992, when the 5th Generation CoW was in effect, and the global recession and market crash in 1987 forced the government to implement a moratorium on new contracts. The 5th Generation altered business conditions with the following being the main amendments:

(1) An increase in land and building taxes;
(2) an increase in the amount of security deposit and minimum expenditure levels;
(3) no guarantee of purchase of product by the government in the case of an export ban;
(4) the deletion of environmental expenses as a legitimate tax reduction;
(5) the imposition of import duties on spare parts; and
(6) the imposition of a new royalty scheme based on fixed US dollar amounts per unit of contained metal as well as imposition of royalties by the province for industrial minerals used to construct the mine.

The conclusion that Clark draws is very apt:

> 'When considered in the global context of mineral exploration and development activity, the majority of the proposed changes for the proposed 8th Generation CoW would appear to be largely unnecessary; would significantly reduce future mineral exploration and development; and overall would not achieve the Indonesian Government's desired objectives.' (Clark, 1997)

Mineral royalties

Prior to 1994, the practice of assessing royalties was based on the net realised value of the commodity. This was changed to basing royalties on an estimate of the mineral content of the ore. This fundamental change to assessing royalties on 'net smelter returns'

has caused a lot of grief to the mining companies (IMA, 1994) because:

(1) the mineral content of concentrate cannot be assayed with complete accuracy;
(2) the recovery rate of minerals from the concentrate/ore at all stages is likely to be less than 100 per cent, and
(3) the concentrate/ore contains other elements which will attract smelter penalties.

Because of the above, there is an additional, hidden tax on the miner. This is also contrary to world practices, and 'a handicap to Indonesia in the race to attract foreign investment in exploration and mining' (IMA, 1994). Foreign investors seek transparency in taxes and royalties. They want to be sure that the actual tax and royalty rates paid during the life of a project will be the same as – and not more than – the rates agreed at the start of the project.

An assay carries with it the potential for human error, irrespective of the skill and experience of the person doing it. Any such error will either be on the high side or the low side. It will thus either increase the hidden tax on the miner or reduce the country's entitlement to compensation for those minerals.

Anecdotal evidence from elsewhere suggests that where assessment of the royalty is based on the assays of the ore coming out of the ground, no matter how regularly those assays are made, there is a real risk of:

- unscrupulous mine managers ordering low-grade ore or waste to be put through the mill before each assay is taken so as to downgrade the mineral content of the ore for royalty calculation purposes; or
- unscrupulous officials responsible for assaying the ore being induced to downgrade or understate that mineral content.

Either way the result is the same: the country is cheated of some or all of its entitlements. This would not be the case with royalties based on the realised value of the minerals – where there will be both the seller's and buyer's records of the quantity and value of the minerals sold. Physical assays may not be able to be audited later; once the parcel of dore has been processed it cannot be re-sampled (IMA, 1994).

The Indonesian government has now proposed a return to the *ad valorem* regime for mineral royalties, which is a step in the right direction. It increases transparency for all concerned. However, there is still the problem of royalty rates. A rate of 2 per cent is suggested by the mining companies, while the government is proposing 3 to 4.5 per cent. Table 1 below compares rates in the international arena. This is a major issue for Indonesia, as the plan is to use royalties to provide directly for the needs of the communities where the mines are situated.

Indonesia is moving towards regional autonomy. The regions are now demanding a greater direct share of the economic benefits

