

Extractive Industry, Policy Innovations and Civil Society Movement in Southeast Asia

An Introduction

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**Extractive Industry, Policy Innovations
and Civil Society Movement in Southeast Asia: An Introduction.**

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Preface

Good governance in extractive industries (EI) and natural resources has played an important role in development, particularly for economic and social welfare. A lack of good governance can potentially lead to asymmetric information, high economic costs, and corruption. It also has critical impact on environmental damage, social conflict, and can even potentially fuel human right violations. This is particularly true in the case of EI, which mostly deals with un-renewable resources that are rarely managed through good and appropriate governance.

Greg Bankoff and Peter Boomgaard (2007), in their chapter “Introduction: Natural Resources and The Shape of Asian History”, write that forest products, minerals, and fish were in principle “free gifts of nature” in the sense that, until powerful individuals or states claimed residual rights regarding their exploitation, they were there for the taking. However, people first had to find a use for them. Resources are, as previously noted, a social construct after all.” Thus, the state is needed to regulate and redistributed the benefits of natural resources to the people.

Southeast Asia, with its abundance of extractive resources—both in reserve and in exploitation—is faced by interlinked and mutually influential challenges of good governance: transparency, accountability, public participation, rule of law and quality regulation, and political stability. These challenges are also important in addressing critical problems of natural resource management, including transforming extractive abundance into welfare and avoiding what economic scientists term ‘the resource curse’ (Auty, 1999). With strong collaboration, trust building, and consistent socio-political economic policy reform along the comprehensive extractive value chain, there is space and opportunity for improving natural resource governance.

Civil society plays an important role in development, and Publish What You Pay is one global movement calling for higher transparency and accountability standards along the EI value chain. ‘Chain for Change’, decided at the Amsterdam Global Assembly Meeting, has figured into the Vision 20/20 Strategy of the global Publish What You Pay movement. As the framework for its global advocacy, Publish What You Pay holds to three main pillars: (1) *publish why you pay and how you extract* (emphasizing good governance in the decision to extract and encouraging good mining practices and social environmental standards); (2) *publish what you pay* (pushing for greater tax and revenue transparency, including the implementation of EITI standards), and (3) *publish what you earn and how you spend* (ensuring proper revenue management for social welfare and sustainable development). Two further pillars

are oriented predominantly to managing the coalition and its development of knowledge and accountable management: *publish what you learn* and *practice what you preach*.

This book is specially dedicated as part of the ‘publish what you learn’ spirit. It is intended to share policy innovations, lesson learnt, and best practices in EI governance reform in Southeast Asia, with a focus on activities designed, facilitated and endorsed by civil society movements. This book covers experiences in EI governance over all three pillars, from the decision to extract to management of EI revenue. Most of the writer are practitioners, NGO activists, or academics.

We thank the writers for their valuable contributions, as well as the reviewers, management team, and creative and publishing team. For its help brainstorming ideas and writing case studies, our gratitude goes to the Aspac Hub working team of the Department of Politics and Government, Universitas Gadjah Mada. We would also like to thank the Natural Resource Governance Institute for its support, as well as the great civil society networks actively dealing with EI in the Asia Pacific Region.

Jakarta, 30 January 2016.

Maryati Abdullah

National Coordinator,

Publish What You Pay Indonesia

Bringing the Political Side of Extractive Industry to the Forefront

I am very pleased to provide the introductory remarks to this book, the basic message of which is that extractive industries are highly political. After reading this book, you will no longer subscribe to the conventional understanding that extractive industries are purely—exclusively—economic affairs. Rather, they are political because they typically link non-industrial or pre-industrial countries with highly industrial ones. Extractive industries have been a hot issue in the global governance debate. Under this banner, industrialized countries have established a global regime, including governance monitoring schemes, which non-industrial and industrializing countries have inevitably been demanded to follow.

Within resource-rich non-industrial countries, extractive industries draw the elites into core decision-making. Their ability to control the money from the extraction and to use high technology renders their activities beyond the reach

of the public. At issue here is not only the vulnerability of this process to corruption, but also the need to ensure that natural resources extracted from the earth are transformed into the greatest wealth for the people. At issue here is the need to ensure that the embedded risk is 'equally' distributed.

This book does not cover everything on that political spectrum. It shares ideas and experiences in advocacy which works to ensure that wealth and risk are reasonably distributed. More importantly, this book shares innovative ideas on how to come to terms with the politics of extractive industries.

At a practical level, the book indicates the primacy of politically motivated exercises involving university lecturers and civil society activists. My greatest gratitude goes to my colleagues at Publish What You Pay (PWYP) for their stimulating collaboration. As part of the Board of Expert in Aspacub, where the book has been prepared, I would also like to express my gratitude to the authors.

Yogyakarta, Februari 2016

Prof. Purwo Santoso

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Extractive Industry, Policy Innovations, and Civil Society Movement in Southeast Asia: An Introduction

Amalinda Savirani, Hasrul Hanif, and Poppy S. Winanti

Over the last few decades, there has been a global initiative from civil society movements to overcome the ‘resource curse’ in the extractive industry (EI) sector. The term ‘resource curse’ refers to the ‘paradox of the plenty’ in which countries rich with natural resources (such as oil, gas, and minerals) are often economically poor. All too often natural endowment impedes, rather than promotes, sustainable development (Humphreys, Sachs, and Stiglitz, 2007:1). Resources thus become a ‘curse’ with a negative impact on development and governance.

This global initiative consists of a variety of actors from various disciplines, including international finance, accounting, law, and the ‘classical’ element of civil society:

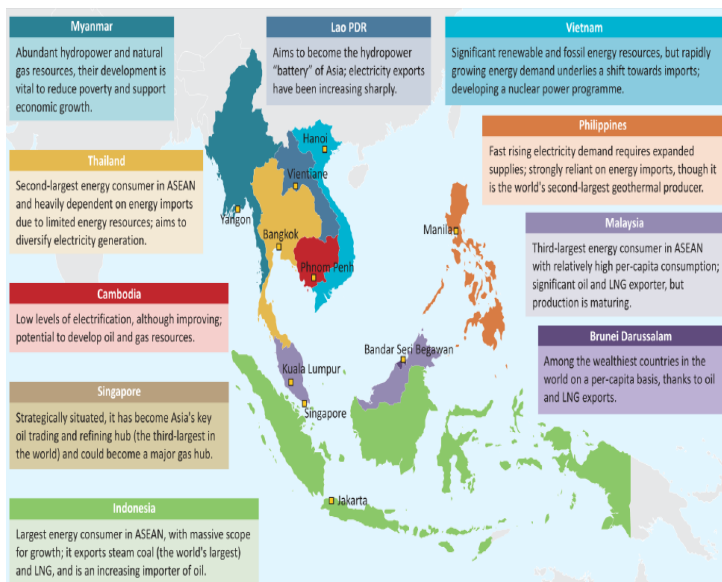
social movements. These actors have been engaging in various governance reforms or innovative policy initiatives intended to overcome the resource curse, and appear to be scrambling to establish initiatives such as Extractive Industries Transparency Initiative (EITI), Natural Resource Funds, local content, multi-stakeholders groups, etc., which to varying degrees and extents build up the idea of a latent or extant resource curse and the need for assistance in ‘good governance’ reform (cf. Bourgouin and Haarstad, 2013: 87).

Demands for transparency and accountability in the EI sector, especially in revenue management, have increased and reached new leverage— including in Southeast Asia. Good policy and democratic governance truly matters in overcoming the resource curse (see Ross, 2012), and proponents of transparency and accountability believe that they will be key points or crucial pathways for achieving sound institutions in this sector. If the resource curse occurs because of ignorance and ‘poor choices’ caused by secrecy, asymmetrical information, and weak planning, the need for transparency and accountability is unavoidable. It is difficult to make a ‘good choice’ without accountability (as the result of participation and transparency) (c.f. Barma, Kaiser, Le and Viñuela, 2012, 4–6).

The rise in demand for participation and transparency is reasonable, as Southeast Asia remains one of most resource-rich regions in the world (see Figure 1.1.) with rising energy demands and consumption. According to the International Energy Agency’s “Southeast Asia Energy Outlook” (2013:16), the centre of gravity of the global energy system is shifting

towards Asia. Together with China and India, this includes the ten countries of the Association of Southeast Asian Nations (ASEAN): Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. An economic revival, coupled with ongoing urbanisation and industrialisation, has led to brisk growth in the use of energy in ASEAN, following the sharp slump in energy consumption caused by the Asian Financial Crisis of 1997–1998. The growth in energy demand has continued even through the more recent global economic crisis. In 2011, the primary energy demand of all ASEAN nations was around 550 million tonnes of oil equivalent (Mtoe), 4.2% of global demand.

Figure 1.1. Energy in the Asean region



Source: IEA, 2013:17

The importance of transparency in promoting accountability and good governance, particularly in relation to the EI sector, is related to considerable funds involved in the sector. Presently, there are strong incentives for corruption, high entry costs, patronage systems, technological complexity in resource development, complex revenue accounting, and a tradition of secrecy in this investment-protected sector. Transparency and accountability are critical for the efficient management of natural resource revenues. According to EI Source Book of good-fit practice activities in the international oil, gas, and mining industries, transparency would limit opportunities for the misuse of power and corruption, while accountability would ensure that those entrusted with the management of public resources are held accountable for their actions or inactions.

As such, this book is intended to document various Asia Pacific Publish What You Pay (PWYP) advocacy network efforts towards enhancing transparency and accountability (among others) in Indonesia and neighbouring countries in Southeast Asia. Documenting and publishing these works is important for several reasons. First is the need to broaden alliances and thus increase the leverage of those demanding reform in Southeast Asia. Second is the need to facilitate dialogue among relevant stakeholders and crucial communities. Third is the need for capacity building so that local actors can critically engage and monitor the government and companies.

Since EI is a complex sector, requiring people with different backgrounds, disciplines, and concerns who can

work in multi-tier governance, a collaborative engagement to build a strong reform coalition with larger proponents is necessary. This publication aims to focus the concern of civil society organisations, academics, and government officers on revenue issues, socio-environmental impacts, and human rights abuses.

Moreover, horizontal learning among the advocates at the regional level is needed. No policy reforms work in a 'vacuum' area. The success or failure of reform is caused not merely by actors, but also the opportunity for structural changes. Since many advocates of EI governance reform in Southeast Asia work in similar political and social contexts, under either authoritarian or democratic-decentralistic political regimes, horizontal learning among them is crucial. The policy network and learning does not only tighten their power to pressure and influence others, but gives them the opportunity to share their experiences with effective policy advocacy.

Last but not least is experience sharing between 'senior' and 'junior' countries, namely countries which experienced an oil boom between the 1970s and 1980s, and countries whose oil reserves were just recently discovered. Through experience sharing among these countries, new EI governance will facilitate a horizontal learning process to prevent the resource curse from occurring in these new-oil countries. In the case of Southeast Asia, countries such as Indonesia and Malaysia can be considered 'senior' countries owing to their long experiences with the EI (especially oil and gas) sector, whereas Myanmar, Cambodia, and Timor-

Leste, can be considered 'junior' ones who have just begun extraction. 'Senior' countries sharing experiences with their 'juniors' and identifying lessons learnt will hopefully provide insight in managing better EI governance. The experiences of democratic countries such as Indonesia and Timor-Leste also will enrich policy learning aspects of resource management.

New precedence and new values

At the global and regional level, active public participation and the practice of transparency and accountability in EI are new values. This is true, at least, if we compare the current situation with that of the 1970s and 1980s, when many countries rich in natural resources (mainly oil) experienced an 'oil boom'; oil prices doubled, providing considerable cash for existing political regimes while public involvement remained minimal. As such, there is no information as to how much money different countries obtained, how such money was spent, and to what extent it benefitted the public or remained in the hand of the few. Though NGOs existed at the time, the undemocratic political climate of the regime meant their activities were confined to charity and philanthropy, or non-political development issues. This is at least true in Indonesia (Robison 1982), Nigeria (Lewis 2001), and Venezuela (Karl 1987).

The new global values of public participation, transparency, and accountability can be traced to three main aspects. *First*, a shift of donor agencies' orientation in development agenda (including aid), as they no longer simply provide money but to control and monitor how money is

spent; *second*, a wave of democratization in developing countries, including a shift in political regimes and the emergence of vibrant civil society; *third*, consolidation of global EI actors and networks. All three elements will be discussed below.

Shift of orientation among donor agencies

The World Bank adapted Structural Adjustment Programmes (SAPs) in the 1980s. These programs consisted of loans provided by the IMF and World Bank to countries experiencing an economic crisis, mainly in Africa. Apart from loans, the program determined both internal changes, mainly related to privatization and deregulation, and external changes, namely the removal of trade barriers. Basically, SAPs worked to establish market friendly policies with an aim of poverty reduction. Recipient countries' roles have been minimal, let alone an ownership of the programme. Much criticism has been levied against the programmes, including the charge that poverty rate has not changed, but rather become worse. Critics have also argued that, rather than addressing economic problems, SAPs facilitated the consolidation of political power; in many parts of sub-Saharan Africa, political instability has increased as the economy has weakened.

In 2002, the SAPs were transformed into Poverty Reduction Programs (PRPs), which stressed recipient countries' ownership of the programs. In the late 1980s, around the same time criticism of SAPs permeated global discussion, the World Bank first began addressing the

issue of governance, mainly targeting reform of the civil service sector (Wood 2005: 3). Governance is basically “the manner in which power is exercised in the management of a country’s economic and social resources for development”. Furthermore, “governance is about how decisions are made, how they are executed, who is accountable for decisions taken and how they are held to account”. As such, for the Bank, governance is closely tied to the concepts of ‘effectiveness’ and ‘efficiency’ (Wood 2005: 5). There is also a standard of governance considered supportive for poverty reduction programs, called ‘good governance’, which is “epitomized by predictable, open and enlightened policy-making, a bureaucracy imbued with a professional ethos acting in furtherance of the public good, the rule of law, transparent processes, and a strong civil society participating in public affairs. Poor governance (on the other hand) is characterized by arbitrary policy making, unaccountable bureaucracies, unenforced or unjust legal systems, the abuse of executive power, a civil society unengaged in public life, and widespread corruption.” (*Ibid.*).

The inclusion of governance in the new framework of donor agencies such as the World Bank has led to new methods of delivering assistance to developing nations. This requires transparency, accountability, strong civil society, and participation in public affairs. This is the basis for the increased popularity of these new values, which have become controlling principles in the public sector, including in the EI. Few official talks have neglected to mention these new values, which have now become global ones.

The wave of democratization

In the 1970s and 1980s, countries in Africa, Asia and Latin America were controlled by military regimes, meaning that a select few controlled the country and repressed ordinary citizens' political roles. The extractive sector was predominantly controlled by the military elite. Crude oil was Indonesia's main economic resource between the 1960s and 1980s. The country became an OPEC member in December 1962, and the OPEC price hikes of 1973–1974 produced a windfall contribution to national revenue which recast the scale and the structure of the Indonesian economy. The country's GDP doubled in the 1970s and again in 1980s; the country had stable 7% economic growth in the 1970s and 1980s. This windfall was accompanied not only by the 'Dutch Disease' but also institutional problems such as poor financial oversight, wasteful expenditures, growing debt, and heightened corruption (Lewis 2001: 60).

These institutional problems emerged partly due to Indonesia's political regime of 'bureaucratic polity'. In said regime type, state actors dominated the entire process of policymaking and provided no space for non-state actors, including civil society. Military officers were the regime's key actors. The state-owned oil company Pertamina was first led by a military officer with a nationalist orientation. After the company went bankrupt in 1975, technocrats began to take over the military's roles (Seda 2005). Under both types of leadership (military and technocratic), public participation remained lacking. Leaders were accountable directly to the President, and were not required to submit

a report to parliament, let alone disseminate it among the populace. Pertamina became an authoritarian conglomerate with unlimited authority (Seda 2005: 180).

In 1998, General Soeharto was ushered from power by student movements backed by elite factions, and Indonesia entered the democratization era. Various means of public participation was installed, including providing a role to civil society. In the early 2000s, when the World Bank assisted Indonesia in its economic problems, the bank set the condition that good governance norms, including accountability, transparency and public participation, were required in all reforms that Indonesia was to undergo. Ever since, public participation, accountability, and transparency have become part of public sector norms. This, thus, has become the basis for Indonesian's participation in global initiatives on the EI sector, including Publish What You Pay and EITI (both discussed below).

A relatively similar situation occurred in Nigeria, another country with rich oil reserves. Though these reserves were discovered in 1956, the first commercial exploration was conducted in 1960s. Exploitation of these reserves became commercially significant in the early 1970s; these efforts were spearheaded by American companies. Today Nigeria is the twelfth largest oil producer in the world, holding the world's tenth largest proven oil reserves. Oil contributes 40% of Nigerian GDP and 80% of Government earnings. Because of the oil industry, the Nigerian economy is the largest in Africa according to the IMF, surpassing South Africa in 2014.

Postcolonial political regimes in Africa have specific features: they are authoritarian, absolutist, personalistic, corporatist, hegemonical, and patrimonial (Ikelegbe 2001: 1). This includes Nigeria, where military officers have controlled the country under one regime or another since British colonial forces left in 1960 (Lewis 2001: 57).

Before the SAPs were implemented in Nigeria in the 1970s, civil society organizations were weak. However, after the SAPs, they have grown despite hardship and discontent with its ruling regimes. The country has also been linked to a struggle for civic rights and democratisation despite widespread state repression; the democratisation process was accelerated when General Abubakar assumed office in 1998 (Ikelegbe 2001: 1).

Consolidation of global actors on extractive industry sector

The shift of political regimes in ‘old’ oil producing countries was part of global trend towards democratization. It occurred when six London-based NGOs—Oxfam, Save the Children, Transparency International (TI), Open Society Institute (OSI), CAFOD, and Global Witness—established a new initiative, Publish What You Pay (PWYP). These six NGOs do not work exclusively on the issue of transparency, but on various issues related to development. They seem to have the conclusion that the major issue faced by development is not the amount of funds being poured into developing countries, but rather how the development budget is managed and whether or not it is managed transparently. Additionally, there

has been a tendency for resource-rich areas to experience high poverty rates, a phenomenon called the ‘irony of the plenty’ or ‘resource curse’. As such, this initiative, which is being implemented in the resource sector, including oil, gas and mining industries, appears to be an extension of ‘good governance’ norms such as participation, accountability and transparency.

