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Indonesian government continues to serve extractive companies

by Bosman Batubara

In 2009, reacting to the rise of swelling economic nationalism, the Indonesian government initiated legislation to increase the state's income by decreasing its exports of raw minerals and coal for the benefit of domestic job creation. However, giant extractive companies thought otherwise. This is the story of Mining Law 4/2009, a once promising step towards Indonesian sovereignty.

On January 11, 2014 the Indonesian government issued Government Regulation (GR) Number 1/2014 concerning the Second Amendment to GR Number 23/2010 on the *Implementation of Mineral and Coal Mining Activities*, hereafter called GR 1/2014. On the same day, the Ministry of Energy and Mineral Resources (MEMR) issued a Ministerial Regulation (MR) 1/2014 on the goal of *Increasing the Value of Mineral Mining through in-Country Mineral Processing and Refinement*, henceforward called MEMR MR 1/2014. The latter is a daughter regulation of the former.

Both directives are a continuation of regulations that have been issued previously, e.g. MEMR MR 20/2013, GR 24/2012, GR 23/2010, and the mother of all of these rules: Mining Law 4/2009

This paper chronologically analyses the substances of the rules above, the changes comprised, and who will benefit from what and how. Furthermore, the wider impact of a series of regulations and related changes taking place in the sphere of minerals and coal mining in Indonesia will be explored.

The evolution of mining regulatory changes

On January 12, 2009, signed by neoliberal president Susilo Bambang Yudhoyono (who tried to be publicly known as interventionist), the In-

Indonesian government issued Mining Law 4/2009. Article 107 of the Law mentions that "[...] the holders of mining permits are obliged to build mineral refinery plants [...] no later than 5 years," after the enactment of the Law.

The main aim of this regulation is to increase the state's income from extractive industries, e. g. from minerals and coal, through domestic processing, and to add jobs for the people in Indonesia. Previously, Indonesia only exported raw materials. In early December 2013, the Minister of Finance, Chatib Basri, mentioned that the implementation of the Mining Law 4/2009 is expected to increase the state's income significantly, rocketing from 4.9 billion USD in 2013 to 9 billion USD in 2015.

To pursue what is stipulated in Article 107 of Mining Law 4/2009, in early February of 2010 the Indonesian government issued GR 23/2010 which in article 112 (4) resounds the duty of mining companies to undertake the in-country mineral processing and refining at the latest within a period of 5 years from the entry-into-force of Mining Law 4/2009. It meant that no later than January 12, 2014, every mining company was under the obligation to have their own mineral processing and refinery plant.

Three years later, the government then issued a ministry-level regulation to outline a more detailed pathway about minerals and their threshold concentration for exports, in MEMR MR 20/2013. Let's take copper and nickel as examples: Copper can be treated as exported commodities in the form of Cu-metal after refinement in such a way that it has more than 99.9% of Cu concentration. While for nickel, to be able to export it in the form of nickel pig iron, a company has to smelt it to reach more than 6% of nickel after smelting.

However, on January 11, 2014, the government passed two pieces of legislation that are basically contrary to their predecessor. The GR 1/2014 is an amendment to GR 23/2010. This newly enacted rule explains that article 112 (4) c in GR 23/2010, which carried a company's obligation to build refinery plants no later than 5 years after the enactment of Mining Law 4/2009, was removed.

Meanwhile, the second one, MEMR MR 1/2014, which was published in conjunction with GR 1/2014, contains many changes to the management of mineral commodities, for instance, the way copper, nickel, and iron sand may be exported. For copper, the term "refinement" was replaced with "processing." This replacement also means a change in the minimum threshold of commodity exports for copper: It jumped down to only 15% for copper concentrate from a previous obligation for companies to refine it to Cu-metal $\geq 99,9\%$. As for nickel, a 4% concentration of nickel pig iron may already be exported. And iron sand is now allowed to be exported when exceeding 58% Fe, marking a substantial decrease from MEMR MR 20/2013 which required refinement up to 90% Fe.