Table 1: International comparison of royalty rates

Country	Royalties (%)				
(State or Province)	Gold	Copper	Nickel	Zinc	Tin
Argentina	3.00	3.00	3.00	3.00	3.00
Australia (Queensland)	2.70	2.70	2.00	2.70	2.00
Australia (Western Australia)	1.25	2.50	2.50	2.50	–(2)
Brazil	1.00(1)	2.00(1)	2.00(1)	2.00(1)	2.00(1)
Canada (Ontario)	20.00(3)	20.00(3)	20.00(3)	20.00(3)	20.00(3)
Chile	0	0	0	0	0
Ghana	3.00	#	#	#	#
Indonesia	3.75	4.00	4.00-5.00	3.00	3.00
Mexico	0	0	0	0	0
Papua New Guinea	2.00	2.00	2.00	–(2)	–(2)
Peru	0	0	0	0	0
Philippines	2.00	2.00	2.00	2.00	–(2)
South Africa	0(5)	0(5)	0(5)	0(5)	0(5)
Tanzania	3.00	3.00	3.00	3.00	–(4)
United States (Arizona/Nevada)	0(6)	0(6)	0(6)	0(6)	0(6)

Notes

(1) Maximum rates only; lower or even zero rates may in many instances be levied or negotiated.
(2) Unknown.
(3) This is a net profit royalty under which virtually all expenses are deductible, including mine development costs and depreciation on mine assets.
(4) Negotiable.
(5) Zero government royalty, but a royalty is generally negotiated with the holder of the mineral rights.
(6) Zero federal government royalty, but state may apply a severance tax.

Source: Institute for Global Resources Policy and Management, *Global Mining Taxation Comparative Study*, Colorado School of Mines, September 1997.

generated by mining operations undertaken within their own areas. However, a very high *ad valorem* royalty rate will ultimately result in zero royalty revenue, because known deposits would not be developed. 'Even an internationally uncompetitive royalty rate which discourages new investment, and encourages high-grading of existing mines, will ultimately have detrimental effect on export earnings, employment, tax revenues and regional development' (IMA, 1999).

The royalty rate is of major concern to the investor simply because, unlike corporate tax, it takes no account of the cost of producing each tonne of minerals which are subject to that royalty. Royalties can have a regressive effect on mining economics. A high royalty rate can render the mining of a significant portion of resources uneconomic, with the result that they might simply be left in the ground. This can, naturally, have a very negative effect on export earnings, taxation revenue, additional employment, regional

development and the expected multiplier effect mining activity has on other sectors of the economy.

The simplest form of royalty, based on net realised value of payable metal, is the net smelter return (NSR) used for gold. It is used by most major gold-producing countries for determining royalties on gold (IMA, 1999: 6). The formula is:

$$R = (G + C) - (P + RC)$$

Where:

R = the royalty payable;
G = the amount of bullion recovered by the refinery from the dore supplied by the miner multiplied by the then current international price;
C = credits for other valuable metals recovered from the dore – most commonly silver – multiplied by the then international price;
P = penalties for any impurities in the dore which effect the economics of the refining process, eg arsenic; and
RC = the refinery's charge for treating the dore.

It should be noted that the gold miner receives no deduction for any costs in producing the ore. Also, because the ore is not a bulk commodity, unlike copper concentrate or coal, the gold miner receives no deduction for transport costs.

A competitive royalty rate coupled with set international practices is absolutely necessary if Indonesia is to sustain foreign investment in its mining sector.

Implementing regional autonomy legislation

After the fall of the Suharto Government, there was a general call for autonomy to be given to the provinces and regions. The general population felt that power, which had been centralised at the federal level, should be returned to the local government authorities. Little progress had come to the remote areas, and they did not feel that they had any control over their destiny. The Habibie administration that replaced Suharto went about earnestly decentralising authority to please the populace and remain in power. This was done in a very short space of time and haphazardly.

The Indonesian Parliament (DPR) passed Law No 22/99 on regional autonomy in early 1999. Law No 25/99 on revenue sharing covered 'distribution of income' provisions (IMA, March-April 1999), which meant that provinces and regions would get a share of the income from the natural resources within their areas. The provinces would now receive 15 per cent of the proceeds received by the government from onshore oil production, 30 per cent from on-shore gas, 80 per cent from mining, 80 per cent from forestry, 80 per cent from fisheries and 20 per cent from reforestation funds.