In September 2002, at the same PWYP was established, Prime Minister of the United Kingdom Tony Blair officially launched the Extractive Industry and Transparency Initiative (EITI), “a global effort to apply the theory that providing citizens with information about the workings of powerful institutions—in this case, the payment of revenues to governments by oil, gas and mining companies—can empower them to better influence the actions of these institutions in the public interest” (O’Sullivan 2013: 1). The United Kingdom government was followed two years later by the European Union Parliament, which adapted what they termed the ‘Transparency Directive’: a set of minimum disclosure requirements for companies listed in the European Union which encourages payment disclosure by countries with EI. Four years later, in 2008, a United Nations resolution highlighted resources transparency and EITI. Later, in 2010, in the spirit of transparency in public sector and facing difficulties with the economic sector in the United States, the administration of President Barack Obama launched the Dodd–Frank Act, or the Dodd–Frank Wall Street Reform and Consumer Protection Act. The act was intended to protect American tax payers from abusive

financial service practices. It does not exclusively deal with the oil, gas and mining sectors, but is rather an attempt to improve financial sector accountability by pushing for a more transparent system.

Ever since, the push for transparency and accountability in the EI sector has become a global movement. The number of PWYP affiliated member around the world has doubled, and EITI membership has grown considerably, reaching forty member countries in 2013 (O'Sullivan 2013: 5). According to O'Sullivan (2013), EITI reports are designed to show how much revenue has been paid to the state; this opens other questions and influences the way in which revenues are earned and used. By knowing how much has been paid, basic information such as scale of fluctuations in a state's income as world commodity prices rise and fall (which has big repercussions for budget planning), and the types of revenue, which provide most income to the state.

The establishment of the Revenue Watch Institute (RWI) in 2002, which later became the Natural Resources Governance Institute (NRGI), has strengthens the movement in its dealings with EI. The institute provides substantial economic, legal and financial capacity building, as well as civil society movement strategies.

Southeast Asia is part of this global movement. Two of the seven countries in the region are candidates for designation as an EITI compliance country (Myanmar and the Philippines); While Indonesia's membership reached compliant status in the end of 2014.

About this book

The main questions to be addressed regarding civil society engagement in extractive industry governance are: How do they engage and through what mechanisms? Which actors play significant roles in this process? What are the results of their engagement? Do these results take the form of new legislation at the local or national levels, or are they inserted into existing legislation? Do these results take the form of a regional framework which deals specifically with natural resource governance, or do they take a different form? To answer these questions, this book is divided into two parts, discussing two main aspects of civil society engagement in governing EI, specifically the engagement process and the results of the movement. The first part of this book focuses mainly on discussing cases which reflect the engagement process, whereas the second part of this book primarily assesses the results of sample movements. It should be noted that, to better understand civic engagement in EI governance, the cases presented in this book also depict civil society experiences at the local, national and transnational levels.

Chapter 1 discusses civil society engagement on a bottom-up process in Samarinda, the capital city of East Kalimantan, Indonesia. This chapter explores the success story of one civil society alliance, the “Samarinda Accuses Movement” or Gerakan Samarinda Menggugat (GSM), which in 2014 filed a “Citizen Lawsuit” (CLS) against the local government of Samarinda over the deteriorative impact of mining exploration. This case shows how consolidated

civil society organizations can be successful in advocating policies in the EI sector as long as they are united within and with a strong network of social leaders and law makers. This chapter also reveals the harmful impact of the sector on the lives of the people of Samarinda; the magnitude of the problems led people to ally together and fight the EI.

Chapter 2 and 3 present two cases which reflect the process of civic engagement in EI at a national level. Chapter 2 discusses the socio-political background of Cambodia's oil and gas development, particularly its struggle against a patronage political dynasty. This chapter also conveys and explores the government's effort, with the support of NGOs, to push for transparency and people's participation within EI development. As such, this chapter provides a comprehensive explanation of Cambodia's experience in preparing itself in the early stages of EI development to avoid the resource curse.

Chapter 3, meanwhile, discusses Indonesian civil society's experiences in promoting transparency through a nation-wide campaign to ensure Indonesia becomes an Extractive Industries Transparency Initiative (EITI)-compliant country. Indonesia has shown a commitment to promote transparency by announcing its commitment to implement EITI in 2009 and by issuing Presidential Regulation No 26/2010 on Transparency of National and Local Revenue from Extractive Industry to govern EITI implementation in Indonesia. Though Indonesia is still unable to fulfill its obligations as EITI compliant country, this chapter shows that considerable efforts have been made by

civil society, which has been actively involved in the process at different levels of government since the beginning. Civil society remains keen to advocate transparency improvement for all types of EI.

In addition to the national and local levels, civic engagement can also be seen in the transnational arena. Chapter 4 focuses on the roles and potentials of transnational civic engagement for domestic policy change through concerted action in promoting and advocating common issues at a regional level, in this case ASEAN. Through the work of these transnational networks, some Southeast Asian countries such as Timor-Leste, Indonesia, the Philippines, and Myanmar have been encouraged to adopt and comply with the global new norms of Open Government Partnership (OGP) and EITI in the EI sector. Despite broadly varying permutations in each country owing to their individual political and socio-cultural contexts, some proponents for the adoption of transparency in EI in these countries have managed to push their respective government to adopt transparency initiatives as part of their EI policies. More interestingly, these networks of CSOs have not limited their advocacy activities to the formal adoption of transparency in EI in their respective countries, but have also engaged in various cross borders activities advocating the formal adoption of this framework at the regional level. In short, this concerted action among civil society elements in Southeast Asian countries implies commonly-shared knowledge among the involved parties. This commonly-shared knowledge serves as a common reference and guiding framework among

involved parties which should be continuously re-examined and adjusted based on experiences in its application in involved parties' respective countries.

The second part of this book, consisting of two chapters, examines the results of the movement. Chapter 5 examines the results of the movement at a local level by examining Nanggroe Aceh Darussalam, a natural resource-rich area in Indonesia. Since 2001, Aceh has received the status Special Autonomy Region, which has significant implications for the future of the Acehnese people. Since 2006, Aceh has been granted special rights, taking the form of additional funds allocated from national budget—particularly from oil and gas revenues. The chapter then focuses on how the local government allocates this oil and gas revenue for local communities.

The final chapter, Chapter 6, discusses the urgent need to establish EI framework in ASEAN. Despite its vast resources, ASEAN member countries encounter a gap in governance and institutional problem while managing their natural resources. Poor accountability and government transparency have been compounded by rampant corruption in the EI sector throughout Southeast Asian. In this regard, therefore, to ensure that natural resource extraction benefits the people of ASEAN, the framework should both address problems related to the extraction process and actively promote and protect rights-based access to resources, thus respecting indigenous land rights and promoting people's sovereignty over food, energy, forests, fisheries, land, water, and sustainable farming practices. Under such a framework, large and transnational corporations must be compelled

to protect human rights and adhere to international and national environmental human right standards and conventions.

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Part I

The Citizen Law Suit in Samarinda, East Kalimantan, Indonesia

Carolus Tuah and Amin Sudarsono

This chapter explores a civil society alliance success story in Samarinda, East Kalimantan. In this case, the “Samarinda People’s Movement” or Gerakan Samarinda Menggugat (GSM) prepared a citizen suit against the Samarinda municipal government and the deleterious effects of mining exploration. The case shows how consolidated civil society organizations (CSOs) can successfully advocate policies related to the extractive industry (EI) sector as long as they stand united in and with a strong network of social leaders and lawmakers.

Samarinda City and the Problem of Uncontrolled Mineral Exploration

Samarinda is the capital city of East Kalimantan. It has a population of less than one million people (2012) spread among 10 subdistricts and takes up less than 0.5 per cent of the total area of its province. The city lies in a coal mining area. According to data from the municipal government, in 2004 the area produced more than 2,000 million tonnes of coal; this figure decreased to 5.7 million tonnes in 2005 and again to 4 million tonnes in 2006. Though production has dropped, more areas are being mined and the number of mining licenses issued is increasing. According to data from the Indonesian Mining Alliance (JATAM), mining zones make up more than 71 per cent of Samarinda's total area; 76 mining licenses were issued in 2009. Samarinda is thus caught between decreased production and greater mineral exploration.

This situation becomes increasingly bitter when data on regional revenue from coal production is consulted. The municipal budget shows that, between 2006 and 2010, mining contributed only 6.3 per cent of the region's gross domestic product. In 2010, despite more mining licenses being issued in Samarinda, mining contributions only saw an increase of 1 per cent. In terms of labour absorption, data from 2011 shows that the mining sector is smaller than agriculture, which absorbs 7.5 per cent of the workforce, compared to 6.8 per cent for mining. As such, the mining sector does not contribute significantly to either the Samarinda coffers or

labour absorption. Coal mining operations are concentrated around two of the city's ten subdistricts.

Furthermore, mining operations have had a deleterious effect on population's health and on the environment. Between 2011 and 2013, almost half of Samarinda's population suffered from upper respiratory tract infections. Poor air quality due to mining activities has also been blamed for causing poor reproductive health; data from the Women and Family Planning Office of Samarinda indicates that women are prone to being directly impacted by poor air quality. In terms of environmental impact, the opening up of mining areas has led to less land being available for agriculture; between 2005 and 2010, 340 hectares of agricultural land was converted for mining per annum. Meanwhile, public infrastructure such as roads have been heavily damaged by daily truck traffic, forcing the municipal government of Samarinda to spend IDR 37.6 billion to fix them. Excessive mining activities have also contributed to increased flooding. Previously, frequent flooding occurred in twenty-nine areas in Samarinda; this has since increased to thirty-four.

Public interest in the issue was piqued following the death three children, with two others injured, in a former mining area in Sambutan subdistrict owned by Himco Coal and Panca Prima. The children entered a pool-like area, thinking the water was shallow, and, unable to swim in the deep water, drowned. According to the Samarinda People's Movement, this accident had several causes. First, the Samarinda government failed to maintain and supervise

dangerous mining areas. Second, the Samarinda government failed to provide children with public facilities such as playgrounds. Third, the companies failed to maintain the former mining area, such as installing “Danger” signs in the area, or notifying children that the area was not a playground. Through this failure, the movement argued, the companies were in violation of Article 15, Point 2, of the Decree of the Minister of Energy and Natural Resources No. 18 of 2008 regarding the Reclamation of Unused Mining Areas, as well as Article 39 of Law 32 of 2009 on Environmental Protection and Management; violations of the latter law carry a penalty of one to three years imprisonment. This situation led civil society to prepare for a class action lawsuit and, later, a citizen suit.

Citizens’ Movement, Early Phase: Class Action Lawsuit

Being concerned about the multi-sector impact of mining activities in Samarinda, citizens and members of the city’s CSOs united and, in early 2012, publicly launched GSM. The movement uses the term ‘citizen’ rather than ‘civil society organizations’ to show that the issues they are addressing concern not only CSOs, but also ordinary citizens. First initiated by the East Kalimantan office of JATAM, the movement serves as an umbrella for around thirty CSOs in Samarinda. In its development, the movement learned from the previous experiences of the National Mining Alliance (JATAMNAS) in two cases of mining advocacy: that of PT Newmont Nusa Tenggara, a company handling copper and mineral exploration in West Nusa Tenggara, and that of PT

Indo Mura Kencana, a gold and mineral exploration company in Central Kalimantan. Both had problems with civil society owing to the environmental impact of their mining activities.

One of the figures behind the consolidation of GSM is Merah Johansyah Ismail of the East Kalimantan office of JATAM; he serves as GSM spokesman and helped mainstream meetings and activities until the movement's base had become more solid. In the early phase of the movement, it was decided collectively to conduct a class action lawsuit, as permitted by the Law on Environment Management (Law No. 23 of 1997) and the Law on Local Government (Law No. 32 of 2004). However, the lack of technical guidance in filing such a lawsuit made this plan too difficult to continue. This became one motivation for the class action lawsuit to be converted into a citizen suit. Citizens' supports was mobilized through the collection of citizens' identity cards; approximately 180 cards were collected.

Apart from mobilizing citizens' support, GSM also networked with religious leaders. In early 2012, it gained support from a representative of the Samarinda branch of the Ulama Council of Indonesia (MUI). The branch's leader, Zaini Naim issued a *fatwa* (decree) on 19 January 2012 condemning the environmental deterioration caused by state-supported mining activities and labelling such mining *haram* (forbidden under Islamic law). This *fatwa* was a restatement of one issued in 2007, covering activities such as fishing and logging. "We give our moral support for the movement intended to minimize environmental destruction caused by mining activities in Samarinda," said

Naim. A Catholic priest also supported the GSM campaign and initiative.

Apart from gathering symbolic power from Islamic leaders and Catholic priests, GSM also got support from Samarinda's middle class and urban communities. As café culture had become prominent in Samarinda (as in other Indonesian cities) over previous years, the movement conducted several activities in cafés. These included movie screenings and a series of discussions on social issues, including the environment and the Samarinda mining sector. One of the most important loci for these activities was Force Café on M Yamin Street, a gathering place for local activists. The movement also mobilized online support through social media, establishing a GSM fan page on Facebook and becoming active on social media such as Twitter.

In early 2012, the movement produced a position paper on the issue of coal exploration in Samarinda. It was written as part of alliance including the East Kalimantan office of JATAM, Pokja 30, BERSIC, Bumi Foundation, Bioma, Naladwipa Institute, and the Nahdlatul Ulama Youth Association. This paper identified three legal grounds for the suit. The first was the death of five children in Samarinda in 2011 due to the local government's lack of protection in former mining holes areas; this case was held to show the government's inability to perform its basic function (i.e. to protect residents). Second was the mud flow in Makroman, Samarinda Ilir, Rimbawan and Tanah Merah in North Samarinda, which has caused tremendous loss of material and immaterial goods. Third was the damage to

public facilities—such as schools, public roads and houses of worship—caused by flooding.

It was later decided to convert the case from a class action suit to a citizen suit; GSM argued that the latter involved a greater degree of public participation than the former. However, in terms of implementation, class action suits have a clearer legal basis than citizen suits. Attorney General Regulation No. 1 of 2001 established a mechanism for citizens to collectively challenge public authority, something not yet available for citizen suits.

From Class Action to Citizen Lawsuit

Citizen suits are a mechanism for citizens to legally challenge public authority violations caused by the public authority's incompetence of executing its duties. It is a civil action on citizens' behalf. Usually, these suits are conducted when citizens are "being adversely affected by the violating discharges with regard to their health, economics, recreational and aesthetic or environmental interests" (<http://www.pugetsoundkeeper.org/programs/enforcement/foundation-federal-law/citizen-lawsuit-provision/>). In citizen suits, the challenge to public authority can be conducted in two manners: with litigation or without litigation. In the case of GSM, the litigation route was chosen. Citizen suits are part of civil law and can be filed individually or collectively. The regulation implementing class action suits is clearer than that implementing citizen suits. Class action suits were implemented through Attorney General Regulation No. 1 of 2001 on Guidelines to Collectively

Challenge the Government. Citizen suits became recognized with Supreme Court Decision No. 25 of 2009.

The first successful citizen suit filed by a CSO was handled by the late Munir, a prominent Indonesian activist who defended the migrant workers being deported to Nunukan, East Kalimantan. This case was accepted by a judge, and resulted in the government drafting a new law to protect Indonesian migrant workers (Law No. 39 of 2004). Another suit was filed against the annual national examinations conducted by the Ministry of Education; these were held to betray the fundamental status of education as a learning process rather than a way to ensure students pass examinations. Another successful suit was filed by the Coalition of Jakarta Residents Opposing Water Privatization (KMMSAJ) to defend their water rights; they took the President of Indonesia, Vice President of Indonesia, Minister of Finance, Minister of Public Works, Governor of Jakarta, and city legislators to court, as well as the water supply companies PAM Jaya, Palyja, and Aetra (<http://www.antaranews.com/en/news/98318/water-resource-management-to-be-under-state-control>).

In their citizen suit, GSM challenged the President of Indonesia (Ministry of Energy and Mineral Resource), Governor of East Kalimantan, Mayor of Samarinda, Environmental Office of Samarinda, Mining and Energy Office of Samarinda, and Samarinda Parliament.

Information Transparency and GSM

In early 2012, around the time GSM was established, the Information Commission was set up in East Kalimantan as part of Law No. 14 of 2008 on Open Public Access to Information, which required the government to establish institutions in each province and city/regency to guarantee public information openness and mediate any related conflicts. This bill has facilitated transparency in public activities, including data disclosure. For social activists, this is a golden opportunities for access to government data that was once restricted.

GSM made use of this openness. Samarinda-based CSO Pokja 30, working with JATAM East Kalimantan, requested the environmental impact assessments and contracts used by the Indonesian government and companies holding a mining licence, as well as reclamation data from the Environmental Office of Samarinda; this request was ignored. On 19 November 2012 JATAM filed a formal complaint against Syaharie Jaang, the Mayor of Samarinda, to the Information Commission, holding that Pokja 30's information request had been based on information from the Indonesian Financial Auditing Body that the majority of mining licence holders in East Kalimantan did not have an environmental impact assessment, despite such assessments being required by Law No. 23 of 1997 on the Environment.

This was the Information Commission's first case since its establishment. It summoned the head of the Environmental Office of Samarinda, but he failed to appear; he only came after a second summons. It was agreed that

the Environmental Office would provide the documents requested by Pokja 30 which they had the authority to provide; they had no authority over documents regarding the reclamation process, which fell under the purview of the Office of Energy and Mining. Despite this agreement, the Environmental Office failed to release the requested documents by the 27 December 2012 deadline.

JATAM then filed a plea for the provincial court to order the Environmental Office to release the requested data, in accordance with the agreement with the Information Commission. On 14 March 2013, the court ordered the documents released by 22 March 2013. However, by 5 June only twenty-four of the sixty-three requested documents had been released.

Focusing on Advocacy Content: Global Climate Change

The problems with excessive mining in Samarinda cannot be separated from global issues of climate change. Excessive mining activities are argued to contribute to ecological disaster, including global warming. Such activities produce methane gas during exploration and during burning activities. Mining also produces carbon dioxide, which contributes to the greenhouse effect. This was one basis for the GSM's citizen suit, along with the government's failure to provide urban open space as required by Law 26 of 2007 on Green Space.

Before the Samarinda case, global climate change advocacy had never been involved in an Indonesian legal case. Owing to this unprecedented event and the complex

and interrelated themes of climate change, the advocacy team mobilized support from global, national, and domestic networks. At the global level, in the early phases the Climate and Land Use Alliances, a Netherland-based NGO focused on climate change issues, offered support through the Indonesian Center for Environmental Law (ICEL), a Jakarta-based NGO. At the national level, the Samarinda movement was supported by five NGOs: ICEL, Friends of the Earth Indonesia (WALHI), Telapak, Civil Society Forum (CSF), and JATAMNAS. These NGOs distributed the workload: ICEL focused on environmental advocacy, whereas CSF and JATAMNAS focused on campaign activities.

A legal basis for this environmental advocacy could be found in Article 21, Point 4 of Law No. 32 of 2009 on Environment Conservation and Management, which clearly recognizes the need for the government to establish a national action plan to reduce greenhouse emissions. This legislation shows that the government has paid serious attention to climate change, at least on paper and at the formal level.

GSM's case was three-fold. First, it urged the government, in coordination with NGOs, to transparently evaluate all issued mining licenses and permits. Second, it urged greater government control and monitoring of post-exploration activities, including the reclamation of abandoned mining areas. Third, it recommended that the government strengthen mining policies and increase strategic efforts to protect agricultural and fishery areas from pollution.

