Mining in Indonesia – how to get involved in a responsible way

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Case-Study, prepared for the Guilé Young Leadership Training Seminar

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The original case (Indo Muro Kencana) was reported by two NGOs from Indonesia (Wahana Lingkungan Hidup Indonesia-WALHI) and Australia (Oxfam Community Aid Abroad-OCAA).

The Indonesian government and RM Trading Corp., a middle-size company based in Switzerland and active in mining and trading raw materials (hereafter referred to as RM), are about to sign an agreement that will grant the company gold mining rights in Central Borneo. The project was pending since 1999; negotiations had indeed been pursued by RM on a low-intensity scale in recent years due to uncertain political and economic prospects in Indonesia. However, in view of the stabilization achieved in the pas few years, and given the interesting potential for the mining industry in Borneo, exploiting these resources has become worthwhile again in the eyes of several transnational corporations active in the field.

From a geographical perspective, Borneo (also called Kalimantan) is the largest island of Indonesia (though the northern part belongs to Malaysia), and is particularly rich in energy and mineral resources (see the map and table in appendix I). The Indonesian part of the island is divided into 4 provinces. Compared to the other provinces, Central Borneo (Kalimantan Tengah) has poorer infrastructure and is relatively new to high-tech mining despite its rich resource potential.

From a social perspective, the region is characterized by co-existing religious communities with basic value systems differing to a certain extent, creating a system of multi-layered identities and loyalties among the population, including ethnic, religious and national affiliations. On the religious level, Christianity, Islam and folk religion are equally influential. The local indigenous tribe are the 'Dayak'.

The major concerns of RM Trading Corp. were the following:

- The exploration area targeted in Central Borneo is populated by local people who had been extracting gold from the field in a small scale and in a traditional way. Although profits from this traditional way of mining are low and although RM expressed willingness to hire the local population in a preferential manner, it has become increasingly clear that a high amount of local resistance is to be expected, in particular because RM's targeted exploration area covers not only the local mining field, but also residential and farming sectors.

- The number of interlocutors RM has had to deal with over the past years is considerably high. Besides government officials on all levels (national, regional and local), negotiations have included local leaders, as RM was keen to avoid social conflicts by attaching due importance to these concerns from the very outset of the planning process. However, in the negotiation process, reconciliating the different points of view ranging from an affirmation of a willingness to cooperate, to a call to fierce resistance to all activities envisaged by RM in the region, proved difficult.

- In order to better deal with the difficult and culturally challenging negotiation process, RM decided two years ago to found a local representation in charge of carrying out the negotiations as well as of preparing agreements and declarations of intent with official and local bodies. As a middle-size company active in many countries, RM was unable to guarantee a tight follow-up of the local developments, and was thus forced to rely heavily on trust and mutual understanding with the Indonesian negotiator appointed for this project.

- Indonesia is a centralized country with a very powerful central government. Yet, the Post-Suharto era (after 1998) has been marked by a strong decentralization process. In the mining industry sector, this process has led in some cases to difficulties with regard to arrangements and profit sharing between the mining industry representatives and the local stakeholders, in particular the local governments. These often demand larger portions of the benefits, or at least require additional negotiation compared to what was common standard in the past. Some corporations have experienced this situation as a major challenge to establishing trustful and sustainable partnerships.

- RM decision-makers have been feeling more and more urgently the need that their local representative be familiar with these various challenges and with the stringency of the various loyalties local government representatives (for instance) may act upon. This local representative was to take into account the functioning of the local institutions including local government and to treat them as part of the company's stakeholders, although the initial negotiation may be with the central government. However, the fact that the relationship between the central and the local governments was not always well managed added potential for misunderstanding. The same could also be said of the relationship between the local government and the people.

- For all its activities, RM recently adopted a clear ethical standard formulated in a Code of Conduct (see appendix II). RM's local representative had to formally commit himself to the standards emphasized in the Code of Conduct. However, ensuring compliance with these rules of conduct is an issue, since the temptation is high to take pragmatic approaches in dealing with state officials. It is a general feature of the Post-Suharto era, that people and the media are far more sensitive to the precise kind of practices and relationships established between government and the corporations, yielding a more critical outlook towards the nature of involvement especially of transnational corporations among the local populations. On the other hand, in the wake of the present global competition between countries to attract investors – in which Indonesia plays an active role given its high potential in natural resources and cheap workforce –, the bargaining power of the transnational corporations is getting stronger, enabling them to push the state officials to leave behind traditions of bribery and over-bureaucracy.