The net effect of these new laws on mining companies is that they have to deal with regional authorities and local government, as the supervision of mining operations is transferred from central to regional authorities. This has not been properly administered or implemented. Many local governments have taken control of mining operations in their area prematurely and the central authorities are hesitant to rectify this for fear of adverse political reactions.

The situation is untenable, to say the least. There have been numerous cases of land grabbing, land claims, compensation claims, profit sharing demands, and improper taxation demands. A case in point is the situation facing PT Newmont Minahasa Raya, a unit of American gold mining company Newmont Mining Corporation, which has operations in North Sulawesi:

> 'Local authorities want to take over a 20% stake in US based Newmont Gold's Minahasa mine that is held by nonresident businessman Jusuf Marukh. They are also suing Newmont of $3.6 million for "back taxes" – money the company says it has already paid to the central government.' (*Jakarta Post*, 25 January 2000)

Related to the autonomy issue is the problem of illegal miners occupying contract areas. This problem has become so severe that several companies have ceased operations completely. The local authorities are not only closing an eye to the problem and failing to maintain law and order, but exacerbating it by being involved in the activity themselves:

> 'Illegal mining becomes an everyday trade violating any regulations, their number and areas of operations are expanding. They involve illegal mining of coal and gold. They used to be carried out by locals who, because of their poverty were trying their luck in their surroundings. Later it was carried out by more well to do people from outside the area, who use their money to fund illegal mining, hiring out heavy equipment for illegal mining and transportation and even their illegal production. They do not pay taxes, they do not comply with safety regulations and they destroy the environment. They of course jeopardise the Government's authority on the CoW agreement. People are losing faith in certain local government.
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> Elements of the local government organization are alleged to be involved. This may be the reason why practically no actions are taken by the local authorities to quell these illegal operations. Of course this will discourage any investors and if these illegal actions cannot be stopped then it is only a matter of time [before] Indonesia will be shunned by many potential investors.' (IMA, Nov-Dec 1999)

In the cover article, 'Bleak Prospects in Indonesian Mining', of its 16 December 1999 issue of the *Far East Economic Review*, writer John McBeth reported that 'A breakdown in law and order and rising demands from restive provinces are troubling foreign mining firms

in Indonesia. Exploration has already dried up, dealing a blow to an industry that's crucial to economic recovery'. The situation has become so serious that the granting of access to illegal miners has become common practice: 'Every Sunday, in a deal negotiated with local officials in October, Aurora Gold must open its 1,500 metre long Kerkil pit to hordes of rag-tag illegal miners.' (McBeth, 1999) The weekly invasions leave Aurora facing some tough choices.

The three other ore-bearing deposits in the Newmont Mining Corporation's 480-square-kilometre Mount Muro concession are permanently occupied by illegal miners, and it has no plans to open new pits for fear that they too would be overrun.

> 'According to mining sources, the illicit operators are backed by provincial and military officials as well as local businessmen . . . the mining companies are getting little support from the central government. Police in Muarataweh, a prosperous river town south of Mount Muro, say that while they will protect Aurora's infrastructure, they are under orders from Jakarta not to take any action that will cause friction with the local community.
>
> Aurora has another 1-million-ounce gold prospect in North Sulawesi, east of Borneo, but after spending $52 million on infrastructure there, it's reluctant to take the final step and open the mine. The reason: local authorities won't guarantee protection from encroachment and have even allowed 1,500 illegal miners to occupy one of the two work areas.' (McBeth, 1999)

It is reported that this anarchy, coupled with the impact of the economic crisis, has brought exploration almost to a standstill. If companies sense that contracts are worthless, few will return. Typically, a decade elapses between the discovery of a deposit and its exploitation, which means a lack of exploration now will cripple the multi-billion dollar industry into the next decade. In its editorial in January-February 2000, the Indonesian Mining Association noted that 'if the Government is not taking firm steps in securing the confidence of the operators and legal rights of the contractors, no new investment can be expected.' (IMA, Jan-Feb 2000)