At the same time, in Riau, Sumatra, a similar case was filed. In that province, peat areas have been converted to production forests and palm plantations. Eight Riau citizens sued the President of Indonesia, Minister of Forestry, Minister of the Environment, and the Governor of Riau over the impact of this conversion, which has led to increased greenhouse emissions, more frequent flooding, the rise of extreme weather, and the loss of thousands of fishing jobs. The Riau case was not filed in the provincial court of Riau, but in the national court in Jakarta; the plaintiffs alleged that the court judges in Riau had been bribed by companies.

Citizen Suits: Long and Intricate Processes with Happy Endings

Officially, the court heard the GSM citizen suit from 26 August 2013 until mid-2014, a period of almost a year. Hearings were conducted in twenty-nine sessions spread over eleven months. During these sessions, GSM and members of the general public were present to provide moral support. A Catholic Priest, Yohannes Kopong Tuan, acted as coordinator for GSM and attended the session; he waited with citizens outside the building until sessions were completed. The case was heard by head judge Sugeng Hiyanto, assisted by two other judges. Before the case proper began, mediation was held under judge Hongkun Tuan.

The defendants in the case, the Environmental Office and Office of Energy and Mineral Resources, were absent from the first two sessions. The judge issued an injunctive relief verdict, despite the absence of the defendants, at the end of

2013. The acceptance of this case through domestic citizen suit mechanisms was a small victory for GSM; according to ICEL, many Indonesian judges remain unfamiliar with citizen lawsuits, despite such suits being allowed by Attorney General Regulation No. 1 of 2001. Judges' unfamiliarity with citizen suits was an obstacle that could have affected whether or not the case would be heard. Fortunately, this was not an issue in Samarinda. Judge Hongkun Tuan, who facilitated the mediating process, appeared to understand the position of citizen suits in Indonesia.

After issuing the injunctive verdict, the judge invited two experts from civil society. One, Deddy Hariyanto, came from a local university (Mulawarman University) and was an expert on climate change; the other, Cekli Setya Patriwi, came from the Muhammadiyah University of Malang and was an expert on environmental law. Both experts gave testimony in support of the plaintiffs. Hariyanto argued that the deleterious impact of mining in Samarinda had made the city an unhealthy place to live, that the Samarinda government's excessive issuing of coal mining licenses had had a negative impact on the environment, and that climate change was affected by excessive mining activities such as those in Samarinda. Patriwi, meanwhile, supported the use of civil suits to defend citizens' interests. The judge invited government experts as well, but they neither appeared nor presented testimony.

On 16 July 2014, the judge released his verdict, finding for GSM. This verdict consisted of four points. *First*, the judge held that the defendants (the Governor of East Kalimantan,

the Mayor of Samarinda Mayor, the Samarinda Parliament, the Minister of the Environment, the Minister of Energy and Mineral Resources, the Samarinda Office of Energy and Mineral Resources, and the Samarinda Environmental Office) had failed to create a healthy and safe environment for the residents of Samarinda. *Second*, because of this failure, the judge ordered the defendants to evaluate all policies related to coal mining in Samarinda; this included licensing, monitoring companies to ensure they fulfilled their obligations (including the reclamation of abandon mining areas), and monitoring post-mining activities (including security in former mining areas). *Third*, the defendants were ordered to address environmental damage caused by mining activities and to protect agriculture and fishing areas from the expansion of mining activities and mining waste. *Forth*, the defendants were ordered to pay all court costs.

Despite this victory, the verdict had its limitations. The judge did not set a clear timeline for the defendants to fulfil court orders. Also, as the verdict found no criminal offense, it is liable to be neglected by the defendants. As time passes, the verdict may be forgotten. Furthermore, since the verdict was released, there has been no apology issued to the residents of Samarinda who suffered from environmental issues caused by mining activities. Ethically, this attitude is hard to accept.

Instead, the defendants have attempted to appeal the verdict, particularly its finding that the government failed to provide a healthy and safe environment for the people of Samarinda and its requirement for government to redesign

all policies related to coal mining activities. The appeal was filed at the Samarinda court on 25 July 2014, nine days after the verdict was announced. The appeals process is still underway.

Lessons Learnt

This chapter describes the success of a social movement in Samarinda in advocating proper mining policies which are beneficial to the populace and environment and do not simply prioritize extraction. It also shows that social movements can be effective strategies for EI policy advocacy. This case indicates at least three lessons to be learnt. First, regarding the role of CSOs in alliances and their contribution to the success of movements, there are at least five tasks accomplished by the alliance: a) consolidating capacity and finding issues to unite members of the alliance; b) mobilizing support from the general public (the ordinary citizens of Samarinda); c) communicating complex ideas on mining, its impact on everyday life, and politics and government finance to a wide audience using simple terms; d) distributing labour among CSO elements; and e) networking with the media.

Second, regarding the successful mobilization of local and national media (including social media) support, news was spread through Facebook and Twitter. Furthermore, a petition was established by Rahma Wati, the mother of one of the boys (Muhammad Raihan Saputra) who died in the former mining area, at the website change.org to collect public support. This petition, titled “Close and punish coal mining business owners in Samarinda who killed children,”

was directed at the Ministry of the Environment and Forestry and the Mayor of Samarinda. To date, it has received 6,933 signatures.

Third, offline initiatives can support the litigation process. For example, after establishing a 'Story Garden' where people can gather once a month, the location can be used to develop environmental awareness through multimedia facilities such as film. Symbolic activities such as visiting victims' graves or visiting victims' families can be used as a reminder to the general public of what has happened because of uncontrolled mining and weak governance. Visits to the founder of Samarinda can also be organized to show a symbolic connection with local identity. Other possible non-litigation and offline activities include gatherings and exhibitions of mining activities and their victims.

There are, however, several requirements which must be met before this success story can be replicated. First, there must be collective action with people's involvement as the heart of the action. In this case, the impact of the mining activities on Samarindans' daily lives was a key uniting factor. The people should speak for themselves, with NGOs and their coalitions facilitating a greater people-centred movement. Second, there must be sufficient stamina, as such movements often take years to realize their goals. Third, movements should use as many strategies as possible, including locally rooted symbolic power. In other words, all available instruments can be useful for a citizens' movement.

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Serving Cambodia's Expectations for Transparent and Accountable Oil and Gas Industries

Primi Suharmadhi Putri

Introduction

In 2002, the Cambodian National Petroleum Agency (CNPA) awarded the Production Sharing Contract to Offshore Block A to Chevron, Moeco, and GS-Caltex; by 2004 Chevron had discovered and confirmed the availability of oil and gas reserves. Since then, Cambodia has put much faith in the possibility of enormous revenue from the oil and gas industries. Indeed, if this possibility is realized, Cambodia will benefit greatly; the oil and gas industries would create new jobs, contribute greatly to development, and lower gas prices—all leading to a better economic and social lives for

the Cambodian people. Though there has been no official statement from the Royal Government of Cambodia (RGC) regarding the quantity of oil and gas in Cambodia, several multilateral agencies have given estimates of the reserves available. At a meeting of the GOPAC Global Task Force on the UN Convention against Corruption and Monitoring, it was stated that Cambodia has around 2 billion barrels of oil and 10 trillion cubic feet of natural gas.¹ Meanwhile, the International Monetary Fund (IMF) has estimated that Cambodia may have received US\$ 174 million in oil and gas revenues by 2011; according to this estimate, the country stands to gain a maximum of US \$1.7 billion by 2021 (Economic Institute of Cambodia, 2008).

With such a considerable potential income from oil and gas revenues on the line, in this early stage Cambodia must take an active role to ensure it avoids the resource curse. To enjoy the expected benefits, Cambodia must work on its extractive industries (EI) management, both in human resources as well as technical systems, as the country is still replete with speculation and discussion of the amount of resources potentially contained under the ground—even though not even a single drop of oil has been extracted. Thus, this paper is intended to not only examine the socio-political background of Cambodia's oil and gas

1 **Based on the presentation** "Promoting Natural Resources Revenue Transparency and Accountability" by Chandra Kirana, presented at the meeting of the GOPAC Global Task Force on the UN Convention Against Corruption and Monitoring and the regional meeting of Southeast Asian parliamentarians.

development, especially its struggle against its political dynasty of patronage, but also to explore the government's efforts (with support from NGOs) to promote transparency and public participation in EI development; becoming more transparent will mean the end of the Cambodian government's regime of non-disclosure.

Oil and Gas Blocks in Cambodia: Introduction to the Industries

After Chevron first began oil and gas exploration in Cambodia, these industries have risen to public awareness. The RGC does not officially disclose relevant industry information, including the names of companies to which it has awarded oil and gas exploration rights (Global Witness), yet much information has been leaked to the public; one example is through Global Witness's research into those companies with little or even no information about them, be it their profile or their industry track-record, in an attempt to ensure that the public knows who is involved in their nation's EI sector. A summary of their findings are as follows (Global Witness, 2009):

- Offshore Block A: Chevron was awarded this block in 2002. The exploration program ended in 2006 and was evaluated in 2008. Holding 55 per cent of the total area of Block A, Chevron submitted its production permit application (PPA) for Apsara—the Block A oil field—in 2010. This PPA was updated in 2012, causing

a disagreement over profit sharing and taxation² and leading Chevron to sell the most developed oil and gas concession area in Cambodia. In August 2014, the Singaporean company KrisEnergy acquired the previous Chevron holdings. This was accepted by both the government and its partner, the joint venture MOECO Cambodia Co. Ltd, and GS Energy Corp. Presently KrisEnergy holds the rights to the Apsara project in Block A (Rigzone).

- Offshore Block B: This block is currently held by a joint venture of Thailand's PTTEP International, Singapore Petroleum Company, and Malaysia's Resourceful Petroleum Ltd. The block is divided fairly among the three companies; each holds 33.3 per cent. The Global Witness study shows that Resourceful Petroleum Ltd. is less known within the industry than its partners. In fact, the company is owned by Dr. Chen Lip Keong, Prime Minister Hun Sen's personal economic advisor. Keong is also the CEO and largest shareholder of Naga Corp, the only company with an RGC license to run casinos in Phnom Penh; it also runs businesses in Hong Kong and Malaysia. It thus appears that one third of Block B is controlled by Hun Sen's inner ring (Global Witness, 2009).

2 As told by Meng Saktheara,
http://www.rigzone.com/news/oil_gas/a/134898/Offshore_Block_A_Provides_Buzz_to_Cambodias_Petroleum_Industry/?all=HG2

- Offshore Block C: Global Witness findings indicate that this block's exploration rights are fully held by Polytec,³ a company which appears to have no expertise in the oil and gas industry. Based in Macau, Polytec's main areas of business are property, frozen products, and financing and investment (Polytec). Global Witness has no further information on how or why the RGC granted Block C to a company with no experience.
- Offshore Block D: The government and media report that this block is 100 per cent owned by the Singaporean company China Petrotech. Another company was involved in the Block D operation until China Petrotech bought part of the company and changed its name to Mirach Energy in 2008. China Petrotech/Mirach Energy submitted its final environmental impact assessment (EIA) draft in March 2014; it was approved eight months later (Rigzone).
- Offshore Block E: At the beginning of 2006, the Indonesian company PT. Medco Energy International was awarded 90 per cent of the total concession area;

3 Based on a presentation by Te Duong Tara at the 2007 Cambodia Outlook conference, 'Petroleum Resource Management—Standard Reserves Classification', February 2007, [http://www.cdri.org.kh/webdata/download/oc07/day2/sessionpercent204percent20\(Pm\)percent20-percent2023percent20Febpercent2007/h.e.percent20tepercent20duongpercent20tarapercent20\(directorpercent20generalpercent20cnPA\).pdf](http://www.cdri.org.kh/webdata/download/oc07/day2/sessionpercent204percent20(Pm)percent20-percent2023percent20Febpercent2007/h.e.percent20tepercent20duongpercent20tarapercent20(directorpercent20generalpercent20cnPA).pdf)

JHL held the remaining area.⁴ In 2007, Kuwait Energy bought 31 per cent of Medco's share; Lundin Petroleum of Sweden that bought another 34 per cent from Medco later that year (Gilison).

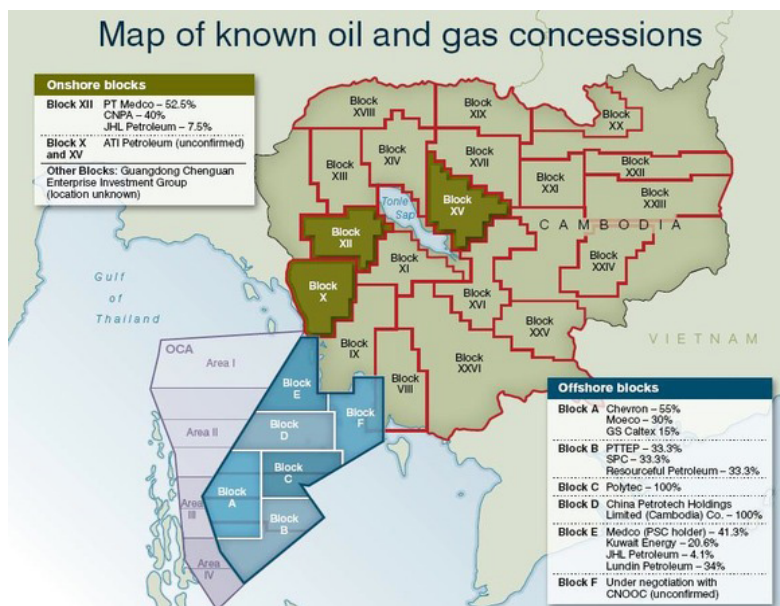
- Offshore Block F: Based on several government document and media reports, this block is run by the Chinese National Offshore Oil Corp (CNOOC). Global Witness has little information on the block and company. In 2007 it was said that the company was signing its second agreement, to be involved with onshore Block XIII (Global Witness, 2009).

Meanwhile on the land, Global Witness's 2008 investigation showed that Onshore Block XII was being surveyed by a Norwegian PGS; it was later learned that this company is a subcontractor for Medco, which owns 52.5 per cent of the block. The Cambodian government, through the CNPA, contributes 40 per cent of survey activity, while JHL owns the remaining 7.5 per cent.⁵ In 2007, Onshore Blocks X and XV are claimed by ATI Petroleum (ATIP), which was granted exploration rights over the blocks. There is as of yet insufficient information on the continuity of this company's holding of official RGC licenses (Global Witness).

4 Based on Medco's 2006 annual report, at http://www.medcoenergi.com/userfiles/file/annual_report/2006/ar2006.pdf

5 Stated on Medco's website, at <http://www.medcoenergi.com/page.asp?id=210027>

Figure 2.1: Map of Known Oil and Gas Concessions



Source: http://www.huffingtonpost.com/2009/03/18/cambodias-coming-oil-weal_n_176384.html

The ‘leaked’ data above, regarding who holds the rights to Cambodian oil and gas blocks, is based on Global Witness documents sent to companies to confirm leaked data. Few companies, however, returned or responded to Global Witness’ request, and as such much of the information and data available originates from the company’s websites. As stated above, some companies granted licenses by the RGC have too little experience in the industry. The RGC’s reasons for granting licenses were generally unclear, especially for companies with little experience, but Global

Witness suggests that most licenses were issued because of companies' 'personal' relationships with the Cambodian authority, and that the government's licensing promoted one person's interests: Prime Minister Hun Sen.

The 2013 election has brought a slight change to the Cambodian political situation and affected the oil and gas governance regime. In late 2014 the Ministry of Mining and Energy planned to open bids for concessions on nineteen onshore oil and gas exploration blocks to promote investment in the sector, though there was no certain date for bidding or making these blocks available to interested companies (Reuters). This may be an attempt by the ministry to be more open and transparent in governing natural resources, as it also wants to gain the trust of the populace, who are now keenly seeking information disclosure.

CNPA as a State Regulatory Body and Executive Extension Occupying the EI Industries

The principal law applying to the upstream oil and gas industry in Cambodia is the Petroleum Regulation of 1991, as amended in 1998 and 1999 (Ministry of Mines and Energy). Initially, under this regulation, the upstream oil and gas industry was charged to the Ministry of Industry, Mines, and Energy (MIME), which had oversight authority and control of EI-related activities. The Minister of Industry, Mines and Energy, meanwhile, was authorized to sign his approval and tasked with ensuring public oversight and transparency. However, control over oil and gas resources were transferred after the Cambodian National Petroleum

Authority (CNPA) was established via royal decree in January 1998 (Global Witness, 2009).

The CNPA is presently the key governmental agency overseeing upstream and downstream petroleum activities in Cambodia. It currently administers six undisputed offshore blocks (Blocks A to F) in the Gulf of Thailand, as well as nineteen onshore blocks (Blocks I to XIX) (Ministry of Mines and Energy). The agency, which executes regulations pertaining to the extraction of oil and gas, is overseen by the Council of Ministers, under direct control of Prime Minister Hun Sen (Global Witness, 2009); as stipulated by Article 3 of the royal decree, CNPA is a permanent institution governed directly by the Prime Minister.

Between its establishment in 1998 and 2011, the CNPA's managing body was a veritable who's who of Cambodia's elites. The prime minister, as the country's top authority, received reports from his deputy, Sok An, who was appointed chairman of the CNPA and thus automatically led the board of managers and presided over all contracts awarded to oil and gas companies (Global Witness, 2009). At the practical level, CNPA was led by a general director, Te Duong Dara, and deputy general director, Ho Vichett; both were members of the Cambodian People's Party (CPP). Global Witness interviews with CNPA staff indicate that Dara drew less-than-qualified administration staff from outside CNPA to assist him and his work, bypassing trained staffs within the CNPA. Dara resigned in 2011, leading to Sok Khavan, a nephew of Sok An, being appointed acting general director; his position was made official in January 2013 (Marks, 2013).

After the July 2013 election, when the opposition party took almost 50 per cent of the poll, several governmental bodies previously overseen by the Council of Ministers were transferred to the relevant ministries. This restructuring led to the CNPA being integrated into the Ministry of Mines and Energy,⁶ as it had failed to meet its own target oil extraction targets for 2012 and was widely criticized for the lack of transparency in its management. This shift of power was one way to increase organizational capacity and accountability, as well as a way to decentralize the state's control (Pheap and Meyn, 2013).

The Possibilities of Enhanced Access to Information

Since the first explorations, the RGC and the people of Cambodia have expressed hope that this untapped resource will serve as a stimulus of social and economic development. Unfortunately, after the establishment of the CNPA and its population with the prime minister's closest circle, the level of transparency in EI activities has decreased over recent years. It reached its lowest point when Chevron withdrew from Cambodia's oil and gas industries after the CNPA failed to extract from its most developed offshore field in 2012. Though Global Witness has found that EI-related documents are kept in Duong Dara's house rather than the office of

6 The 2013 election also led to the restructuring of several ministries, including the separation of the Ministry of Industry, Mining and Energy into two new ministries: the Ministry of Mines and Energy and the Ministry of Industry and Handicrafts.