During the RM negotiation period, in another region of Indonesia, an Australian-owned mining company (IMK) in a similar situation experienced major political and local resistance leading to a civil-society uprising that created great reputation risks for the company. In the wake of the events described below, mistrust and critical awareness against RM are, thus, at a highest level, although the precise facts about IMK's case remained highly controversial:

IMK and Indonesia's central government signed an agreement on the exploration of a mining area in the southern Borneo region. In a similar way as it was presented to RM, the corresponding region was explored by the local people, who claimed traditional property rights to the soil and its resources. Claiming exclusive rights to the area based on the legal contract with the central government, IMK started its project by first 'clearing up' the area. This included removing locals from their workplaces and homes without any compensation, since the mining activities carried out by the local people were considered illegal. The 'clearing up' process involved the deployment of an armed police brigade provided by the central government.

Although the police were able to force locals to stop working in the field, the tension with the company never decreased. Conflicts between the two parties led to an incident where 2 persons were shot dead by the police. In 2001 and 2002, more people were injured. In reaction to the incidents, locals blocked the access to the mining field and to the processing factory.

The conflicts attracted society groups, as well as national and international NGOs and civil-rights movements. Media coverage of the incidents and of the Australian company's other mining activities was considerable. Lawyers were taking action in favor of the local population and against the contract binding IMK and the central government. With the help of civil society organizations, the case was brought to the attention of the Australian government and then to the Indonesian state court. Attempts to mediation (especially by one prominent NGO) failed. A group of lawyers was formed in order to represent the people in bringing the case to the court. The complaints of the local people included:

- The expelling from their lands and houses without compensation.
- The loss of job and economic resources including farming production and small scale mining works, also without compensation.
- The damage of mining equipments owned by the local people.
- The ongoing environmental destruction.
- The intimidation, harassment, terror and even killing of unarmed civilians by the security officers living in the mining area.

The lawyers believed that the company violated legal principles, including ILO Convention 169, Civil Rights Law verse 1365, Letter of Contract between the government and the company, and the local customary law.

The company ignored those complaints, admitting no responsibility for the police's actions. However, NGOs found that the company did support and provide food, accommodation, as well as rewards to the police. Australian ambassador Richard Smith urged the Indonesian government to take action and overcome the security problem in the area, as a proof of the government's promise to treat investors in a friendlier way.

> In the Indonesian court, the case was rejected. Some NGOs claimed that IMK had not refrained from using formal and informal methods of bribery in order to establish the contract providing such favorable conditions.

- Facing this precedent, RM had to carefully take into account the risks to reputation and the potential damage to other activities in Indonesia and other Asian countries in which the company was involved. Contacts established with IMK on this issue, however, confirmed that one of the major challenges IMK was facing prior to these events were unclear agreements, especially with the local authorities whose respective understanding of the legal documents established with the central government differed significantly from one to the other.

- RM officials gave particular attention to the issue of security. After dubious experiences with private security companies in other areas, RM decided to rely on the governmental security provisions. However, recent cases including IMK's experience lead RM to doubt about the integrity of the local police forces. In Indonesia, officers of private security firms are normally retired military and police officers (low-rank officers are usually retired at the rather young age of 48). Those with other backgrounds are often trained by professionals of the military or police academy. The picture, thus, is not so much that of a competition between private security firms and the regular police forces, but the security sector – and the population – suffer rather from a blurred distinction between private and public security providers, which enhances uncertainties and distrust among the local population. Similarly, large corporations often ask the police or a military institution (against informal honoraria) to provide help with regard to security matters.

- RM identified uncertainty about the tensions between the legal contracts established with governmental agencies and the property rights of the local people as a major challenge. A tension between the legal provisions of Indonesian law and customary and traditional law on the local and regional levels turned out to be a crucial issue. RM's local representatives asserted that they were aware of this challenge and insisted on being able to deal with those factors. However, the RM officials were finally unable to double-check whether the arrangements really corresponded to the level of certainty needed in order to rely on the contracts established.