Local government taxes and charges

The New Law 18 of 1997 allows local governments to set and levy new and increased charges and taxes. Part of the success of the CoW system in attracting investment in the mineral sector has been its claim to provide an exhaustive list of all taxes and charges that will be levied on a company throughout the term of the CoW. Law 18 has changed the whole scenario. Companies have found themselves vulnerable to a whole range of taxes and charges levied by local government never contemplated by the CoW. This is further exacerbated by the fact that, unlike royalties, these taxes and charges

bear little relation to the profitability of the mining operation (IMA, Jan-Feb 1999).

A more balanced system needs to be worked out, so that investors have a clear and unambiguous understanding of all the taxes they need to pay and to whom, in order that the sustained level of foreign investment can prevail.

Lifting the concept of 'ring-fencing' and incorporating 'one company – multiple contracts'

Ring-fencing is when deductions for exploration expenditure are restricted to the company which explored the CoW, and can only be deducted against future earnings from that CoW (IMA, 1994). Thus, if exploration is unsuccessful, because the CoW does not have an income-producing mine, there will be no deduction available for that unsuccessful exploration expenditure.

This practice in Indonesia ignores the large amount of regional exploration that may be required before detailed exploration under title can take place. It also ignores the large amount of exploration under title elsewhere in the country that may have to take place, before a commercial discovery is made. The practice is unattractive to the foreign investor as country-wide tax deduction is not allowed. In the more developed countries, such as Australia, Canada and the United States, it is recognised that all mining-related expenditure, including exploration expenditure, should be deductible against any other income.

One qualification to this is that in Australia, the company which incurred the exploration expenditure and the company which earned the income must be 100 per cent related. However, in Australia, unlike Indonesia, there are no equity restrictions in mining projects and it is possible for companies to hold 100 per cent equity in various projects (IMA, 1994: 24).

In countries competing for the same source of foreign investment, such as South Africa, Mexico and the Philippines, the foreign investor can have just one company holding a number of titles. This one company can incur exploration expenditure on all those titles and, if it makes a success of one or more of them, carry forward the unsuccessful exploration expenditure on the other titles for deduction against mining income from a successful project on just one of those titles. 'Because of Indonesia's one-company-per-CoW requirement, this option is closed off; the effective after-tax cost of any large scale exploration in Indonesia thus becomes that much higher than in many of Indonesia's competitors' (IMA, 1994: 25).

It has also been suggested that the one-company per-CoW restriction prevents 'one of the most cost effective and technically productive forms of exploration – "brownfield" exploration – from being used'. Brownfield exploration involves exploration for further ore reserves to feed an established mining operation. If the mining

company cannot go back and re-explore an area previously relinquished by it under a CoW – so that it can seek to expand its ore reserves – it is left in a dilemma. It cannot seek a tax deduction for exploration funded by it on another party's CoW. It cannot, therefore, afford to fund exploration by applying for a new CoW under another company – even a related company – which obtains title over that adjoining area. This holds true even if, technically and commercially, it might want to do so to extend the mine's operating life (IMA, 1994: 25).

The reform of this legislation is imperative, if Indonesia is to continue to make its mining sector attractive to foreign investment. This policy would not be new, as Indonesia had previously permitted the covering of a number of non-contiguous blocks under just one CoW.

Long-term reforms aimed at sustaining continued investment

The current state of affairs in Indonesia requires a comprehensive approach and action towards creating and implementing mining policy and legislation aimed at providing an atmosphere that can create and sustain the continued interests for foreign mining companies. Reforms in four areas can be identified as critical to any progress in this area:

(1) political and economic stability and enforcement of the rule of law;
(2) long-term stability in the application of the CoW system;
(3) participation of the regions in sharing the benefits of the natural resources endowed; and
(4) the development of fair and transparent business practices.