CNPA, secrecy and non-disclosure activities have continued. Under Article 54 of the 1991 petroleum regulation:

“All information, documents, data and materials acquired by a contractor during petroleum operation shall be kept confidential in accordance with the provision of the petroleum agreement...”

This article mostly supports the implementation of PSC in Cambodia, in which both companies and CNPA, as the industry’s regulatory body, must follow the confidentiality clause included in every PSC document. Information on progress, revenue collection, contracts, licenses, or relevant draft laws is not disclosed, and there is generally no consultation with the public or civil society organizations. Furthermore, Cambodia applies no freedom of information law. This has occurred despite the efforts of NGOs to increase transparency and accountability; NGOs submitted a draft for a freedom of information law in 2010 (with an amended version in 2012), but both were rejected by the national assembly (Sopheap, 2015).

The limited access to information on oil and gas industries in Cambodia has led to the media becoming increasingly attracted to any news or event, no matter how small. It is thus easy for them to misunderstand the situation and begin speculating. Using figures and data from other documents, the media frequently misreports the amount of resources available—despite their reports, in Cambodia there is still no official estimate, and thus the potential value of these resources is uncertain. By spreading information

based on ongoing activities which are clarified later, after further data is gathered, the media feeds into the public's high expectations (Economic Institute of Cambodia). As stated by Meng Saktheara, the general secretary of the Ministry of Mines and Energy, in his official blog,⁷ by nature all estimates involve some degree of uncertainty. However, investors, regulators, governments, and consumers all require reliable estimates of petroleum reserves to determine the energy supply outlook as well as for economic or investment planning (Saktheara, 2014).

The newly established Ministry of Mines and Energy is attempting to minimize high public expectations for the oil and gas industries by disclosing relevant information, particularly to NGOs, yet the public's lack of knowledge, caused by previous misinformation, remains one of their biggest barriers. This means that the Ministry must put greater effort into minimizing people's distrust of the government. Other than working with 'bridge' NGOs to deliver relevant information to the public, the ministry also selects what kind of information should be disclosed, based on the public's current level of understanding; the government, working together with NGOs, is now working to improve the populace's knowledge of EI (Saktheara, 2015).

7 Meng Saktheara is one government official at the Ministry of Mines and Energy who has dedicated himself to the development of transparency in oil and gas governance in Cambodia. He does so by providing information through blog in response to relevant current issues within the oil and gas field or his ministry. His blog can be accessed at www.ickhmer.wordpress.com.

Ensuring Transparency and Public Participation in the Cambodian Oil and Gas Industries

Oil and gas industries are highly related to a nation's political atmosphere, understood as a way of governing these resources. Standards are applied when examining oil and gas governance in a nation. This includes transparency, which has been a major issue in Southeast Asia. From 2010 to 2012, budget transparency in Cambodia has stagnated. This is reflected by the country's Open Budget Index score of 15 in 2012, which indicates that the RGC provides only scant information to the public on its budget and financial activities over the course of the financial year (NGO Forum). One way to improve transparency is by implementing the Extractive Industry Transparency Initiative (EITI), an international standard in ensuring transparency in resource-rich nations. Completed by assessing published reports on oil, gas and mining made by companies to governments, EITI is voluntarily enacted by the government and overseen by a multi-stakeholders group of government officials, company representatives, and CSOs members.

Since 2006, Cambodian CSOs have been involved in EITI activities to learn and understand its principles. Although EITI focuses only on revenue collection from EI resources, it somehow aids the public in accessing reports on government revenues from the oil, gas, and mining sectors (Heinrich Boll Stiftung Cambodia, 2013). Unfortunately, in 2007 the RGC announced that Cambodia would not join the EITI, arguing that it had yet to receive revenues from these resources and that Cambodia would lose thousands

of dollars in membership fees (Heinrich Boll Stiftung Cambodia, 2013), even though there are no membership fee system yet in EITI Standard. An NGO coalition focused on the EI sector, Cambodian Resource Revenue Transparency (CRRT), believes that the government's refusal to join EITI is motivated by a need to keep the EI sector's political and business patronage system secret.

Despite this secrecy, NGOs and international counterparts have slowly pushed Cambodia to implement transparency. The newly restructured Cambodian government has stated its intention to become more open by applying EITI principles and reporting standards in the country's own laws, fiscal policy, and regulations, as well as the monitoring and evaluation procedures in the EI sector and the national budget legislation and process.⁸ Meng Saktheara adds that the government is ready to publish reports and disclose information, particularly through a law for on-process rights to access information.⁹ Following Australia's JORC Code, the ministry has required the government to adhere to three governing principles:¹⁰

8 Interview with Kim Natacha, National Director of Cambodian Resource Revenue Transparency, December 2014; confirmed through emails confirming EI issues in Cambodia sent by member of Asia Pacific Knowledge Hub, POLGOV UGM.

9 Interview with Meng Saktheara at his office at the Ministry of Mines and Energy, 15 December 2014.

10 *Ibid.*

- **Transparency:** the report provide sufficient information, the presentation of which must be clear, unambiguous, and not misleading.
- **Materiality:** the report must contain all of the relevant information that investors and professional advisers would reasonably require and reasonably expect for the purpose of making a reasoned and balanced judgment.
- **Competence:** the report must be based on work that is the responsibility of a suitable qualified and experienced person subject to an enforceable professional code of ethics.

Another government effort towards mainstreaming transparency within the industry is the amendment of existing mining, oil and gas taxation laws: an amendment is currently proposed as an opportunity to introduce transparency principles and mechanisms into Cambodia's fiscal system, and thus promote an effective tax system complete with checks and balances (Sakhtheara, 2015).

In EI, transparency is strongly related to issues of freedom of information within society. Despite the RGC's lack of interest, CSOs and their coalitions have taken an important role in promoting this issue as a public one (Tapiheru and Putri, 2014). A considerable growth in the number of CSOs promoting transparency in Cambodia's EI has been seen over the past eight years (Triwibiwo, 2014); one significant move was the establishment of the CRRT

by local NGOs.¹¹ Since early 2008, the CRRT has worked with the government, regulatory agencies, and counterpart groups to encourage the creation of fair and equitable laws, policies, and procedures governing EI and push for transparency and information disclosure (Cambodians for Resource Revenue Transparency, n.d.). To ensure the public's awareness of issues in their respective areas, the CRRT also works with the media and member CSOs through campaigns, conferences, training, research, surveys, and policy reviews (Triwibiwo, 2014).

One of their activities is raising public awareness, especially within the resource-rich areas of Cambodia. The CRRT collaborated with YRDP, an NGO focused on youth development and empowerment, to conduct a campaign regarding resource revenue transparency in the EI sector in Preah Sihanouk. The campaign, intended to raise awareness and educate the public regarding the potential revenue from oil and gas extraction efforts which would occur locally in 2015, targeted regional youths and invited local government officials and stakeholders who were actively involved in EI issues.¹² Since 2013, there have been plans to build a domestic

11 The CRRT coalition was initiated by five Cambodian civil society organizations: the Center for Social Development (CSD), Development and Partnership in Action (DPA), Economic Institute of Cambodia (EIC), NGO Forum on Cambodia (NGOF), and Youth Resource Development Programme (YRDP). Each organization automatically has a seat on the coalition's council/board.

12 Based on observations and interviews with stakeholders who attended the campaign in Krong Preah Sihanouk, 13 December 2014.

oilfield service and refinery in Krong Preah Sihanouk and Kampot Provinces (Rigzone Staff). Though construction is in its early stages, the CRRT–YRDP campaign had an important role in bridging the populace and government officials, ensuring that the public was informed of and understood its right to information and public participation in managing the EI sector in their area.¹³

Nonetheless, the coalition and its work still relies heavily on the media to channel information to the general public. Although most of Cambodia’s media—especially Khmer-language media—is highly politicized and subject to the government’s whims (Freedom House, 2013), a partner of CRRT in the media, the Cambodian Center for Independent Media (CCIM), which manages Voice of Democracy (VOD) Radio, has dedicated itself to keeping and increasing media independence in delivering messages to the public. As one way of delivering information, since 2009 CRRT has worked with CCIM to conduct weekly shows on thematic EI issues and air them on VOD Radio. As radio is cheap and easily reaches all corners of Cambodia, such collaboration is among the best ways to realise the values of transparency and participation, as well as educate the populace.¹⁴

13 *Ibid.*

14 Based on an interview with Say Phalla, Senior Producer of VOD, 14 December 2014

Conclusion

Located within a resource-rich region, Cambodia might follow its ASEAN counterparts in positioning its oil, gas and mineral reserves as the nation's most favourable commodities. Unfortunately, as of early 2015 not a single drop of oil has been extracted from the ground. This can be blamed on failed agreements between companies and the government regulatory body as well as personal interests within the government which have taken most of Cambodia's energy and attention. Estimates from several international agencies¹⁵ coupled with ambiguity in the media regarding the size of the country's reserves have given the public high expectations. After Cambodia suffered a massive depression under the Khmer Rouge, thirty years of recovery has not been enough to ensure the nation's physical and human resource development. The high expectations for the reserves' potential could lead Cambodia to the next level of development, or to disappointment: a disengaged public; a government indebted after borrowing against possible revenues; difficult development planning; Dutch disease; increased rent-seeking; and general mistrust within society (Economic Institute of Cambodia, 2008).

While the public, NGOs and some 'champions' within the government body are finding their own way to lead the country towards transparent and accountable governance

15 The International Monetary Fund has estimated that offshore oil and gas revenues for US2011 reached US\$ 174 million; the UNDP has stated that all blocks could produce a maximum of 200–250 barrels/day.

in the EI sectors, there remain several potential causes of conflict which Cambodia must address before extraction becomes a reality and the government benefits from resource revenues, including:¹⁶

- 1. Land titling and land conflicts issues:** As land property and documents were destroyed during the Khmer Rouge regime, land was grabbed by returning peoples. Cambodia has reclaimed this land and initiated a land titling process. The process is on-going and can lead to conflict, as people may claim land on which they have been living for decades but is designated public or private State land.
- 2. Administrative management of local and indigenous people:** The administrative division of communities was imposed by law and the Cambodian government without considering the existing, informal boundaries known by the hill tribes. This has led to conflict over land and land use between hill tribe communities.
- 3. Illegal artisanal mining:** Some communities and indigenous peoples have long made a livelihood from mining and surface extraction. However, their activities are not recognized by law, meaning that their mining operations are conducted illegally. This creates conflict with mining companies that have obtained licenses for mining exploration or exploitation.

16 Points 1–3 based on an email interview with Kim Natacha, director of CRRT, 29 January 2015.

Most importantly, before the RGC and other parts of the nation work to address these three points, the close relationship between businesses and their self-enriching government patrons must be severed.

To address these possible conflicts, the Ministry of Mines and Energy must soon implement its planned regulation requiring all mining concessions to prepare an annual community development program and to which must be included with each mining license application, and without which the license will not be granted (Sakhtheara, 2014). This would include implementing principles of Free Prior and Informed Consent to ensure that people have the right to give or withhold consent for proposed projects which may affect their customary lands, be they occupied or otherwise used (Forest People Programme).

The old EITI standard lacked any mechanism to prevent or solve conflict, as it was focused on the reporting of revenues and the reconciliation of reported figures. The new EITI standard, however, has emphasised citizen engagement and community consultation, both mechanisms that could ensure conflict prevention.¹⁷ Cambodia may re-consider following this international standard of reporting. After all, 80% of Cambodia's present economic growth depends on four main motors: manufacturing (garments/footwear), construction, tourism, and agriculture (Cambodia Minister of Commerce, n.d), and the incoming oil and gas revenues should help with Cambodia's economic diversification.

17 *Ibid.*

Facing an uncertain windfall of a non-renewable resource, Cambodia should prepare the public to not have high expectations by disseminating sufficient and pertinent information. Ultimately, the public will understand that, although the nation needs considerable money for development, investments should support sustainability in other sectors.

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Mandatory Disclosure in EITI Indonesia: Challenging the Dodd–Frank Act

Rizky Ananda Wulan Sapta Rini

Background: Big Steps toward Transparency

Indonesia, a top-ten exporter of minerals and holder of 28.97 billion tons of coal reserves, is one of the most resource-rich countries in the world (BPPT, 2014; ESDM, 2013). As common for resource-rich nations, Indonesia has struggled to guarantee the revenue from this valuable sector. Though the extractive industries (EI) sector contributed 18.59 per cent of the country's GDP in 2013 (7.35 per cent from the oil and gas sector, 11.24 per cent from the mining sector [BPS, 2014]), this figure could be higher. A recent Publish What You Pay Indonesia study showed that lost potential mining revenues, especially land

rents, for the fiscal years between 2010 and 2013 in thirteen Indonesian provinces cost the nation nearly \$80 million.

Despite its shortfalls, Indonesia has shown a commitment to promoting transparency. In 2009, the government announced it would implement the Extractive Industries Transparency Initiative, or EITI, a global standard focused on improving transparency and accountability and thus strengthening EI governance (EITI, 2008). The following year, President Susilo Bambang Yudhoyono issued Presidential Regulation No 26 of 2010 on Transparency of National and Local Revenue from Extractive Industries to govern EITI implementation in Indonesia. The implementation of EITI consists of two main components: payment disclosure, meaning that oil, gas, and mining companies must publish what they pay to the government and that the government must disclose what it receives from these companies; and the establishment of a multi-stakeholder group.

Focusing on payment disclosure as a core component of EITI, this chapter aims to review the implementation of said disclosure in Indonesia. To give a cogent understanding, contextual information will also be provided, with a particular emphasis on the Dodd–Frank Act—an act considered the most advanced of its type, as it was proposed in 2010, three years before the New EITI Standard mandated project-level disclosure. This chapter will highlight the good practices and lessons learned from EITI implementation in Indonesia, especially those related to project-level reporting.

EITI Implementation in Indonesia: Project-Level Reporting

The core of EITI implementation is the requirement for governments to disclose revenues from EI (oil, gas, and mining), which are compared to the payments made by the companies by an independent reconciler; the independent reconciler then reports the findings. The implementation of EITI is supervised by a multi-stakeholder group, consisting of government officials, EI companies, and civil society. EITI reports are made publicly available and accessible. The government is not only expected to publish the report, but also follow up on any discrepancies.

EITI has had several standards for the reporting mechanism. The most recent, the New EITI Standard, was adopted in 2013; its predecessor, EITI Rules, 2011 Edition, was adopted in 2011. There are some meaningful changes in the new standard, ranging from the disclosure of contracts to beneficial ownership; however, as EITI implementation in Indonesia used the 2011 EITI Rules, the New EITI Standard will not be explained further.

The EITI Rules, 2011 Edition, only required governments to regularly publish revenues and payments. There was no further requirement for certain types of reporting, as seen in the following quote:

“Regular publication of all material oil, gas and mining payments by companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in

a publicly accessible, comprehensive and comprehensible manner.” (EITI, 2011)¹⁸

Under these rules, governments were not required to disclose disaggregated information or information at the project level. Such disclosure was voluntary, and many countries, including Azerbaijan, Cameroon, Gabon, Guinea, Kyrgyzstan and Mauritania, chose to not do so (EITI, 2008; Goldwyn, 2008). The decision to report payments (taxes, royalties, bonuses, etc.) made by companies at the project level or to provide aggregated reports was that of each country’s EITI multi-stakeholder group (Olcer, 2009). These groups had the authority to determine a reporting template and the scope of reports, including the degree of data disaggregation (Soerjoatmodjo, Hanafi, and Triwibowo, 2014).

Despite these minimal requirements, Indonesia partially performed project-level reporting in its first two EITI reports, covering the fiscal years of 2009–2010 and 2010–2011. Payment types and amounts were provided in the EITI report for each oil and gas project. As such, the public could access any specific type of payment data for projects operated by Indonesia’s fifty-seven largest oil and gas companies.

18 See the EITI Standard Rules 2011, eiti.org/files/EITI_Rules_Validations_April2011_1.pdf.

A Glimpse of Indonesia's First EITI Report

In 2013, Indonesia published its first EITI report. It disclosed the payments made by fifty-seven oil and gas operators, eighteen mineral companies, and fifty-four coal companies, as well as the revenue received by several Indonesian government agencies, including the Directorate General of Oil and Gas, the Executive Agency for Upstream Oil and Gas Development (BP Migas), the Directorate General for Budgeting, the Directorate General for Taxation, and the Directorate General of Minerals and Coal, in the 2009 fiscal year (EITI Indonesia, 2013).

Total payments for both the oil and gas sector and the mining sector reached \$23,985 million. These payments included (corporate and dividend) taxes and (production and signature) bonuses, overlifting/underlifting, royalties, land rents, and dividends. The government, meanwhile, reported revenues of \$24,227 million. The revenues reported differed by \$250 million; the largest difference was found in royalties in the coal sector (UBC, 2013).

Indonesia's implementation of project-level reporting was made possible by a long decision-making process in the country's multi-stakeholder group regarding the reporting template and its scope. For the first report, released in 2013, this process began in June 2010. The process was a difficult and slow one owing to different points of view regarding the report's content, as well as differing commitments from stakeholders—particularly government entities. For government entities, the one attended the meeting was commutative. As a consequence, they didn't get informed with the most updated information regarding the process.

On the other hand, civil society made considerable contributions to the decision-making process. They were actively involved since the beginning of the process (Deloitte, 2013) and were very keen to advocate for improved

transparency in EI, demanding that six points be covered. One was the disaggregate disclosure of information at the project level. The other five points were: 1) the inclusion of volume data as a complementary component of company payments, 2) the reporting of the total amount of lifting, 3) the inclusion of cost recovery data for the oil and gas sector, 4) the publication of revenue transferred to sub-national governments (both provincial and local), 5) the disclosure of companies' spending as part of corporate social responsibility (Soerjoatmodjo, Hanafi, and Triwibowo, 2014).

Surprisingly, it was not only civil society which encouraged project-level reporting in EITI implementation. Local governments, especially from resource-rich districts, also urged project-level disclosure of information. Maryati Abdullah (2015), a former civil society representative in the EITI multi stakeholder group, states that local governments showed considerable concern for the EITI reporting template, especially the disaggregation of data. They encouraged disclosing payments at the project level so that each district could be informed about the revenue obtained from each project and thus ensure proper compensation from extractive activities.