- An independent, low-scale investigation commanded by the local RM representative confirmed that the charges against IMK of having used financial incentives for the advancement of their case were not to be discarded entirely. But it was also reported that this was customary for a wide range of international corporations willing to achieve ambitious projects in the Indonesian setting.

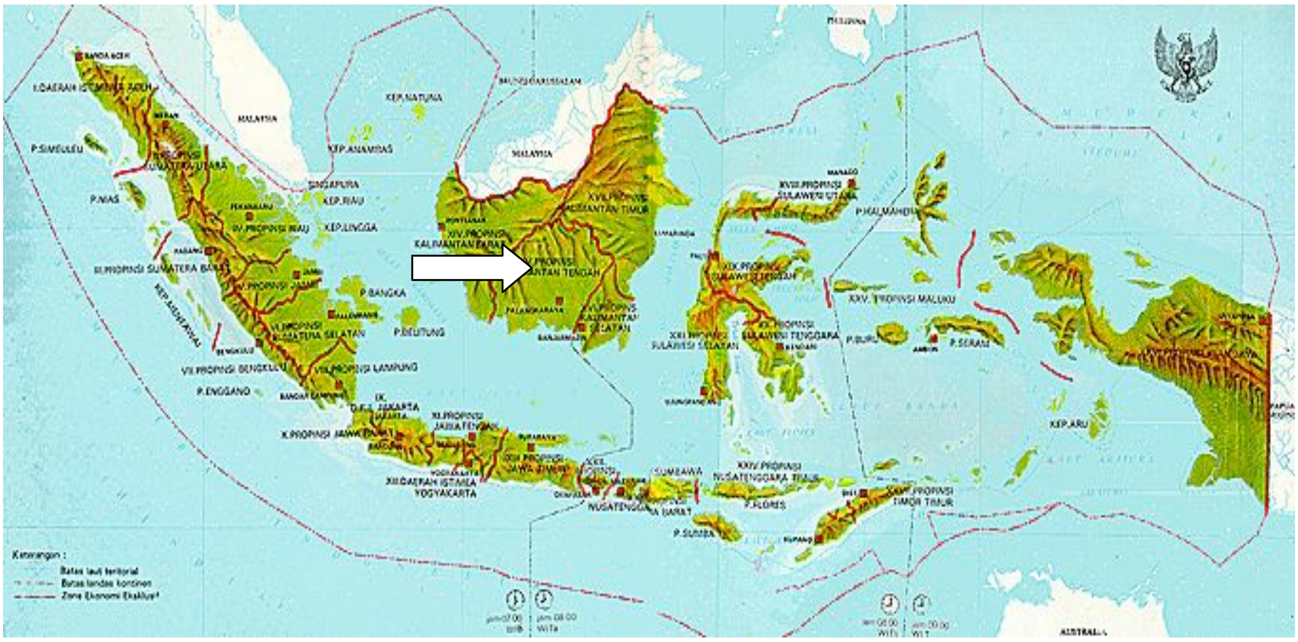
- In a general sense, the degree of corruption in Indonesia is very high, involving almost every area of life and every sector of government, both central and local. According to all recent surveys, Indonesia ranks among the most corrupt countries in the world and in this regard is one of the most striking examples in East Asia (see Appendix III). The present president, however, Susilo Bambang Yudhoyono, has demonstrated a strong commitment to fight corruption, and there have been quite many governors and regents (heads of counties) who are sentenced to jail. At the moment, the regent of Kutai Kertanegara (the richest county in Kalimantan) is in detention for investigation by the Commission for Combating Corruption (KPK). Cooperation in the anti-corruption action initiated by the government has recently become an important reputation parameter for corporations active in Indonesia, in particular for multinational companies. Taking such a stance can thus be regarded as a form of investment that would, in the long run, produce benefits for all parties including the corporations themselves. All the more, therefore, foreign investors will have to be cautious when they deal with local firms offering partnership, particularly if those firms are parts of or related to holding companies that belong to the family of state officials.