Political stability

In a study specific to Indonesia, Goeltom (1997) indicates that political stability was rated as the most important policy factor, out of a list of 40, that foreign investors considered when deciding whether to continue their interest in Indonesia.

Indonesia ranked lower in numerous specific areas, when compared with its competitors. Headlines such as 'Unrest on the Indonesian island of Halmahera has again forced Australia's Newcrest Mining Ltd to shut its Gosowong Gold Mine and evacuate staff' (*Jakarta Post*, 26 January 2000) and 'Anarchy has brought exploration almost to a standstill' (*Far East Economic Review*, 16 December 1999) do not auger well for foreign investors' continuing interest or desire to invest in the country.

Since the time of this survey, the situation has rapidly worsened as far as political stability is concerned. This should be the main focus of emphasis in reform planning for continued and sustained foreign investment in mining in Indonesia.

Table 2: Selected indicators of foreign investors' rating of policy factors in Indonesia

No	Variable	Factors affecting investment decisions (Important/ very important/ most important)	Indonesia relative to its closest competitor		
			Lower	Equal	Higher
1	Political stability	96%	15%	35%	50%
2	Consistent policy	95%	40%	39%	21%
3	Quality of labour	96%	49%	44%	7%
4	Access to foreign exchange	90%	11%	47%	42%
5	Access to physical infrastructure	93%	37%	46%	17%
6	Profitability	100%	26%	54%	20%
7	Tax policy	97%	44%	50%	6%
8	Licences and permits	96%	52%	39%	9%
9	Labour laws	95%	37%	52%	11%
10	Dispute settlement	95%	37%	55%	8%
11	Regulation on foreign labour	93%	43%	39%	18%
12	Environmental law and regulation	92%	23%	62%	15%

Source: FIAS Survey 1994, and Goeltom Survey in 1996, quoted in Miranda S Goeltom, Globalization, Investment, Endowment: Capturing the Opportunities in the New Millennium', paper presented at the Indonesian Mining Conference, October 1997, Jakarta.

Long-term stability in the application of the Contract of Work

Investment in mining is a long-term commitment. The longest sustaining and operating foreign concern in Indonesia, and the biggest such mine in the world by far (Freeport Indonesia) has been active for over 30 years. It is imperative that the foreign investor be assured that the terms and conditions that were in force at the time of entry, continue to prevail throughout the expected period of the life of the mining operation. The basis has to be on the expectation that exploration will result in the development of the mine and that extraction and export of the minerals will be an ongoing process.

Clark (1997) observes that 'the strength of the CoW has been its stability, transparency and competitiveness; all essential features to maintain if the mineral sector is to grow and diversify'. In addition to the necessity that the terms and conditions of the CoW should be competitive relative to the regulations of other nations seeking foreign investment in mining, it is also vital that there be long-term stability in the application and security of the contract.

The CoW has been described as a 'key ingredient in the development of Indonesia's world class mining industry' (IMA, Jan-Feb

1999). Fundamental to its strength has been the recognition of the various criteria fundamental to foreign investors' assessment of new exploration and development opportunities:

> 'Foremost among these criteria is a stable, transparent and predictable legal and fiscal regime throughout the life of any project. The need for such a legal and fiscal regime is dictated by the long-term, high risk and capital-intensive nature of investment in the mineral sector.' (IMA, Jan-Feb 1999)

In Table 3, security of tenure ranks highly, along with geological potential and political stability, as an important factor in the evaluation that mining companies make as to a country's potential for long-term investment. Security of tenure means 'the sole and exclusive right of the investor to explore for, and if that exploration is successful, then mine all minerals (other than prohibited minerals) within the investor's tenement' (IMA, Jan-Feb 1999: 11).

For Indonesia to compete successfully for a share of the limited resources of foreign capital and technology, it is essential that a concerted effort be made to put into effect a process whereby the investor is assured that the rights granted under a valid contract are guaranteed throughout its life.