Owing to internal consultation and coordination among government officials, involving numerous agencies and bureaucratic processes, it took more than a year before the scope could be agreed upon by all members of the multi-stakeholders group (Soerjoatmodjo, 2012). This time, however, was well-spent, as seen in the scoping notes regarding project-level disclosure:

“In view of the fact that the Ministry of Finance’s LKPP disaggregates individual extractive industry payment streams down to the level of individual reporting production units, it is the recommendation of the Formation Team that Indonesia’s first EITI Report should be fully disaggregated, to the level of individual payment types and individual production units” (Sekretariat Tim Transparansi Industri Ekstraktif Indonesia, 2011)¹⁹

There was no significant challenge to the inclusion of project-level reporting in Indonesia’s EITI report. The government supported the notion, since the system was already prepared, and local governments had required disaggregate data even before EITI was implemented in Indonesia. Other stakeholders, particularly EI companies,²⁰ also agreed with the notion. The only difficulty came from the mining sector, the administration of which was not yet prepared for project-level reporting.²¹ Thus, project-level reporting was only available for oil and gas sector companies in Indonesia’s first EITI report.

For Indonesia’s second EITI report, there was no significant progress in the implementation of project-level reporting. Government agencies active in the mining sector

19 See the EITI Indonesia Scoping Note for its 2009 report <http://eiti.ekon.go.id/en/first-report-scoping-note/?aid=155&sa=1>.

20 The extractive companies are represented by three industry groups: the Indonesian Petroleum Association (IPA), the Indonesian Coal Mining Association (ICMA), and the Indonesian Mining Association (IMA).

21 Interview with Maryati Abdullah, National Coordinator of Publish What You Pay Indonesia and former civil society representative in the EITI multi-stakeholder group, 6 March 2015.

were still unprepared. Meaningful progress was only found in the number of companies covered and the inclusion of an additional type of reported payments (domestic market obligation fees in the oil and gas sector). However, despite the complexity and the scale of its EI sector, Indonesia still managed to maintain project-level reporting in its second EITI report.

Slow but Steady Progress in Indonesia's Second EITI Report

A year after issuing its first report, Indonesia issued its second EITI report. The content was similar, but the number of companies covered increased significantly. The report covered payments from 170 oil and gas companies (71 operators and 99 non-operators) and 83 mining companies which had royalty payments of more than Rp 2.5 billion for the 2010–2011 fiscal year.

The total tax revenue reported by oil and gas companies amounted to \$14,353 million; the government reported \$14,364 million in revenue for the same period. The net difference of tax revenue for oil and gas sector was \$10.375 million. For the mining sector, companies' total payments reached Rp 119,469 billion; the government reported revenues of Rp 119,671 billion. The discrepancy between companies' reported payments and the government's reported revenues amounted to \$202 billion; taxes contributed most to this discrepancy.

Several innovations were made in the second report, including brief company profiles (location, ownership, and financial contributions to the Indonesian government), revenue sharing from the central government to sub-national governments, and the fiscal regime applied in the EI sector. Unfortunately, the reconciliation process could not be completed, as 11 oil and gas non-operators and 9 mining companies did not report their payments.

Source: EITI Indonesia, 2014

Dodd–Frank Act: A Setback for Transparency

In the past few years, there has been remarkable progress in EI transparency. The European Union has amended its transparency directive to govern mandatory disclosure; this directive has been transposed by the United Kingdom and France, and was adopted by Norway in 2014. Canada has also adopted a similar law. The most ambitious, however, is the Dodd–Frank Act; companies covered include nearly fifty per cent of world’s hundred biggest EI companies (by market capital), including those in the oil, gas, and mining sector.

The Dodd–Frank Act, formally the Dodd–Frank Wall Street Reform and Consumer Protection Act, was passed in 2010 to recover public trust in the financial services industry following the 2008 financial crisis and global recession (Ushie, 2013). On 22 August 2012, the Securities and Exchange Commission (SEC) adopted a mandatory payment disclosure provision as part of § 1504 of the Act; this was intended to promote EI transparency and combat bribery and corruption (Fisher-Haydis and O’Callaghan, 2013).

Companies registered with the SEC are required by § 1504 to disclose all payments of over US\$ 100,000 in the most recent fiscal year made to governments (both American and foreign) for the commercial development (understood to refer to licensing processes, exploration, production, and export) of the oil and gas sector and the mining sector. Such payments can include taxes, royalties, fees, production entitlements, bonuses, in-kind payments, dividends and infrastructure improvement (PWYP-US, 2013). The

definition of ‘foreign governments’ in the Act is not only limited to national governments, but also includes regional and sub-national governments, as well as departments, agencies and instruments of foreign governments (Ushie, 2013). This regulation allows no exemptions from reporting, and applies even to US-listed EI companies operating in countries without disclosure requirements. The Dodd–Frank Act affects sixty-eight of the world’s largest oil and gas companies, as well as forty of the world’s largest mining companies (PWYP-US, 2014).

Prior to its implementation, the Dodd–Frank Act triggered debate. Some considered it a comprehensive instrument promoting transparency both domestically and internationally. It was considered to benefit EI by improving market efficiency and risk management (Revenue Watch Institute, 2012). However, the Act could not escape criticism, even from within the SEC. Some critics highlighted the cost of act, arguing that it imposed substantial costs on EI companies but was unable to ensure transparency and accountability in global governance (Gallagher, 2012). The estimated initial cost of compliance with the Act was US\$ 1 billion, with a further US\$ 200 to US\$ 400 million in subsequent costs to EI companies (Matthews, 2012). Other critics were concerned about the accuracy of data, particularly that regarding payments made to foreign governments, as the SEC was seen to lack the capacity for proper monitoring (Firger, 2010). Still others said that the Act was full of procedural errors, violated oil companies’ First Amendment free speech rights,

and undermined the competitiveness of the country's EI companies.

The American Petroleum Institute (API), whose members include ExxonMobil, Shell, Chevron, and British Petroleum, the Chamber of Commerce, and the National Foreign Trade Council filed a lawsuit in the District Court for the District of Columbia in an attempt to abolish the Dodd-Frank Act (Ushie, 2013). The Court decided that the SEC had misread § 1504 of the Act as requiring mandatory disclosure and indicated that the SEC's decision to grant no exemptions to the requirement for mandatory reporting was capricious. As a result, the SEC was required to propose amendments to the Act, especially § 1504. In May 2014 the SEC announced that rulemaking would begin in March 2015, but emphasized that this deadline was not binding and did not guarantee that final rules would be adopted in the same year.

API has also submitted a proposal to the SEC focusing on the definition of project-level data disclosure, stating that API would send the SEC data regarding company names, payment types, payment amounts, conversion methods, payment currencies, entities paid, countries, operations, resources, and major sub-national jurisdictions. It specifically highlighted that project-level disclosure would only cover four aspects: 1) location (country), 2) location (major sub-national jurisdiction/regional level), 3) method (operation), 4) object (resource). As such, specific company information—even companies names—would not be publicly available (API, 2014). In API's defense, publishing

such data at the project-level, as mandated by § 1504, would disclose trade secrets (PWYP-US, 2013).

The SEC's delay in rulemaking and API's efforts to limit the definition of 'project-level data' have led to heated responses from various stakeholders, including civil society, investors, and EI companies. They have asked the SEC to adopt new rules by 2014, since similar standards have already been applied in other countries. Choosing to take legal action, Oxfam sued the SEC, claiming violation of the mandatory deadline set by Congress for the adoption of § 1504. Oxfam argued that these rules should have been issued four years prior, in 2011, and that the timeline offered by the SEC in March 2015 showed unreasonable delay. Oxfam asked the SEC to propose its revisions by 1 August 2015, give a 45-day deadline for public commentary, then issue its final rules by 1 November 2015. The SEC, in return, stated that Oxfam's suggested timeline was unworkable, and that the commission had to prioritize more 'urgent' rules, particularly those dealing with matters of human health and welfare. In December 2014, the SEC proposed that its revisions be reported no later than 31 October 2015, with implementation in early 2016.

This situation clearly shows a setback in transparency in the United States. Project-level disclosure rules were first proposed on 15 December 2010. Congress gave the SEC a 270-day deadline to adopt the rules, meaning that they should have been issued by 17 April 2011. Unfortunately, the SEC missed the deadline, only adopting the rules on 22 August

2012. These rules were stricken in 2013 by the District Court for the District of Columbia and the SEC was asked to redraft them. Though the SEC announced that rulemaking would be conducted in March 2015, implementation is not expected until spring 2016—a five year delay from the original plan.

The delay towards greater transparency is troublesome, as is the API proposal which offers lower standards than the Dodd–Frank Act. As the Court has not prohibited the SEC from proposing precise rules, there is still an opportunity for the United States to have a progressive transparency standard, as described in § 1504 of the Dodd–Frank Act. However, considering current progress in transparency standards worldwide, including the New EITI Standard and laws passed in the United Kingdom, Norway, and Canada, the United States has been left behind. Though in 2012 the country appeared to be the vanguard of transparency in the EI sector with its project-level reporting standards, it now represents an enormous setback for EI transparency.

Project-Level Reporting: Beyond Transparency

In Indonesia’s implementation of EITI, the multi-stakeholder group decided to disclose payments and revenues at the project level. Though civil society and local governments were the ones who encouraged the idea, it was also supported by other stakeholders. This shows how all stakeholders in Indonesia, including EI, consider project-level reporting important, even when they have their own interests. There is no parallel to API’s claim.

Unfortunately, information disclosure, particularly project-level reporting, is often associated with civil society efforts towards transparency. This is understandable, because the idea of transparency is itself frequently manifested through information disclosure (Mason, 2008). As a basis for transparency, information disclosure is meaningful and empowering. It can lead to the ‘expected’ goals of transparency: increased efficiency, enhanced trust, strengthened governance, reduced corruption, improved accountability, and increased legitimacy of the decision-making process (Gupta, 2008). However, information disclosure, especially project level reporting, is not merely about pursuing transparency. It goes beyond that. Transparency is only an instrument to achieve a greater goal (Acosta, 2013).

First, project level reporting can ensure that proper EI revenue is received by the government. In the case of Indonesia, this is the main driver behind local governments’ decision to disclose project-level data in the EITI report. It is important to consider the revenue sharing structure and mechanism for the EI sector in Indonesia. EI revenue is collected by the central government then distributed at the sub-national level according to a legislatively determined formula. This policy was initially designed to help each district government plan and develop its district in accordance with the spirit of decentralization. In implementation, however, it has gone unmonitored, and the centralized data has provided loopholes for abuse. When the reconciliation process is undertaken, sub-national governments do not

have contested data.²² In such a situation, revenue transfer is crucial sub-national—especially district—governments.

Revenue Sharing Mechanisms in the EI Sector in Indonesia			
In Indonesia, revenue sharing mechanisms in the EI sector (including the oil and gas sector and the mining sector) are regulated by Fiscal Balancing Law 2004 and Government Regulation No. 55 of 2005 regarding Fund Balancing. Certain formulas for each sector, but generally they depend on the producing region.			
Oil Sector (District as producing region)		Oil Sector (Province as producing region)	
Central government	84.5%	Central government	84.5%
Producing provinces	3%	Producing provinces	5%
Producing districts	6%	All districts in the prod. provinces	10%
Districts adjacent to prod. district	6%	Educational budget	0.5%
Educational budget ²³	0.5%		
Central government	20%	Central government	20%
Producing provinces	16%	Producing provinces	80%
Producing districts	64%		

22 A similar situation can be found in Publish What You Pay Indonesia's program to improve EI governance in five pilot provinces: including Aceh, South Sumatera, West Kalimantan, East Kalimantan and Central Sulawesi, as explained by local government officials in multi-stakeholder discussions on revenue transparency. Officials argue that data has caused enormous problems for them. Their concern is mostly regarding the state: without data on production and payments, they are unable to ensure that fair revenue is transferred from the central government. Looking at revenue sharing mechanisms in Indonesia, there is considerable space for illegal practices that can bring financial loss.

23 The educational budget amounts to 0.5%, taken from the producing region and adjacent districts. If the producing region is a district, then the share

Mining Sector–Royalties (District as prod. region)		Mining Sector–Royalties (Province as producing region)	
Central government	20%	Central government	20%
Producing provinces	16%	Producing provinces	26%
Producing districts	32%	All districts in the prod. provinces	54%
Districts adjacent to prod. district	32%		

To determine the producing region, the oil and gas sector uses the location of the wellhead as the determining factor. When onshore, the producing region is the district in which the wellhead is located; when offshore, there are three possibilities, 1) If the wellhead or platform is located less than 4 miles from the coast, the producing region is the district; 2) If the wellhead or platform is located between 4 and 12 miles from the coast, the producing region is the province; 3) If the wellhead or platform is located more than 12 miles from the coast, the producing region is the central government. In the mining sector, the producing region is based on the mining area. If a mining area is located in two districts, then the province is considered the producing region.

Source: Government Regulation No. 55 Year 2005 on Fund Balancing; Decree of the Minister of Energy and Mineral Resources on Producing Regions in the Oil and Gas and Mining Sectors (2013)

Project-level reporting provides an alternate solution to revenue transfer problems in Indonesia, the most prominent of which is asymmetric information among stakeholders. The absence of comprehensive information leads to poor assessments and gives more rooms for illicit financial activities such as corruption and embezzlement (Olcer, 2009). Greater information disclosure, particularly

taken is based on the following formula: 0.1% from the producing province, 0.2% from the producing district, and 0.2% from adjacent districts. If the producing region is a province, then the formula used is 0.17% from the producing province and 0.33% from all districts in the province. This scheme is only applied for the oil and gas sector.

at the project level, enables governments to easily detect and trace revenue flows and to identify suspicious activities (Dingwerth and Eichinger, 2010). The actor(s) behind such illicit revenues also can be identified. As such, project-level reporting can be highly beneficial for addressing corruption, considering the EI sector itself is considered the world's most corrupt industrial sector (OECD, 2014).

By utilizing disaggregated data in the EITI report, local governments can verify the total amount of revenue to be transferred. As such, project-level reporting helps ensure proper compensation for local governments and prevents the mismanagement of revenue. As the experiences of Ghana, Nigeria, Liberia, Burkina Faso, Sierra Leone and other resource-rich countries indicate, concrete action towards greater transparency in revenue management, taking the form of information disclosure, is effective in the improvement of revenue collection and inflows (OSISA, 2013).

Second, through information disclosure, particularly project-level reporting, industries can optimize their work. Considering the high risks of the EI sector, information disclosure will be useful for industrial risk management. Risk assessment is a crucial step in the decision making process, especially when it comes to investing in and developing a working plan. Assessment allows industries to calculate the costs and benefits of their projects: will they bring economic gain but tarnish the company's image, or will they bring great profit and positive publicity for the company? As such, through information disclosure

industries receive an understanding of the situation which can be used in developing future strategies. In such a situation, project-level reporting is highly beneficial, enabling industries to analyse the risk for every project.

Information disclosure also improves the effectiveness of risk management. It should be noted here that the risks of EI projects are not only related to technical issues, but also socio-political ones, including as political instability, environmental sensitivity, and regional unrest. In the case of Indonesia, political and regional stability have a strategic role in shaping the investment climate and business environment of EI. This stability is frequently disturbed by the insecurity of related stakeholders. To some extent, civil society has no trust for business entities and government; business entities are likewise prejudiced against the government. This situation can be resolved by ensuring the free distribution of information to all stakeholders. The availability of project-level data, especially regarding industries' financial contributions to the impacted communities, can (for example) mitigate tensions between civil society and business entities. Clearly, eliminating asymmetrical information distribution will mitigate misunderstandings and develop inter-stakeholder trust, thus leading to safer and more stable working circumstances.

Furthermore, project-level reporting provides greater economic gains for EI industries. It allows them to conduct performance analyses that can be used to determine the economic value of each project. Economic targets and operation costs can be easily identified. As shown by an

empirical study conducted by Columbia University, payment disclosure has a positive impact on EI companies' financial performance, including price ratios, returns on equity, and invested capital (Toledano and Topal, 2012). Simply put, project level reporting ensures greater stability and lessens uncertainty, thus enhancing investment prospects.

Third, project-level reporting empowers civil society. The EI sector was once considered sacred, with strictly limited access to information; this is why most citizens of resource-rich countries are poorly informed about EI revenues as well as the sector's contributions to development. Information disclosure such as that mandated by EITI is a good initial step towards raising public awareness of the importance of transparency in the EI sector. As issues become publicly known, they will provoke debate focused on the fairness of payments made by companies or the use of EI revenue. Information disclosure will enable citizens to monitor EI payments and identify questionable ones. Disclosure will also allow citizens to ensure the fair revenue sharing as compensation for EI activities in their area and give citizens room to monitor the allocation of revenue, to ensure it is used for the benefit of the public and not mismanaged.

Indonesia' experiences implementing project-level reporting provide a substantial basis for civil society works, especially those related to their advocacy for EI transparency. Described below are the three main advocacy activities conducted by Publish What You Pay

Indonesia (PWYP), in collaboration with local partners, to elevate EITI Indonesia to a more concrete level.²⁴

- *Utilizing Mining Licenses Data to Promote Spatial Transparency.* The Swandiri Institute, in collaboration with PWYP Indonesia, used GIS technology and EITI project-level data on mining licenses to assess mining concessions in West Kalimantan. Their findings showed a transgression estimated to have cost the province more than \$1.5 million in lost land rent.²⁵
- *Project Level Data as an Instrument to Cross-check Oil-Gas Production in Resource Rich District.* PWYP Indonesia and a local civil society organization, LPAD, conducted a comparison analysis of oil and gas production in Riau Province. Production data reported in the EITI Indonesia report was substantially different than the data provided by the Ministry of Energy and Mineral Resources. This may be explained by the different data sources used: EITI Indonesia used data from the Executive Agency for Upstream Oil and Gas Business Development as contested data of extractive companies, whereas the ministry relied on an online real-system system. This study also showed a critical issue facing Indonesia's oil and gas sector: asynchronous data production. Since

24 See the works of Publish What You Pay Indonesia using project level data: <http://www.publishwhatyoupay.org/resources/using-project-level-data-pwyp-indonesia-workshop>.

25 See the online portal on EI spatial transparency in West Kalimantan: <http://editor.giscloud.com/map/164977/eispatialtransparency>

Indonesia implemented a production sharing contracts mechanism, payments made by companies have also included in-kind payments in oil and gas (an agreed percentage of companies' total production). As such, greater data accuracy is needed to ensure fair revenue sharing in Indonesia in general and Riau in particular. Due to the availability of project-level production data in the EITI report, PWYP Indonesia and LPAD can monitor Indonesia's oil and gas production and identify any problems in the oil and gas sector that need to be investigated further. This shows how project-level reporting can be utilized as a basis of advocacy.

- *The Effectiveness of Natural Resource Contributions to Human Development.* This work assesses EI revenue management by comparing natural resource contributions to human development in two resource-rich districts in West Nusa Tenggara: West Lombok and West Sumbawa. Data used in the study is taken from the EITI report as well as other sources, including corporate responsibility data. The findings show the importance of modifying local revenue management in resource rich-districts to translate the abundance of resources into meaningful socio-economic development.