RM is crucially interested in finalizing the arrangement and getting the final go-ahead for starting its operations in Central Borneo. The following questions, however, are to be addressed by the company officials:

- *How should the instances of the company proceed in this situation in order to obtain a reliable "license to operate"?*
- *How should RM proceed to establish trustful relationships with the local population, and to which extent should it consider local and regional NGOs as stakeholders (both for prudential and for moral reasons)?*
- *What kind of arrangements would the company have to seek after, allowing for a sustainable implementation of its ethical commitments?*
- *Which aspect of its CSR policy should the company specifically focus on?*

Appendix I

Map of Central Kalimantan (Borneo)



Mineral Resources Potentials in Central Kalimantan (Borneo) 2002

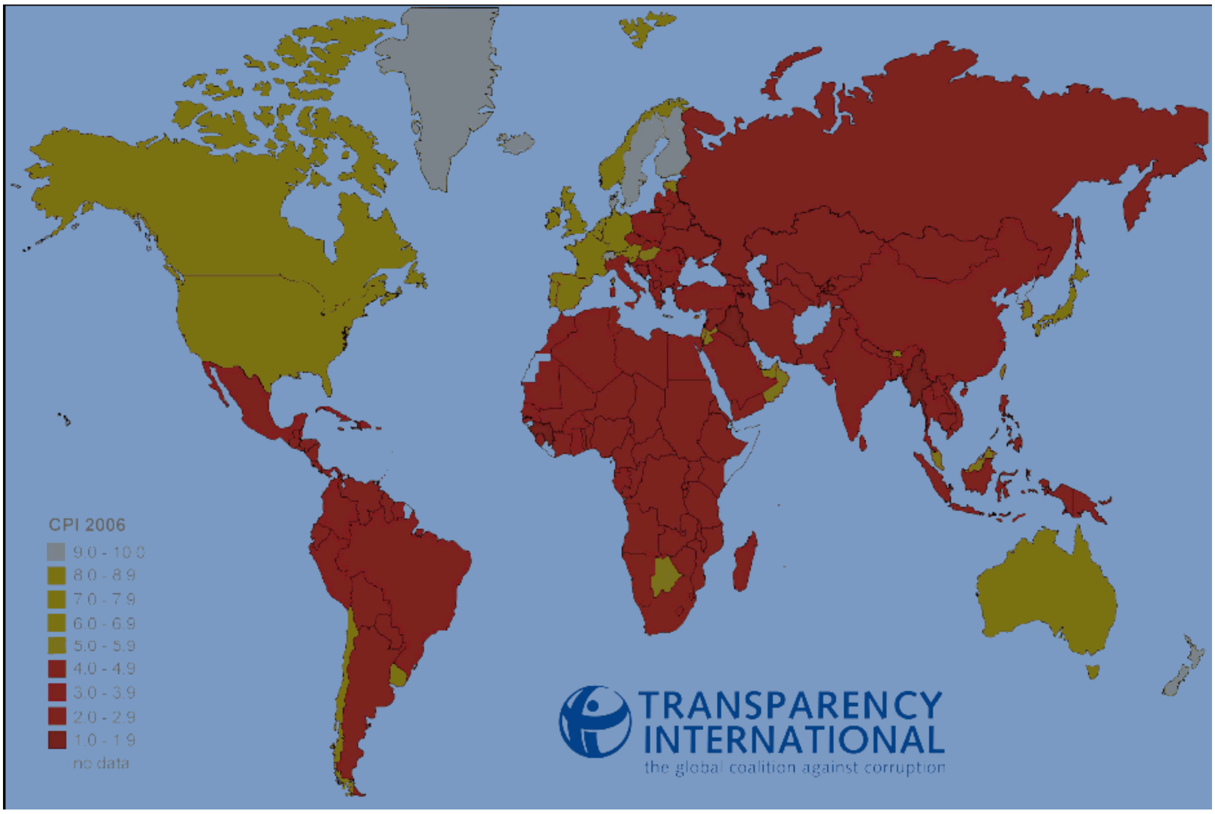
Coal	1,384,374,170 metric tons
Gold	42,741,700 grams
Kaolin	6,426,439,000 m^3
Granite	13,272,411,000 m^3
Andesit	8,099,094,000 m^3

Appendix III

Corruption in Indonesia

Global Corruption Perception Index 2006: World Map

The figures relate to perceptions of the degree of corruption as seen by business people and country analysts, and ranges between 10 (highly clean) and 0 (highly corrupt).



Source: http://www.transparency.org/policy_research/surveys_indices/cpi/2006