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Governance Institutions, Resource Rights Regimes, and the Informal Mining Sector: Regulatory Complexities in Indonesia

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Summary. — This study examines how shifting resource governance regimes affect labor inequities in the small-scale mining sector in Indonesia. It focuses on the implications of governance “decentralization” processes and mining regulation reforms for indigenous and migrant populations who rely on informal (unlicensed) mining for income in Central Kalimantan. While the findings illustrate the territorially uneven impacts of recent reforms, they highlight how dominant paradigms that prioritize the enforcement of property rights schemes have contributed to problems of livelihood insecurity and poor environmental governance. The article urges for more nuanced attention to contested articulations of power as well as local resource rights and institutional arrangements to assist rural communities in reversing marginalization.

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1. INTRODUCTION

As the last two decades have witnessed a dramatic growth in mining activity in many countries, a burgeoning body of research has emphasized reasons for revising resource extraction policies and improving governance of the mining industry. This has been argued from a variety of perspectives, particularly to promote equitable socioeconomic development and curtail environmental threats (Bebbington, Hinojosa, Bebbington, Burneo, & Warnaars, 2008; Bridge, 2004; Bryceson & Jønsson, 2010; Hilson & Maconachie, 2009). In a previous issue of *World Development*, Bebbington, *et al.* (2008) urge for more attention to how social movements resist the expansion of the mining industry, exploring how communities struggle to pursue rural livelihoods while opposing neoliberal regimes of development. Their analysis focuses on regions where decades of reform prioritized foreign mining investments, and how, through active resistance, poorer communities can be seen as “co-producers” of rural development dynamics. In this study, I build further upon such ideas by examining the challenges of equitably addressing mining and rural development in Indonesia, focusing on multifaceted and at times ambiguous linkages between governance reforms, community rights, and labor dynamics *within* the mining sector.

The article encourages a critical re-examination of popular global discourses of resource regulation and governance in mining communities as well as specific debates surrounding Indonesia’s political landscape, where the governance of mineral resources has been a subject of numerous high-profile controversies due to conflicts between companies and communities, disagreements over revenue distribution as well as pollution, and land degradation (Ballard & Banks, 2003; Resosudarmo, Resosudarmo, Sarosa, & Subiman, 2009; Shaw & Welford, 2007). I interrogate a key question that is often overlooked by policymakers and scholars alike: how do shifting governance regimes and competing institutional interests affect poorer small-scale mining communities’ resource rights in the contemporary era? I also link this with a second question: what implications does the *non*-recognition of poorer populations’ mining rights have for the management of

environmental resources and informal livelihoods, particularly in contested areas where unlicensed mining—by indigenous and migrant workers—may be seen as an essential source of income?

Past scholarship has highlighted a heterogeneous array of advocacies addressing why government authorities in Indonesia should do more to ensure that indigenous people benefit more from mineral wealth and in more sustainable ways (Ballard, 2001; O’Faircheallaigh and Ali, 2008). Yet, despite frequent agreement on the vague assertion that marginalized rural populations (“indigenous” populations and others) should benefit more from mineral developments, the idea that such populations should be empowered more as active participants who labor *within* the mining sector receive conspicuously mixed levels of support (Downing, Moles, McIntosh, & Garica-Downing, 2002; Erman, 2007; Resosudarmo *et al.*, 2009). This discrepancy arises particularly as environmental and social problems associated with unlicensed artisanal and small-scale mining¹ activities remain locked in uneasy debates. Such activities, undertaken by diverse Indonesian workforces and usually discussed as “illegal mining,” have expanded over the past decade in numerous regions across the country (Etemad & Salmasi, 2003; Sulaiman, Baker, Susilorini, Telmer, & Spiegel, 2007). Many arguments have been put forward to police “illegal miners” more severely, as has been frequently advocated by large mining companies, who criticize

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how small-scale miners cause problems by operating on company-owned lands and widely argue that this deters foreign investment (Bhasin & Venkataramany, 2007; PricewaterhouseCoopers, 2006). Scientific literature often directly and indirectly bolsters this corporate advocacy through industrial and ecological modernization discourses; extensive literature, for instance, emphasizes problems with rudimentary small-scale gold mining such as pollution and land degradation and contend that risks occur due to a lack of rural regulatory enforcement (Edinger, Siregar, & Blackwood, 2007; ICG, 2001; Kambey, Farrell, & Bendell-Young, 2001).