Lessons Learned from Indonesia: How to Make It Work

Indonesia has succeeded in implementing project-level disclosure in its EITI report, though such disclosure is not required by the 2011 EITI standard. The United States,

meanwhile, has yet to adopt such disclosure despite a deadline having been set by Congress. Indonesia's success in adopting such policies cannot be separated from the work of CSOs, supported by local governments, which have demanded the disclosure of payment and revenue data at the project level. Indonesia's governments, predominantly the local governments, have considered it urgent to implement project-level disclosure owing to the revenue sharing mechanism used in the country. The Indonesian experience shows strong internal support for project-level disclosure, a situation not found in the Dodd–Frank case. Demand for § 1504 of the Dodd-Frank Act has generally come from external parties, particularly resource-rich countries; certain entities in the United States, meanwhile, have attempted to delay implementation and even lower standards. Presently, CSOs in the United States must work harder to gain internal support by convincing other parties of the benefit of project-level disclosure. Though great support has been obtained from other countries, strong internal support is still needed.

However, the successful implementation of project-level reporting in Indonesia will not be the end of its struggles. Current information disclosure has yet to directly address all problems caused by the absence of transparency. Proper information disclosure, however, does not ensure that the public will actively engage to hold the government accountable. A certain environment is needed to maximize the benefits of information disclosure, particularly project-level reporting.

The most important is information literacy. If information literacy is not upheld, then publicly accessible information will have no benefits for society—information must still be analysed and communicated to the public. As such, civil society needs adequate capacity and knowledge for advocacy work, particularly regarding revenue transparency in EI (Soerjoatmodjo, Hanafi, and Triwibowo, 2014). Moreover, civil society must develop a detailed understanding of technical subjects and remain passionate in exercising its role as a watchdog.

Freedom of the media is also essential for the implementation of information disclosure. Information disclosure has a significant role in triggering debates and opening dialogues, but this information will have no value if the environment does not accommodate it. The findings of the EITI reconciliation process, as well as the work of CSOs, cannot be publicly known if the freedom of the media is restricted. Freedom of the media is particularly important in EI, which is well-known to be a secretive sector involving highly ranked officials.

The implementation of project-level disclosure is indispensable in advancing civil society's advocacy agenda. However, information disclosure is but the first step towards a greater goal. Thus, the findings here should be followed up with concrete action; it is crucial to develop information disclosure into a broader reform of the EI sector in Indonesia. Indonesia still has much homework to complete.

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Trans-National Civic Engagement and Campaign for EITI in Southeast Asian Countries: Opportunities and Challenges

Joash Tapiheru and Primi Suharmadi Putri

Abstract

This paper focuses on the roles and potential of transnational civic-engagement for domestic policy change through concerted action in promoting and advocating common issues at the regional level, in this case ASEAN. Using theories of discourse analysis, knowledge management, and policy networks, this paper elaborates and reflects upon the experiences of EITI framework advocacy through concerted actions by civil society elements of ASEAN member states promoting domestic policy change in the extractive industry sector. By doing so, this paper aims to identify the further potential of and challenges faced by transnational civic engagement in developing concerted policy advocacy in an ASEAN community context.

Keywords: knowledge, knowledge exchange, learning

Introduction

Through the work of transnational networks in Southeast Asian countries such as Timor-Leste, Indonesia, the Philippines, and Myanmar, governments have been encouraged to adopt and comply with new global Open Government Partnership (OGP) and Extractive Industries Transparency Initiative (EITI) standards in the extractive industry (EI) sector. Consequently, multi-stakeholder groups in these countries have been established at a rapid rate. Such groups believe that transparency in the EI sector is a solution to the problems of rent seeking and oligarchy that have plagued this sector.

One important point is that the current state of EI does not exist in a vacuum. In each country, this sector is structured by an interplay of factors, of social, political, geological, economic, and cultural contexts. However, despite broadly varying permutations of these factors in each country, some proponents for the adoption of transparency in the EI sector in Southeast Asian countries have managed to push their respective governments to adopt transparency initiatives in their policies for the EI sector. More interestingly, these CSO networks have not limited their advocacy activities to the formal adoption of transparency by the EI in their respective countries; they have also engaged in cross-border activities to advocate the formal adoption of such framework at a regional level.

The fact that proponents of transparent governance, especially in the EI sector, have been able to conduct concerted action despite their differences is worthy of examination.

Concerted action among civil society organizations (CSOs) in Southeast Asian countries, especially in the EI sector, implies the existence of commonly shared knowledge among involved parties which serves as a common reference and guiding framework which should be continuously re-examined and adjusted based on experiences with its application in involved parties' respective countries.

This paper focuses on the process in which certain kinds of knowledge are circulated, examined, and accepted as a common platform for EITI adoption in Southeast Asian countries. It focuses on the role of transnational civic-engagement through various forums in the process of knowledge sharing and learning. Though this paper's topic may be something advocates do routinely in various forms, it is hoped that this paper can make explicit the importance of knowledge and knowledge management in advocacy.

CSOs in Southeast Asian Countries

Before continuing, it is necessary to briefly highlight the commonly shared feature of Southeast Asian countries. This is a vital factor that has, in concert with other factors, shaped the general nature of CSOs in this region. Most countries in this region are or have been at some point of their history ruled by one or more regimes that put the State in a dominant position. The wave of democratization and paradigmatic shift in governance which swept this region in the 1980s and 1990s has forefronted CSOs (Schmidt, 2005:1). Among elite figures in Southeast Asian countries, the idea that the populace should participate in State decision-making

processes began to emerge in the 1980s; one of ASEAN's founding fathers, Adam Malik, stated "the shaping of a future of peace, friendship, and cooperation is far too important to be left to government and government officials. [As such, there is a need for] ever-expanding involvement and participation of the people". Unfortunately, Malik's ideas were followed by no action or even a way of accommodating non-State actors in countries' policy making or regional level until the ASEAN Institute for Strategic and International Studies (ASEAN-ISIS) was established in 1988. The idea was only actualized as "an assembly of the people of ASEAN" in 1995, which became the embryo for the first ASEAN People's Assembly in 2000. Since then, the importance of civil society participation has been recognized by ASEAN and its members (Chandra, 1999:72).

After the monetary crisis of 1997, civil society in Southeast Asian countries was given greater power, boosted by the wave of democratization that swept the region and burgeoning number of CSOs. However, things have not all gone as hoped. It is important to emphasise that each Southeast Asian country has a different type of political system, and the political context of each country affects CSOs political opportunities by structuring their roles and effects in their respective countries. Chong and Ellies (2011) have identified three types of relationships between CSOs and the State in Southeast Asia; (1) 'tacit understanding', where there is a convergence of interests between CSOs and the State, especially in the area of public service; (2) 'advocacy-oriented and potentially conflictive' relationships,

in which CSOs take action against government policies and interventions; (3) a 'mediated' relationship in which CSOs enjoy the same level of autonomy but operate largely under the political and legal conditions set by the State. These three types of CSO are by no means monolithic; owing to the high number of CSOs developing annually, any country could have any or all three types of CSO, although which of these types is the majority type will be affected by the country's political situation and/or (frankly speaking) by the CSO's sponsors and donors.

In Indonesia, the era of CSOs began after the fall of the New Order and resignation of President Suharto. CSOs were established in response to people's disappointment in the New Order, its reputation for corruption, and its centralistic authoritarian mode of governance. Democratization and decentralization thus took Indonesia to a whole new level of transparency discourse. This correspond with CSOs demands for broader recognition of their right to be involved and participate in the country's policy process and in any other forms of engagement, both as decision makers and watchdog.

In the Philippines, the country most similar to Indonesia in terms of its political context and movements among Southeast Asian, CSOs and civic movements have a lengthy tradition. Experiencing decentralization after a change of government 1986, CSOs in the Philippines have been experimenting with new forms of civil society engagement, serving as the government's partner in development and

democratization at both the national and local levels (Fabros, 2003:174).

In Timor-Leste, the youngest nation-state in the region, the growth of civil society has occurred along with national development. CSOs' activism contributes to the mainstream discourse of the nation-building process (Wigglesworth, 2013:51–74), and many Timorese CSOs 'enjoy' support from Western governments.

In Myanmar, a country now transitioning from an authoritarian to a more formally democratic regime after the 2010 elections, CSOs are also transitioning to become more politically equipped. CSOs are seemingly focused on having greater influence in terms of democracy and good governance (Sang, 2013).

CSOs' conditions in Southeast Asia are influenced by many factors, including their countries' political contexts and transformations. Recognizing that said political contexts and transformations are in turn driven by multiple other aspects, such as government type and political issues, these aspects also indisputably drive CSOs' ideologies and focuses. The wide range of issues covered by CSOs likewise pushes them to manage and exchange knowledge through various degree of collaboration. Such collaboration has gone beyond national borders, taking place at the regional and global level.

Emergence and Spread of EITI Discourse in SEA

Before the 1997 economic crisis hit Southeast Asia, civil society organization (CSOs) involvement was limited by state

and business communities. Following the crisis, the changing political landscape allowed CSOs greater participation. Many have become characterized by their work at the grassroots level that reflects an immediate response to public needs. CSOs in general have also been 'naturally issue oriented or even issue specific' (Chandra, 1999:74).

One major issue, transparency, has been hotly debated in Southeast Asian countries, especially after 'good governance' discourse gained prominence. Regarding this, we hold that each country in Southeast Asia faces similar problems with financial reporting and budget distribution, considering the similarity of the centralized and state-centric regimes in these countries. Within the broad discourse of 'good governance', transparency has become an umbrella for many other issues, including clientelism, oligarchy, and patronage.

The lucrative nature of EI has added further complexities. This sector has been vital for Southeast Asian countries, almost all of which are dependent to varying degrees on natural resources for revenue. This means that each country's policies in this sector have broad and deep effects on the country's government and society.

The high number of oil, gas, and other minerals upstream activities has been followed by the emergence of crucial issues which must be handled by the government, including business matters; national income and wealth; taxes and budgeting; national and local revenue sharing; non-economic effects on society and the environment; land ownership issues; and human rights violations against indigenous peoples. As stated by Gillies (2010), EI operations are

‘directly related to the wider issues of democracy, conflict and social justice which characterize their mandate’. Such problems have also been emphasized because, when the industries are (legally) run by multinational and/or state-owned companies, this system relies on a relationship between governments and companies that can become a toll-road to rent-seeking without transparency.

Transparency issues have also been related to freedom of information issues. Initially, they were advocated by CSOs through the building of broader international coalitions such as Transparency International and Publish What You Pay (PWYP). This strategy gave local and national NGOs greater capacity to push governments to open their financial reports and to familiarize non-state actors with the value of transparency in minimizing corruption. As more people have become aware of the corruption and rent-seeking practices in their country’s EI sectors, companies have had to support transparency initiatives to win support from international donors. They are also recommending the implementation of good governance policies in most developing countries. Numerous new transparency laws and regulations have been created.

In the EI sector, EITI has become the primary institutional tool for the promotion of EI transparency as an international norm (Gillies, 2010). Supported by state governments, companies, and donors, it also requires CSOs representatives to have a voice in dialogue forums, allowing them to discuss the implementation of EI in their country. They also promote a transparency based on the

EITI principles, to be implemented at the national level but with international supported.

Launched in 2002 at the World Summit on sustainable development in Johannesburg as an international standard for assessing oil, gas and mining in resource-rich countries, EITI works quite simply. It is based on voluntary participation from the governments of resource-rich countries, which publish information on their EI revenues in comparison to companies' payments (taxes, royalties, duties, etc.) to the government. This reporting is overseen by a multi-stakeholder group of government officials, company representatives, and CSOs. If the EITI report shows any gaps in payments and revenues, the multi-stakeholder group can then publish it to attract debate and promote government accountability (Ölcer, 2009:13).

As stated above, EITI as a transparency tool for resource-rich countries depends greatly on the active involvement of in-country CSOs, which work as a watchdog ensuring their transparency at the local, national, regional and international levels. Understanding that issues are not limited to revenues, coalitions of CSOs have focused on a wide range of issues that can occur in the EI sector, using knowledge exchange to build stronger coalitions and promote transparency in EI governance. The Revenue Watch (later renamed the Natural Resource Governance Institute) IKAT-US project is one such partnership, consisting of four Indonesian non-governmental organizations—the Institute for Essential Services Reform, the Publish What You Pay Indonesia, the Indonesian Parliamentary Center, Article 33 (previously the

Pattiro Institute)—as well as civil society counterparts from Southeast Asia including Bantay Kita (the Philippines), Luta Hamutuk (Timor-Leste), Cambodians for Resource Revenue Transparency (Cambodia), Pan Nature and CODE (Vietnam) and Research For Social Advancement (Malaysia). These organizations collaborate to promote effective transparency and accountability campaigns focused on the oil, gas and mining industries, and targeting regional, national and subnational authorities.²⁶

EITI's unique use of state governments, companies, and CSOs has influenced resource-rich nations to implement the standard to 'fight' corruption within their governments and avoid the resource curse. This has sparked trends in resource-rich nations' revenue management policies and attempts to improve said policies' effects on the national budget (and, in turn, national development). This means that countries' EI income from specific resource-rich areas can be enjoyed by all people. The great potential this offers for accelerated economic and social development can only be realized if countries can resolve the special macroeconomic and governance challenges that are associated with an abundance of natural resources (Kato, 2006).

In countries which have implemented decentralisation and thus delegated some financial management to local governments, EITI needs to be adapted to the system implemented by the country. Indonesia, for instance, is

26 <http://www.resourcegovernance.org/grants/about-revenue-watch-ikat-us-project>.

a large decentralised nation with revenue policies at the national and subnational level, especially regarding mineral revenues; mineral mining revenues are fully under local governments, whereas oil and gas revenues are collected at the national level and then divided at the subnational level. As such, by expanding the scope and outreach of EITI to subnational areas with significant resource revenue-sharing systems, Southeast Asian countries have a clear opportunity to address governance and the lack of trust issues in their key producing regions.²⁷

However, at the local level EI is not merely about transparency. As companies must dig up people's land to extract resources, much care is needed. Budget earmarking can cause conflict if people do not receive enough reparations to replace what they have lost. The high frequency of conflict in EI-producing areas has led several CSOs to focus on subnational transparency, holding that access to revenue resources through direct payments from operating companies must be overseen by CSOs, both those involved in multi-stakeholder groups and those acting as watchdogs. Fortunately, the establishment of local and national CSOs with a focus on subnational issues, such as *Bantay Kita* of the Philippines and Article 33 of Indonesia, along with regional coalitions dealing with EI, has positioned transparency as only one important aspect of subnational EI activities. Others

27 EITI reporting by key producing region:

http://eiti.org/files/SWG/World_Bank_SWG_Paper_Note_on_EITI_reporting_by_subnational_governments_April_2012.pdf

include social and community resilience, environmental degradation, and the important role of local involvement through Free, Prior, and Informed Consent (FPIC).

On other hand, as form of transparency EITI also aids in distributing knowledge and information, as citizens of many resource-rich countries are poorly informed about their government's EI revenues and the actual value of resources (Humphreys, Sachs, and Stiglitz, 2007). Countries' willingness to participate in EITI reporting could be a first step towards capacity building and public awareness of countries' EI revenues.

Advocacy, Knowledge Exchange, and Learning Among CSOs in SEA

- **Impacts of Transnational Civic-engagement: Policy Community**

Knowledge and knowledge management has become more prominent in CSOs and policy circles in general. In the case of EITI, the emergence of such issues in mainstream policy discourses in the EI sector in Southeast Asia can be attributed to the appeal of broadening access to EI, which has for so long been denied to most stakeholders. For state and private actors involved in this sector, more knowledge means more efficiency. For civil society, more knowledge means more control over public matters. Thus, although not all Southeast Asian countries are ruled by democratic regimes, most have shown a relatively high interest in adopting EITI.

Among CSOs, EITI discourse serves as a framework and common reference among participants. Two main discourses have evolved around the value chain introduced through EITI framework: participation and making good investments by actively engaging multi-stakeholder groups in EI policy processes (and thus manifesting the participatory principle). EITI discussion endorses the implementation of this principle of participation in the decision-making process, particularly regarding how revenue gained from EI may be invested and how its benefits can be channelled for the public good.

These topics, along with ensuring transparency in the EI sector, have become nodal points for discourses regarding EITI. CSOs involved in transnational forums, especially at the regional level, use knowledge gained from their foreign counterparts and adapt it to their own experiences and situations in their home countries. In countries where the ruling regime is less willing to comply with the participatory principle, the idea that transparency enhances efficiency can be used to soften the government's stance and spark its interest in adopting EITI. Furthermore, as EITI becomes internationally accepted as the standard for 'good extractive industry governance', such regimes will see that adopting EITI may serve to improve their position at the international level.

Transnational civic engagement involving CSOs in Southeast Asian countries enables them to share knowledge and adjust and experiment with advocacy strategies and tactics. The case of the Philippines shows how local CSOs' engagement in regional forums enables them to put the

government ‘under siege’ and force it to adopt and implement EITI principles and standards. By simultaneously using their networks at the grassroots level and within the government itself, as well as utilizing international pressure, local CSOs have been able to ensure government compliance with EITI standard, not only in the issue of transparency but also in the issue of participatory policy processes, including the principle of FPIC.²⁸

In countries with different socio-political contexts, such as Malaysia, transnational civic-engagement serves as a source through which activists can obtain knowledge and experience from foreign counterparts regarding how they should deal with their country’s government and corporations. Continuous engagement in such forums also serves to ensure the support of international pressure groups in times of need.²⁹

One activist states that another beneficial impact of involvement in transnational forums is the rejuvenation of their drive to advocate for issues of concern. Through such forums, CSO activists from various Southeast Asian countries establish a community with a set of commonly shared values; through it, they share, discuss, learn, adjust, and implement various ideas in a continuous cycle.

28 Email interview with “Bon-bon”, a CSO activist with “Bantay Kita”, the Philippines, 2 September 2014

29 Interview with Tricia-Yeoh (Chief Operating Officer, IDEAS Malaysia), 3 September 2014

By doing so, CSOs may gain leverage and a stronger bargaining position over their governments and businesses/corporations involved in the EI sector. This leverage comes from two sources. *First*, the more knowledge shared through trans-national forums, the more potential CSOs have to draft clear-cut, well-articulated alternative frameworks. In short, trans-national forums increase their expertise in this sector of EI, allowing them to face governments and businesses/corporations on more equal term.

Second, as mentioned above, their involvement in transnational forums gives CSOs potential allies that can support their advocacy by providing international pressure. When governments and businesses/corporations realize this, they will be more willing to listen to the CSOs and adopt their agendas.

In Southeast Asia, this community has moved even further, working on a draft, based on the EITI framework, to be offered as a regional framework. Such a measure signifies the purposing (attempted or real) of transnational forums as policy communities.

- **The Nodal Point: EITI**

The existence of EITI framework is vital for the formation of a policy community as discussed in the previous section. As a common reference, it provides an operable yet flexible framework. These two features are important due to ASEAN communities' need for an equally operable alternative framework and the varying specific context of each country in Southeast Asia.

EITI framework also appears ‘politically neutral’ to both the government and corporations, though this is of course relative to the broader field of discursivity of the EI sector. However, bearing in mind that radical discourses against mining activities are not uncommon nowadays, EITI offer a much more moderate alternative.