Regional participation in sharing of benefits

The Asian Crisis of 1998 revealed many fundamental weaknesses in the economic and political structures of many South-east Asian countries, including Indonesia. The net result has been rising nationalism and a demand by the rural population for a share in the nation's wealth, especially from regions that are host to foreign companies extracting resources within their areas. Parson (1999) notes that:

> 'One cloud on the horizon is a detectable increase in nationalism. When times get tough, fingers want to point to somebody to blame, and often the blame ends up on the shoulders of foreign investors. There is some evidence of this happening in Indonesia . . . the political change will touch the country's mining industry in one important way. There are growing signs of the beginning of a shift in power from the central government to regional governments, at least in so far as the mining sector is concerned.'

It is not unnatural for the regions to demand a greater direct share of the economic benefits generated by mining operations undertaken within their own areas. One could say that this was an accident waiting to happen. Over the years, the country's prosperity has mainly been channelled into the urban areas, especially the capital city of Jakarta, which has also been where power is concentrated.

It is imperative that economic and social benefits should trickle down to the regions where mining operations are being carried out. Though foreign mining companies have contributed to developing

Table 3: Results of a global survey of mineral company investment preferences	
Number of companies	*One of three key decision criteria*
34	Geological potential
15	Political stability
10	Security of tenure
7	Mining law Mining law stability Tax stability
3	Logistics
3	Management control
2	Access to land
2	Market
2	Cost
2	Location
2	Repatriation of profits
2	Safety of people and assets
2	Quality and financial involvement of operator
1	Country of operation
1	Environmental climate
1	Availability of geo-technical services
1	Infrastructure availability
1	Applicability of experience/technology
1	Large blocks Mineral ownership

Source: J M Otto, Seminar on Analysis of Taxation Policies in Minerals and Metals Industries, United Nations ESCAP, August 1992, p 14.

the local communities (by US$28 million in 1998), the overall system has not fully catered for the needs of the regions. A complete and comprehensive plan needs to be put in place, using legislative and policy means, to ensure that this is consistently and evenly implemented as part of the nation's overall development blueprint.

Enforcing the law and developing fair and transparent business practices

To achieve any real success in implementing legislation, it is vital that practice at all levels be open and consistent. For this, the system and its implementing bodies must operate fairly and transparently. Methods of doing business in Indonesia have been 'shady' to say the least. Backman (1999: 373) notes:

> 'A sound legal framework is absolutely essential for a sound business environment. But it doesn't matter how fine and

brilliantly conceived that framework is on paper; if middle and low ranking civil servants and court officials from the judge down are easily bribed, then in reality it's utterly worthless.'

Laws need to be enforced. Justice has to be done and has to be seen to be done and on time. Transactions have to be made above board, in total transparency, and fairly and justly. There must be accountability at all levels. This pre-requisite is an absolute must, if Indonesia is to remain attractive for foreign investment in any field, including mining.

Conclusions

The CoW system initially worked very well for Indonesia. With this system the country was able to jump-start a very weak and largely inactive mineral sector into a major industry that brought in a large number of well-established and highly competent mining companies and huge amounts of capital investment, technology and expertise. Today, the Indonesian mining sector is close to collapse.

The CoW system is a well-developed and meaningful system of granting concessions and mining rights to foreign companies. The basic needs of investors:

- security of tenure (covered as conjunctive title which empowers the investor to proceed from general survey through exploration all the way to mine development, production, processing and marketing); and
- security of investment (covered as *lex specialis* treatment which assures that the investment is not subject to changes in government laws or policies after signing for the period in force);

are expressly stipulated.

It is only when changes were made to the basic structure of the system that the decline in investment took place. These changes involved the slow but serious dismantling of the provisions. This had serious repercussions, as this was the sole reason for the investment to be considered as worth the risks involved. It lost its credibility when the contents were changed. Indonesia now has the challenge of restructuring its policies and laws to ensure that investor confidence is restored by an effective system that safeguards the interests of both parties.

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