To "ensure the availability of raw materials and a refining mineral processing industry, and the conservation of natural resources," on January

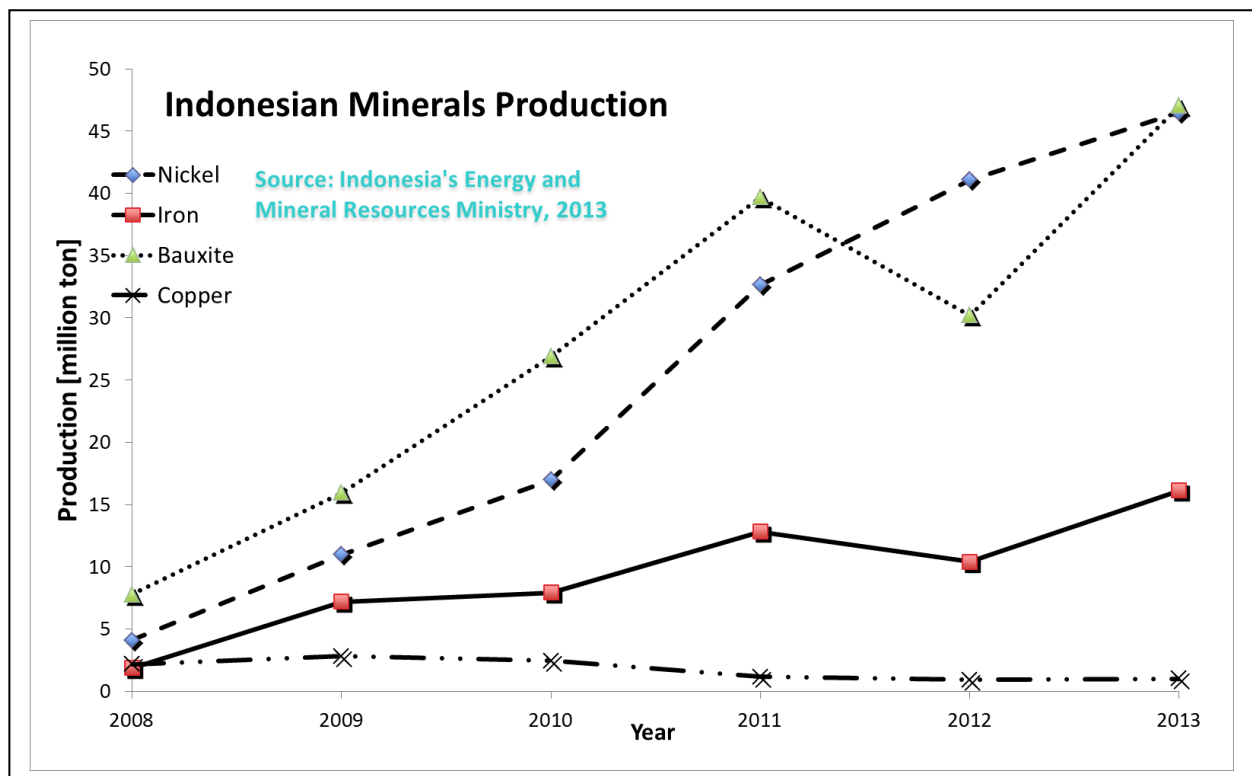
2014, the Minister of Finance issued rule number 6/PMK.011/2014 which governs mineral export tax rates for commodities like copper, iron, manganese, lead, zinc, and titanium. In general, tax rates progressively increase from 2014 until 2016.

The evolution of mining regulatory changes in Indonesia since 2009 is shown in Table 1 above. In addition to copper, nickel, and iron sand there are actually many commodities that are mentioned in MEMR MR 20/2013 and 1/2014, such as tin, gold, manganese, bauxite, iron ore, etc. Yet, this paper is only taking three commodities to illustrate the logic within the regulations' tree.

In the context of a series of amendments of various daughter rules after Mining Law 4/2009, it is then important to look at the socio-political contexts within which the changes occurred.

The origins of Mining Law 4/2009

The issuance of Mining Law 4/2009 cannot be separated from the socio-political context in Indonesia. After the Reformation era began in 1998, various socio-political movements, especially of young politicised people with a very great awareness, appeared in Indonesia. One can easily identify a stronger tendency of politi



cal movement, which is tied to grassroots issues.

In general, it can be concluded that these young people are fanatic supporters of Indonesian sovereignty, including the extractive industry sector. Very often young people refer to article 33 of 1945 (Constitution) Act, which handed over the governance of natural resources to the state, and their utilization for the maximum benefit of the people.

One of the presidential candidates in the 2009 elections, Yudhoyono, who was also an incumbent at that time, seemingly recognised the signs of the strengthening of nationalism and interventionism as an opposition to neoliberal-based policies. To capture young people politically, the Indonesian government under Yudhoyono then issued Mining Law 4/2009 on January 12, 2009; therefore 3 months before the Indonesian general elections on 9 April 2009. As a result, we know that the Democratic Party, the Yudhoyono-initiated political vehicle in the prelude of the 2004 election, became the winner of the 2009 election with 20.85% of the votes and conveyed him to the presidency for a second period in his life.