In this situation, EITI creates broader maneuvering space. It stops the division of the field of discursivity of EI into two diametrically opposing camps (pro- and anti-mining). By doing so, it enables negotiations to take place regarding the implementation of this framework and its adaptation to specific countries’ EI policies. It is in this manoeuvring room that knowledge exchange and learning take place, as many ideas, experience, and practices are continuously put forward and tested against the empirical reality of EI and the policy process surrounding it.

As an initiative, EITI has snowballed in Southeast Asia. The space it creates will thus ensure the flow of new ideas and EI practices as long as it can maintain flexibility without compromising practicality. Crucially, this factor also affects the sustainability of the policy community. Once it is frozen and turned into an orthodoxy, it will lose its vitality and enter a phase of decay.

One way to sustain Southeast Asia’s vibrant CSOs, as generated through EITI, is to start producing strategic ideas regarding EI. EITI enables stakeholders in the EI sector to provide more open space for negotiation and to provide common reference among stakeholders for the development of new ideas and experiences. However, as with any other

discourse, EITI implies the dislocation of other aspects that may be related to EI.

One dominant feature of EITI is its focus on the issue of 'revenue management'. Though other issues, such as participatory policy processes and revenue investment in more sustainable sectors, are incorporated into the EITI value chain, the 'revenue management' aspect has been the most appealing one of this framework. EITI reduces the tendency to interpret transparency in the EI sector as merely transparency in revenue management. As such, EITI enables more stakeholders to participate in policy processes related to the EI sector and limits what the EI sector should be understood to be.

Awareness of this tendency as a challenge for reform in EI governance is crucial. EI does not simply mean revenue from mining commodities. Many of these commodities are also strategic goods, especially ones such as oil, natural gas, and coal, which are widely used as energy sources. The strategic value of these commodities distinguishes them from other mining goods, and they should therefore not be treated as simple mining commodities.

This does not mean that transparency in the EI sector, particularly revenue management, is unnecessary. Thanks to EITI, transnational policy communities have been established among civil society to address issues in Southeast Asia's EI sector. However, beyond the relative initial success in mainstreaming discourse of transparent EI governance there are greater challenges for ensuring that policies made for this sector lead to more sustainable future

development. This chapter thus argues that it is necessary to broaden the EI-related discourse initiated by EITI so that policy communities in Southeast Asia can be used to venture into more strategic framework, beyond simple revenue management.³⁰

- **Transnational Civic Engagement as Channel for Multiple Track Diplomacy: Underdeveloped Potential**

Policy communities formed through the process of mainstreaming EITI in Southeast Asia have connected people of various nationalities. Discussions focus on an issue which is often a source of inter-State disputes and conflicts: natural resources. The transnational civic engagement conducted by CSOs activists from Southeast Asian countries shows that this issue can be discussed openly, avoiding claims over natural resources. This phenomenon suggests that other opportunities may be offered by such transnational forums as alternative channels for diplomacy.

This potential is correlated with the growing discourse of multiple-track diplomacy. However, to realize this potential, many conditions must be met. First, it is necessary to ensure CSOs' ability to carry out their function as representatives of diverse interests of civil society elements so that their claim to represent the civil society interests in their respective

30 Another paper in this panel, presented by Poppy S. Winanti and Hasrul Hanif, elaborated on the formation of this policy community and its transformation into a political coalition.

countries is justifiable. Second, such ability must be equally shared among CSOs in the countries involved.³¹

The current momentum promises a great opportunity to more firmly institutionalize transnational civic engagement. The existing governance scheme favours more active civil society engagement, not only at the sub-national and national levels, but also the transnational level. However, as mentioned above, there are conditions that must be met before the projected image of this transnational civic engagement can function maximally as an alternative channel for diplomacy.

Regarding the further transformation of policy communities into political coalitions addressing specific issues, the idea of trans-national civic engagement inspires us to envision networks of coalitions addressing broader and more diverse issues. Such networks would work collaboratively with governance actors at both the domestic and regional level to address issues emerging in ASEAN's engagements, as a single entity, with other actors of global governance and with ASEAN member states.

Various domestic issues equally demand an immediate response from related member state(s) and ASEAN, including democracy in Myanmar, the political crisis in Thailand, the justice process for Khmer Rouge war crimes in Cambodia, and the settlement of human rights violations in Indonesia. To properly address these issues, collaboration is needed

31 Email interview with "Bon-bon", a CSO activist with "Bantay Kita", the Philippines, 3 September 2014.

between civil society elements in the involved country and its ASEAN counterparts. It is possible to further develop existing networks and policy communities into political coalitions to address these issues.

As we know, however, one major challenge to collaboration between various elements of ASEAN is the diversity and discrepancy of ASEAN member states, be it in terms of civil society capacity, political regime, legal framework, or comparative advantages relative to other ASEAN member states. The trans-national civic engagements which took place during EITI and policy community discussions at the regional level have provided basic general knowledge regarding issues of concern other than EI, domestic situations, and networks.

Such basic knowledge and linkages have the potential to be further developed into civil society coalitions that serve to unite stakeholders in the ASEAN community regarding crucial issues at the domestic or regional level. Such an arrangement would be strategic, as we already know that ASEAN, as an institution, has largely been dominated by state—and now corporate and business—actors. With dominant actors such as these, there are a number of issues which are unlikely to be addressed through the formal policy agenda at the ASEAN or domestic level.

This is particularly true for ASEAN works based on the principles of consensus and non-intervention. Government-to-government engagements within ASEAN are bound by these principles, and as such there are certain issues that are less likely to enter inter-government discussion agendas.

Civil society elements are relatively less bound by these principles, and thus permit discussions addressing critical issues and the formulation and coordination of advocacy strategies at the regional level.

Trans-national civil society networks can also be a useful part of advocacy strategies. Linkage of domestic advocacy measures with broader networks at the regional level will produce a so-called boomerang effect that will put greater pressure on involved state government(s), in the hopes that they will properly deal with advocated issues.

Together with the steady, though relatively slow, growth of civil society involvement in policy processes at the ASEAN level, elements of civil society should consolidate themselves in regional networks to match governments and business entity networks (Lopa, 2012). By doing so, trans-national civil society elements can present themselves as equal partners and stakeholders in governance at the ASEAN level.

While trans-national civil society networks at the ASEAN level promise enormous potential for future development, there are certain conditions that must be met before said potential can be materialized. *First*, networks should be able to think strategically, beyond the issues at hand. As presented in the case of dealing with EITI discourse, stakeholders should be able to think beyond EITI framework and explore alternatives that might further enhance civil society's role and capacity as well as the effectiveness of the governance process as a whole.

Second, shared knowledge and experience produced through various trans-national civic engagement forums should be well managed, thus facilitating the process of knowledge processing and retrieval when needed. This process will, over time, further facilitate the construction of a common understanding among trans-national civil society elements regarding each other's situation, concerns, and knowledge. In short, this process is crucial for the institutionalisation of the knowledge scattered among specific stakeholders and their transformation into a collective endowment.

Third is horizontal learning among involved stakeholders. This is crucial for meeting point two above, and also to address the challenge of capacity discrepancies among civil society elements in ASEAN member states. Over time, this horizontal learning will equalize civil society elements' capacity in Southeast Asia countries and, in conjunction with the second point above, will contribute to forging a sense of community among civil society elements in ASEAN countries.

Fourth, it is necessary to further decrease the gap between state and business/corporate actors and civil society. As Lopa (2012) notes, relations among governance stakeholders in ASEAN have been dominated with mutual suspicion. The current situation, in which engagements have been intensified, should be utilized to further strengthen relations and take steps to anticipate the coming ASEAN Economic Community and interplay with other governance actors at the global level.

Conclusions

Transnational civic engagement in EITI advocacy at the regional and domestic levels has produced networks of CSOs united by common visions, goals, and issues. Along with the general trend in ASEAN and its member states to give greater explicit recognition of CSOs' roles and positions as partners in the governance process, the emergence of transnational policy networks dealing with EI issues has opened a new horizon to further develop said networks and include more elements of civil society (thus covering broader issues). Materializing such potential, however, is far easier said than done. Many conditions must be met before various elements of civil society in ASEAN countries can act, together with States and corporate entities, as equal and active governance actors at a regional level.

The current development in Southeast Asia, especially ASEAN member states, provides an unmatched opportunity for action which should be exploited as best as possible. In 2015, ASEAN initiated the ASEAN Community Plan, a master plan for more open borders among the ASEAN member states in terms of goods, services, and human mobilization. This plan will further facilitate interconnectivity among various elements of civil society in ASEAN countries.

To do so, however, it is necessary for parties involved in such networks to engage discursively with each other and determine common issues through which sustainable networks can be continuously maintained. Sustaining transnational civic engagement is vital to maintaining links (and, thus, opportunities) between elements of ASEAN

civil society. Networks formed with shared knowledge and experience developed and accumulated through such engagements will serve as an important basis for the further development of an ASEAN civil society community and, in turn, contribute greatly to the ASEAN community.

Keeping channels open between civil society elements in ASEAN countries will in turn enable involved parties to identify common issues that they can cooperatively push into the policy agenda at the national and regional levels. One interesting case is the rise of the civil society movement itself during and immediately following the Asian financial crisis of the late 1990s. As nearly all ASEAN member states faced a similar crisis situation, there was a surge in demand for ruling regimes to democratize their political structure and grant greater space for non-State elements, including civil society, to have their voices heard in policymaking. Though the form of this phenomenon varied from one ASEAN country to another, the fact that it emerged almost simultaneously in this region owing to parallel situations caused by a region-wide crisis provides us with important lessons which must be learned if civil society is to contribute more intensely to policies in at the national and regional (ASEAN) level. One of these is that civil society movements must have drawn inspiration from their counterparts in neighbouring ASEAN countries to further their own causes.

Despite the diverse trajectories of democratization (and, thus, CSOs) in ASEAN member states and Southeast Asian countries in general, experiences with common issues and situations—as seen in the case of the Asian financial crisis—

have affected the growing prominence of civil society as a crucial element of governance. Its prominence continues to grow as CSOs acquire more capacity to link with their counterparts in other countries at both the regional and global level.

Future challenges involve exploiting the opportunities provided by the initiation of the ASEAN community as well as enhancing networking experiences at a regional level to produce more effective civil society movements. One key challenge is the need to continuously engage in discursive engagement to determine common issues and values that will serve as a common reference among various elements of civil society in ASEAN and Southeast Asia in general.

Once again referring to the surging growth of society movements around the Asian financial crisis, it is necessary to bear in mind that, on its own, the crisis was not understood as a crisis by many in Southeast Asian; rather, it became everybody's issue through a discursive construction process. Maintaining and enhancing the capacity to determine issues that define common problems and possible solutions, both at the domestic and regional level, are crucial for sustainable and effective transnational civil society engagement.

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Part 2

Earmarking and Mineral Rents in Post-Conflict Aceh³²

Hasrul Hanif and Aryanto Nugroho

Aceh, once a conflict zone, has been transformed into an area of peace under a strong asymmetrical government. As the conflict and tensions in Aceh were predominantly between the central government and the local government of Aceh, and then primarily and closely related to revenue sharing from natural resources, it is interesting to explore the innovative revenue sharing policies implemented after Aceh received special autonomy. Said innovative policy, the earmarking of *Dana Bagi Hasil Tambahan* (additional revenue sharing funds) for certain types of public spending (particularly education and physical infrastructure development) was implemented after the

32 Aryanto Nugroho initially developed this chapter. Hasrul Hanif re-wrote and extended it with an emphasis on significant points on the intertwining of conflict and resource abundance.

Indonesian central government granted Aceh greater authority for self-government after the 2006 Helsinki accord. The chapter starts by exploring the background of social conflict in Aceh since the 1970s, a history closely intertwined with resource abundance in the province. It then describes asymmetrical decentralization as a way to overcome conflict and tensions between the centre and periphery before finally describing the earmarking of oil and gas revenue sharing funds in Aceh.

Veranda of Conflict as Resource Curse?

Aceh was the location of one of the longest-lasting violent social conflicts in Indonesia. For more than thirty years, disappointment and dissatisfaction, resistance and rebellion marked Aceh's relationship with Indonesia and claimed about 15,000 victims. Aceh was trapped in a bloody intermittent conflict between the Indonesian central government and the Acehnese people and government beginning in 1953, when Dauh Beureueh, a charismatic Acehnese religious and social leader, established and armed an opposition movement which called for greater self-governance and an Islamic state; this conflict heated up again after Hassan Tiro established the Free Aceh Movement (Gerakan Aceh Merdeka; GAM), which again emphasized the grossly unequal distribution of revenue drawn from Aceh's vast natural resource. In response, the central government has responded with military force and declared Aceh to be a *Daerah Operasi Militer* (Military Operational Zone) from 1990 to 1998 (Prasetyo and Birks, 2010: 48).

Aceh is known as one of the archipelago's resource-rich regions, a status recognized since the 16th century; the classic books *Reys-Geschrift van de Navigatien der Portugal oysen in Orienten* and *Itineraio*, published in 1596, described Aceh as a source of balsam and medicinal oil (Mohammad Said, 1981: 212).

Since Indonesia's independence, Aceh has significantly contributed to the development of Indonesia's oil and gas industries; it has also helped the country become a major oil and gas exporter. Early in the Soeharto period, the Indonesian government signed a 30-year Production Sharing Contract (PSC) for oil and gas exploitation with Mobile Oil Indonesia, a major American oil company. This contract, and the finding of enormous gas reserves in Arun Aceh in 1971, had a significant role in the successful development of *Liquefied Natural Gas* (LNG) and *Liquefied Petroleum Gas* (LPG) projects. Soebroto, the most influential Minister of Mining and Energy of New Order Indonesia, stated on 19 September 1971, at the launch of the LNG refinery in Arun, that:³³

"keberhasilan pelaksanaan proyek gas alam cair Arun (Aceh) sekarang ini, telah pula melampaui rekor yang telah dicapai Indonesia selama ini ... dan menempatkan Indonesia pada posisi yang sama dengan Aljazair sebagai negara pengekspor utama LNG di dunia pada saat ini. Prestasi ini sangat penting artinya dalam pelaksanaan kebijaksanaan pembangunan nasional dalam sektor Pertambangan dan Energi yang diharapkan dapat meningkatkan sumber penerimaan

33 http://www.acehbooks.org/pdf/ACEH_03296.pdf

negara yang sangat dibutuhkan dalam rangka pembiayaan pembangunan nasional.”

(the successful implementation of the liquefied natural gas project in Arun (Aceh) today has also surpassed the record achieved by Indonesia during this time ... and put Indonesia in the same position as Algeria, as one of the world's main exporters of LNG today. This achievement is very important for the implementation of national development policies in the mining and energy sectors, and are expected to increase State revenues necessary to finance national development)

Unfortunately, the benefits of oil and gas exploitation did not trickle down into Aceh, thus increasing the scale of the region's conflict and developing it into a secessionist movement demanding the independence of Aceh. As mentioned by Zulfan Tadjoeddin (2014: 44), in Aceh the renewed secessionist challenge arose from (a) the central government's approach to the exploitation region's rich natural resources and the distribution of its benefits; and (b) the armed forces' ruthless security approach in the region to 'safeguard' resource exploitation. A comparative perspective of secessionism in Southeast Asia has suggested that horizontal socio-economic inequalities between native peoples (in this case, Acehnese) and migrants (predominantly Javanese) were relatively higher than those of the neighbouring province of North Sumatra, thus precipitating the region's renewed violent secessionist challenge.³⁴

34 Interestingly, this underscores the theoretical debates on approaches to understanding conflicts over natural resource. Georg Frerks, Ton Dietz,

Interestingly, Aceh is not the only region of Indonesia which has faced a resource-related secessionist conflict. To varying degrees and extents, Papua, Riau and East Kalimantan have also demanded self-governance over issues of regional inequality in development between Java and the other islands (see the table below).

Pieter van der Zaag (2014: 14–15) write that there is no single approach to understanding the cause of natural resource-related conflict. Among the multiple possible causes are:

- Degradation of the environment (a key explanatory factor)
- Resource scarcity or distribution (a key issue), often concentrated on one particular resource or mineral.
- The problem by adopting a broader livelihood
- Natural resource extraction and ‘greed’ orientation; in this framework, the idea of resource abundance as a conflict factor has also emerged: the ‘resource curse’.
- The possible role of climate and climate change in promoting future conflict.
- The environment, seen not so much as a conflict factor, but rather as a shared interest between conflict protagonists; as such, it can be a window for peace building. ‘Securitisation’ of the environment is a deficient approach, as it runs counter to the need for a broader, global environmental approach when dealing with problems, something that a realist and nationalist approach is unable to deliver.

Table 6.1: The Four Rich Regions: Resource and Conflict Characteristics

Province	Resources	Level of conflict	Manifestation of conflict
Aceh	Natural gas, timber	High	<ul style="list-style-type: none"> • Well-articulated secessionist political movement • Significant violent insurgency by an organized rebel group (GAM)
Papua	Oil, copper, gold, natural gas, timber	Medium	<ul style="list-style-type: none"> • Fragmented and poorly articulated secessionist political movement • Minor violent insurgency by a less organized rebel group (OPM)
Riau	Oil, natural gas, minerals, timber	Low	<ul style="list-style-type: none"> • Minor political secessionist sentiment
East Kalimantan	Oil, natural gas, minerals, timber	Low	<ul style="list-style-type: none"> • Minor political secessionist sentiment

Source: Tadjoeeddin, 2014: 44

Asymmetrical Decentralisation³⁵ as a Way to Overcome the Curse?

The tsunami disaster of 2004 changed social, economy and political life in Aceh, including the relation between the central government of Indonesia and the people and government of Aceh. After the tsunami, the Indonesian government and GAM finally agreed to sign a peace treaty in

35 In short, asymmetric decentralisation refers to how the central government differentially treats different local government units, considering factors such as historical legacy, capacity, etc. (see Litvarck, Ahmad, Bird, 1998: 23)

Helsinki, Finland, on 15 August 2005. Following the accord, the Indonesian government introduced Law on Government of Aceh No.11 of 2006, which granted the Government of Aceh greater authority and special autonomy for self-governance.

Features of Acehnese Special Autonomy

Hasrul Hanif, Sigit Pamungkas and Erwin Endaryanta (2010) noted that there are several features of special autonomy held by the government of Aceh which cannot be found in other regions of Indonesia, i.e.: First, the point of departure for decentralization is the provincial level, not the district/municipal level. The People's Representatives Council of Aceh and/or the governor of Aceh states that every strategic issue related to the government of Aceh should be approved.

Second, Islam is considered the basic principle of Acehnese government and social life. Laws in Aceh emphasize the importance of institutionalised Islamic values in governance, the strategic role of Islamic scholars in governance, the implementation of Sharia (Islamic law), and a Sharia court system.