However, despite the common advocacy to enforce existing laws immediately, a more recently emergent body of research suggests that the “informal”—unlicensed—mining sector can provide crucial income-earning opportunities to Indonesia’s rural populations and that governance approaches and property rights regimes must be revised to be more sensitive to communities who depend on informal small-scale mining as a poverty alleviation activity (Aspinall, 2001; Erman, 2007; Lahiri-Dutt, 2004; Yasmi *et al.*, 2005). Some recent studies also suggest that in order to be effective (let alone equitable), environmental protection models particularly need to be more attentive to concerns of vulnerable mining communities in the informal sector (Burke, 2006; Sulaiman *et al.*, 2007). Influenced by a growing body of literature on community-based natural resource management (“CBNRM”), largely in the forestry sector, debates about governance, poverty, and environmental sustainability in Asia have increasingly emphasized a rights-based approach, in which equitable development is strongly associated with individual and community rights (Johnson & Forsyth, 2002; Nomura, 2008). While small-scale miners’ livelihood aspirations have not featured prominently in Indonesia’s rights-based or CBNRM literatures to date, and this article will explore reasons for this, understanding contemporary resource governance regimes requires not only a recognition of impacts from mining and regulation challenges in theory; critically, it also requires a close contextual understanding of institutions that address mineral extraction and the mechanisms by which they respond to competing community priorities and views on local labor and environmental rights.

This article examines complexities in understanding resource struggles in Indonesia’s mining context, investigating institutional pressures at multiple geographical scales of governance, and giving primary focus to regulatory dilemmas in Central Kalimantan, Indonesia’s third largest province. Section 2 provides an analysis of the historical development of Indonesian mineral laws and policy institutions in order to contextualize contemporary governance systems and mineral rights regimes. Section 3 investigates complexities and potential problems in conceptualizing both “illegal mining” and “indigenous mining” as units of analysis, the risks of small-scale mining for people and the environment, and how such concerns shape advocacies for government regulation and reform. Different types of small-scale mining are differentiated from one another, and testimonies from interviewees in 2010 are examined to highlight the contentious implications of recent policing activities in a particular gold mining site in an area called Galangan. Section 4 discusses key findings from studying stakeholder interactions in a United Nations development initiative, engaging with government institutions, NGOs, and mining communities to pursue strategies for improving environmental governance. Advocacies to promote formal legal recognition of local mineworkers’ rights (as part of an environmental strategy) are examined in conjunction with an array of socio-political pressures and recent reforms that constrain

such efforts, with critical implications for re-conceptualizing notions of governance decentralization and community-based management as potential avenues for rural empowerment.

Methods for this study included focus groups and interviews, using semi-structured questionnaires with small-scale miners, other people living in mining areas and nearby towns, officials from district, provincial and national governments, NGO staff, United Nations staff, mining company representatives, and other stakeholder groups. Field research was complemented by a review of policy documents and media discourses. The study draws partly on a retrospective analysis of the author’s experiences serving as a policy advisor to the United Nations Development Program (UNDP) and the United Nations Industrial Development Organization (UNIDO) (2005–08) and mainly on independent field research conducted in June and July of 2010.² Overall, the findings illustrate how governance regimes in Indonesia’s extractive sector remain in a highly ambiguous transition period where the decentralization of power from the central government to district authorities, instigated by the Autonomy Laws of 1999, is occurring with dubious degrees of effectiveness and with territorially uneven results in addressing small-scale mining. Very few resources have been allocated toward government functions for legalizing and supporting socially marginalized mineworkers. The article examines how overlapping administrative structures, political confusion, competition over resource ownership, as well as widespread unwillingness to provide poorer labor groups with clear sets of rights—sometimes due to multiple sets of “hidden interests”—have all complicated efforts to promote sound management of resources. The study’s approach emphasizes complexities inherent in efforts to promote local and indigenous rights³ in the mining context, highlighting the need for rigorous attention to power dynamics that shape resource rights regimes and how these impact informal livelihoods in uneven ways. The study also suggests trajectories for future research, critically engaging institutional strategies to address socioeconomic and environmental equity concerns in mining areas.

2. MINERAL GOVERNANCE IN HISTORICAL CONTEXT: KEY DEVELOPMENTS AND PRESSURES

(a) *Influences in the development of Indonesia’s Mineral Governance Institutions*

Past research suggests that understanding Indonesian mining policy requires first recognizing historical influences on mineral governance institutions beginning with colonization and how these have evolved through transitioning patterns of institutional control in rural areas (Erman, 2007; Robinson, 1986). After Dutch colonial authorities introduced a system that gave elites exclusive resource rights and that centralized power in the licensing of minerals, resource governance regimes in the post-colonial era continued to centralize licensing power at the state level and prioritized mineral extraction even more emphatically as a national economic strategy (Ballard, 2001; Etemad & Salmasi, 2003). In 1958, the Indonesian Government passed Foreign Investment Law No. 78, which sought to boost foreign investment in mining. Following the abortive coup attempt of 1965, the New Order Government under President Suharto carried out new sweeping reforms in resource sectors, creating new regimes for mining. In 1966, actions were taken by the Temporary People’s Consultative Assembly (MPRS) by passing Decree No XXIII, reforming economic policies for the purpose of prioritizing extractive industries,

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