What happened after the issuance of the Mining Law 4/2009? All of a sudden, a very volatile response from many extractive companies in Indonesia emerged. Realizing the requirement in the years to come, many extractive companies wanted to maximize their chance before January 2014. This can be recognized from the rocketing production of nickel, iron, and bauxite in Indonesia as depicted in the graph of *Indonesian Minerals Production*. Copper is an exception, as the production decreased due to land expansion of PT Newmont Nusa Tenggara (NNT), one of the gold-copper giants in Indonesia.

PT NNT is one of the world's giant mineral companies headquartered in Denver, Colorado, USA. The company is engaged primarily in gold and copper mining. Besides Indonesia, Newmont has regional operations in the USA, Australia, Peru, Ghana, New Zealand, and Mexico. Annually, the company produces approximately 300,000 tonnes of copper concentrate in Indonesia.



Open cut mining in Indonesian forests. Foto H. Schuermann

Mining giants flex their muscles

The end of 2013 was a phase of negotiations between various interests. On the one hand, the Indonesian Government wanted to enforce the Mining Law 4/2009, while on the other hand extractive companies were not ready with smelters for refinery as mandated by the Mining Law 4/2009 and MEMR MR 20/2013. In early December 2013, in a statement quoted by the media, Chatib Basri looks optimistic into the future, stating that the government would be able to run the law. Notwithstanding this optimism it also transpired that the Minister does not really understand what is going on. At that time, none of the mining companies was ready for the enactment of Mining Law 4/2009, while they had only about 4 months to the deadline stipulated by it. In other words, it was impossible to build new mineral refinery plants in such a short period.

In his statement to the largest daily newspaper in the country, Kompas, Chatib said that there will be a shift in Indonesia's mining exports, stating that "processed minerals will be increased, so there will be a shift from unprocessed to processed". In the midst of December 2013, the Indonesian Government, through the Coordinating Minister of Economy, Hatta Rajasa, still showed confidence that they would be able

to implement Mining Law 4/2009. In a statement to the same paper, Hatta Rajasa, who was also nominated by the National Mandate Party as presidential candidate for the coming 2014 general election, confidently declared: "For us, it is important to be consistent running things."

However, at the same time the extraction companies seemed very aware of what was going on and knew that they will not likely meet what is included in the Mining Law 4/2009. In late September 2013, the company PT NNT even mentioned the option of closing their gold-copper mine in Batu Hijau, since the management recognised that they are not able to meet the regulations for building a smelter and therefore face a ban on exports of copper. Another objection came from the labour union of Freeport Indonesia (FI), which operates in Papua. FI is an affiliate of Freeport-McMoRan Copper & Gold Inc., based in Phoenix, Arizona, USA. The company is one of the largest copper producers in the world. In 2011 and 2012 Freeport sold about 1.7 million tonnes of copper concentrate annually.

In late December 2013, Virgo Solossa, the Chairman of the Workers Union (SPSI) in Mimika (Freeports mining district), was alarmed that if Mining Law 4/2009 is enacted, approximately 18,000 to 20,000 workers would be laid off. Facing such pressures, at the end of December 2013, the Indonesian government finally agreed to amend the regulations, resulting in the decrease of the minimum threshold concentration of commodities for export and the postponing of the obligation to build mineral refinery plants. This time Hatta Rajasa confessed that lobbyists from Freeport and Newmont had come to his office. "This is so tough. Many kinds of pressures," explained the minister briefly.

The amendment, according to the executive director of *Indonesian Resources Studies*, Marwan Batubara, very much deviated from what is mandated by article 170 of MEMR 20/2013. Marwan suspects that MEMR MR 1/2014, which allows the export of copper with a concentration of more than 15%, is the result of intensive lobbying by Freeport and Newmont. We also know that the sum of total copper concentrate production from these companies ($\pm 2,8$ million of tonnes per year) constitutes 97% of the Indonesian copper production.

Hence, based on the above-mentioned analysis, one can easily conclude that the issuance of GR 1/2014 and its daughter rules is aimed at accommodating the interests of giant extractive companies, and not intended for the sake of the Indonesian people, let alone the protection of the environment.

The author

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