Third is the typical mechanism of local political recruitment. In Aceh, independent candidates and local political parties could run as candidates for governor or regent. After Constitutional Court decide to use such mechanism in electoral process, this has no longer been a typical mechanism in Aceh, except for local parties.

Fourth, the central government has given the Acehese government leeway to take a significant part in foreign relations, granting (among others) the right to directly conduct agreements with foreign institutions and to directly participate in arts activities, cultural activities, international sports, etc. Fifth, there is recognition of the indigenous social structure, including the *gampong*. Sixth, the Government of Aceh also greater authority to develop *kawasan khusus* (special areas), such as Sabang.

Seventh, there are some asymmetrical arrangements regarding fiscal decentralisation (see Djojosoekarto, Suwarmono and Suryaman, 2008: 28). For instance, the Government of Aceh receives additional revenue sharing funds from oil and gas, in the amounts of 55% (for oil) and 40% (for gas). The Government of Aceh has the authority to decide, manage and arrange the allocation of revenue sharing funds from oil and gas to regencies and municipalities; however, it should allocate approximately 30% for education and 70% for development at the provincial, regency, or municipal level.

Another interesting point is that, for the first fifteen years of special autonomy in Aceh, the central government must allocate 2% of the total Special Allocation Fund to Aceh. This figure is to decrease to 1% sixteen years after the implementation of special autonomy, ending altogether in the twentieth year. State enterprises operating exclusively in Aceh should allocate some of their profits to the government of Aceh, based on an agreement between the central government and Government of Aceh.

Furthermore, according to Article 160 of Law No. 11 of 2006, the Government of Aceh, in collaboration and partnership with the central government, has authority to arrange and exploit both off- and on-shore oil and gas reserves in Aceh. The government of Aceh, again in collaboration with the central government, also has authority to arrange and develop an implementing body for natural resources management. The central government further regulated arrangements for institutionalizing an implementing body through Regional Law No. 23 of 2015 on the Joint Management of Oil and Gas Resources in Aceh, explicitly giving greater authority to Aceh to manage its own natural resources (see the table below)

Table 6.2: Aceh Authorities After Implementation of PP No. 23/2015

Indicators	Before Law No.23/2015	After Law No.23/2015
Resource ownership	<ul style="list-style-type: none"> Central government, as representative of the state, until returned by the contractor 	<ul style="list-style-type: none"> State; managed jointly by the central government and government of Aceh
Managing authority	<ul style="list-style-type: none"> Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi (SKK MIGAS; Special Task Force for Upstream Oil and Gas Business Activities) 	<ul style="list-style-type: none"> Badan Pengelola MIGAS Aceh (BPMA; Aceh Oil and Gas Management Body)
Opportunity to explore existing block	<ul style="list-style-type: none"> Government of Aceh to be offered 10% of exploration rights as returned by contractor 	<ul style="list-style-type: none"> Local state enterprises to be offered exploration of existing block that will almost end the contract

Indicators	Before Law No.23/2015	After Law No.23/2015
Working area	<ul style="list-style-type: none"> Minister offers working area 	<ul style="list-style-type: none"> Minister approves working areas based on recommendation of the governor
Profit and additional fund sharing		<ul style="list-style-type: none"> Government of Aceh to receive: 50% of total signing bonus 50% bonus if production target is achieved 30% of fund sharing for sites between 12 and 200 miles off-shore

Source: <http://katadata.co.id/infografik/2015/06/12/beda-aturan-baru-tata-kelola-hulu-migas-di-aceh>

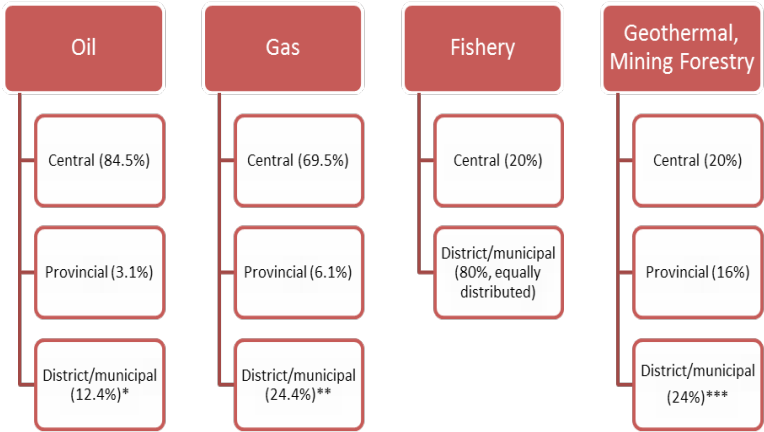
Asymmetrical Arrangement of Revenue Sharing Funds

Based on Law No. 32 of 2004 on Regional Government in Indonesia and Law No. 33 of 2004 on Fiscal Equalisation Between Central and Regional Governments,³⁶ revenue from oil and gas is generally shared among the central government, provincial government, and regency/municipal government according to this formula: 84.5% (oil) and 69.5% (gas) for the central government; 3.1% (oil) and 6.1% (gas) for the provincial government; and 12.4% (oil) and 24.4% (gas) for regency/municipal governments (see the table below). However, as mentioned previously, the Government of Aceh receives a greater percentage of oil and gas revenue, as the

³⁶ Both have been amended by Law No. 23 /2014 on Regional Government.

central government also includes *Dana Tambahan Bagi Hasil MIGAS* (Additional Revenue Sharing Funds for Oil and Gas) of 55% (for oil) and 40% (for gas).

Figure 6.1: General Arrangement of Revenue Sharing Funds in Decentralised Indonesia



Notes:

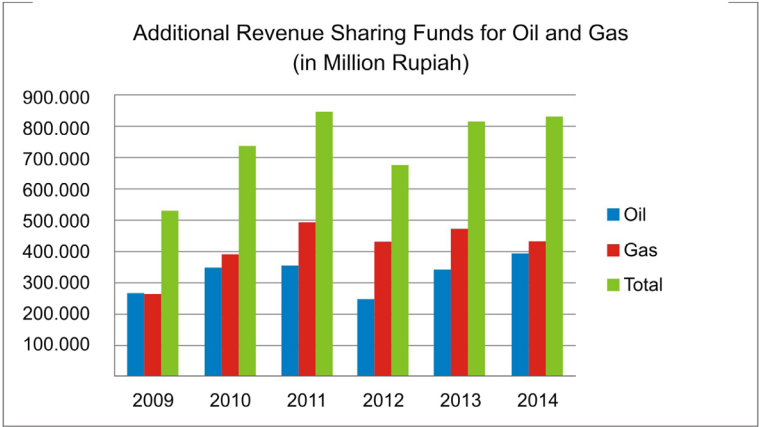
- *) 6.2% for producing districts and 6.2% for non-producing districts (equally distributed)
- **) 12.2% for producing districts and 12.2% for non-producing districts (equally distributed)
- ***) Land rent allocated only for producing districts; royalties shared 32% for producing districts and 32% for non-producing districts (equally distributed)

Source: Agustina, Ahmad, Nugroho and Siagian, 2012

The data shows that the Gas and Oil Profit-Sharing has significantly contributed to the government of Aceh’s public budget between 2008 and 2014. In total, the government

of Aceh has accepted approximately 4.5 trillion rupiahs in additional revenue sharing funds (see Figure 6.2 below).

Figure 6.2: Allocation of Gas and Oil Profit-Sharing in Aceh (In Millions of Rupiah)



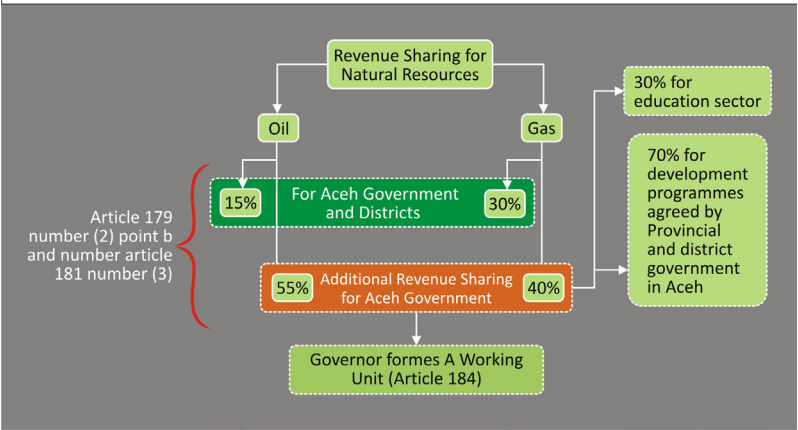
Source: Modified Minister of Finance Regulation

Earmarking of Mineral Rents for Education and Development

Based on the Qanun (Acehnese local regulation) No. 2 of 2008 (as revised by Qanun No. 2 of 2013) on Allocation Mechanisms for Additional Oil and Gas Revenue Sharing Funds, the government of Aceh earmarks or allocates the spending of revenue sharing funds for certain purposes or particular expenditure programs (see Hogwood and Peters, 1984: 119). The government of Aceh allocates 30% of total revenue sharing funds for education; the remainder is used to finance strategic development programs. All development programs must be designed through an agreement between

the provincial government of Aceh and the regency/ municipal government(s). See Figure 6.3 below.

Figure 6.3: Earmarking Mechanism



Source: Subdirectory of Natural Resource Profit-Sharing, Directorate of Fund Balancing, Directorate General of Fund Balancing, 2014

The Formula and Mechanisms of Earmarking

Revenue sharing funds are essentially allocated among the different tiers of government for two purposes, i.e. education and development (see Table 6.3 below).

Table 6.3: Formula and Mechanism of Earmarking

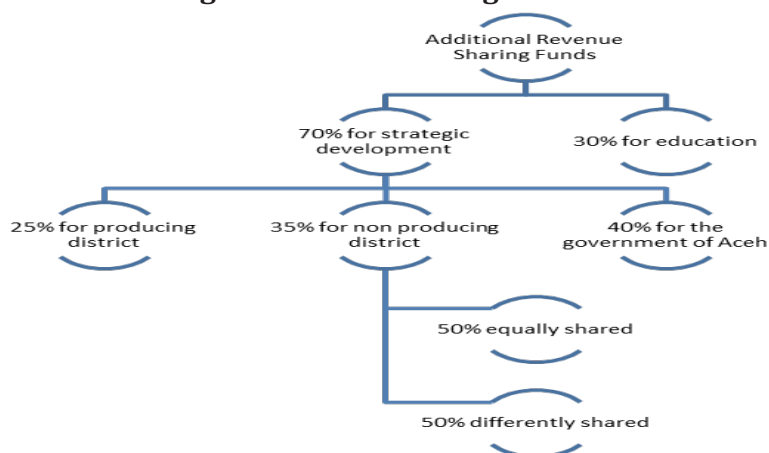
No	Regency/Municipality	2013		2014		2015	
		Gubernatorial Decree No. 050/12841 of 2013		Gubernatorial Decree No. 050/3905 of 2014		Acehese Gubernatorial Regulation No. 7 of 2015	
		NON-EDUCATION	EDUCATION	NON-EDUCATION	EDUCATION	NON-EDUCATION	EDUCATION
NAD		151,214,488,040	64,806,209,160	231,661,151,120	148,925,025,720	61,069,035,720	39,258,665,820
1	West Aceh Regency	6,133,907,931	3,840,015,594	9,394,847,356	3,921,945,331	2,480,524,109	1,033,878,224
2	Aceh Besar Regency	7,696,199,864	4,268,060,455	11,794,038,099	4,359,122,863	3,121,070,086	1,149,124,178
3	South Aceh Regency	7,239,403,937	4,073,278,151	11,094,891,687	4,160,184,726	2,912,547,624	1,096,681,375
4	Aceh Singkil Regency	4,986,854,974	4,066,712,606	7,652,877,194	4,153,479,101	2,018,704,210	1,094,913,680
5	Central Aceh Regency	7,187,675,291	3,898,775,545	11,007,227,247	3,981,958,971	2,900,008,507	1,049,698,637
6	Southeast Aceh Regency	7,042,501,717	4,625,534,731	10,783,057,355	4,724,224,133	2,834,442,087	1,245,369,847
7	East Aceh Regency	11,091,176,607	5,543,790,934	16,994,739,723	5,662,072,049	4,491,711,484	1,492,599,336
8	North Aceh Regency	85,318,757,649	6,258,626,867	130,708,280,490	6,392,159,567	34,455,271,448	1,685,060,352
9	Bireuen Regency	7,333,135,045	4,796,519,746	11,235,279,296	4,898,857,247	2,958,763,386	1,291,405,515
10	Pidie Regency	8,088,914,489	4,267,629,535	12,387,747,188	4,358,682,749	3,256,819,242	1,149,008,158
11	Simeulue Regency	4,794,049,443	3,847,079,475	7,345,219,530	3,929,159,924	1,931,000,457	1,035,780,089
12	Municipality of Banda Aceh	4,893,608,063	3,986,664,213	7,496,992,705	4,071,722,812	1,993,023,496	1,073,361,609
13	Municipality of Sabang	3,335,899,570	2,301,134,888	5,106,078,675	2,350,231,401	1,346,389,494	619,553,018

No	Regency/Municipality	2013		2014		2015	
		Gubernatorial Decree No. 050/12841 of 2013		Gubernatorial Decree No. 050/3905 of 2014		Acehnese Gubernatorial Regulation No. 7 of 2015	
		NON-EDUCATION	EDUCATION	NON-EDUCATION	EDUCATION	NON-EDUCATION	EDUCATION
	NAD	151,214,488,040	64,806,209,160	231,661,151,120	148,925,025,720	61,069,035,720	39,258,665,820
14	Municipality of Langsa	4,366,177,460	3,801,738,341	6,692,503,377	3,882,851,401	1,760,196,843	1,023,572,532
15	Municipality of Lhokseumawe	4,519,761,945	3,935,387,694	6,922,019,148	4,019,352,269	1,824,194,071	1,059,556,020
16	Nagan Raya Regency	6,334,061,410	4,170,134,671	9,701,105,107	4,259,107,756	2,558,684,930	1,122,758,833
17	Aceh Jaya Regency	6,016,219,638	3,716,936,772	9,216,855,809	3,796,240,525	2,435,615,117	1,000,740,725
18	Southwest Aceh Regency	5,203,525,490	3,942,870,150	7,975,992,471	4,026,994,369	2,099,276,495	1,061,570,582
19	Gayo Lues Regency	7,062,826,018	4,582,981,434	10,816,231,942	4,680,762,927	2,851,438,025	1,233,912,881
20	Aceh Tamiang Regency	14,016,370,670	4,745,985,865	21,471,570,749	4,847,245,186	5,654,010,429	1,277,799,873
21	Bener Meriah Regency	5,185,805,757	4,368,259,421	7,942,850,841	4,461,459,652	2,096,539,382	1,176,101,550
22	Pidie Jaya Regency	4,689,264,951	3,968,616,345	7,181,951,886	4,053,289,879	1,891,940,158	1,068,502,436
23	Municipality of Subulussalam	4,285,634,141	4,202,580,307	6,569,368,805	4,292,245,643	1,731,382,503	1,131,494,432
	All Regencies/Municipalities	226,821,732,060	97,209,313,740	347,491,726,680	99,283,350,480	91,603,553,580	26,172,443,880
	Total Gas and Oil Revenue Sharing		540,051,743,000		827,361,254,000		218,103,699,000

A more detailed overview of the allocation and sharing formula used by the provincial government of Aceh and the regency/municipal government(s) is as follows:

- 30% for education
- 70% for strategic development, divided further as follows:
 - o 25% for producing regencies/municipalities
 - o 35% for non-producing regencies/municipalities that is allocated as follows:
 - ✓ 50% shared equally among all regencies/municipalities
 - ✓ 50% shared differentially, considering each regency/municipality's area, population, Human Development Index, regional gross domestic product, and other relevant indicators.
 - o 40% for development at the provincial level

Figure 6.4: Earmarking Details



Source: Aceh Gubernatorial Regulation No. 79 of 2013

This allocation of additional revenue sharing funds has several implications. It is a budget platform rather than cash for financing programs and activities that have been agreed upon by the provincial government of Aceh and the respective governments of regencies/municipalities. The budget platform is assigned by the governor and must be approved by the People's Representative Council of Aceh. All programs and activities also should be in accordance with and refer to strategic development plans, both the Long-term Strategic Development Plan for Aceh and the Medium-Term Strategic Development Plan for Aceh; only then will the government of Aceh execute the budget platform. All programs and activities are included in Aceh's annual revenue and expenditure budget. All programs and activities financed by Additional Revenue Sharing Funds (and also Special Autonomy Funds) will administratively be part of a *Kode Kegiatan Khusus* (Code for Special Activities) in the Budget Activities Plan (*Rencana Kegiatan Anggaran*)/Budget Execution Document (*Dokumen Pelaksanaan Anggaran*) of the Acehnesse Administrative Work Unit (*Satuan Kerja Perangkat Aceh*).

To select proposed programs and activities, the governor determines certain terms and condition, following several stages. First, the regency/municipal government(s) prepare the proposed program and development activities based on indicators, terms, and conditions annually assigned by the governor. Second, all proposed programs and activities must be deliberated through regency/municipality development planning sessions. Third, the regency/municipal government

submits its selected proposed programs and activities via Aceh's deliberative development planning to be included in the following year's public budget.

Implementation, Monitoring, and Evaluation of Ear-marking

Qanun No.2 of 2008 states that the governor can establish a Coordinating Team of Additional Revenue Sharing that consists of representatives of the government of Aceh, the government(s) of regencies and municipalities, and relevant experts. Article 14 of Qanun No.2 of 2008 specifies that the team, which must be approved by People's Representative Council of Aceh, has several responsibilities:

1. To actualize the formula for fund allocation, including the supporting data;
2. To develop the criteria and terms for selecting proposed programs and activities;
3. To evaluate whether or not proposed programs and activities meet the criteria;
4. To provide the regency/municipality with technical assistance for preparing and implementing the programs and activities.

Finally, the government of Aceh and the People's Representative Council of Aceh are responsible for the monitoring and evaluation of the implementation of the additional revenue sharing funds and special autonomy funds. Monitoring the planning, allocation, implementation and responsibilities is handled by a special unit of the Development Planning Body.

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Mainstreaming Extractive Industries Framework in Regional Bodies

Meliana Lumbantoruan, Morentalisa Hutapea

Why ASEAN Should Develop a Framework for Extractive Industry Management

A Common Problem

In many countries, extractive industries, or EI, have played the role of economic backbone for centuries. In the context of Southeast Asia, the presence of natural resources has helped countries fuel their development. Even today, income from natural resource exploitation remains a major source of national income in many countries. Brunei Darussalam, for instance, draws more than 85% of its national budget from the oil and gas industries. Malaysia

and Indonesia, meanwhile, respectively obtain 50% and 35% of their national budgets from these same industries.

Aside from providing direct income, this sector is also a source of investment. In Indonesia, for example, the mining sector accounts for 17% of the country's foreign direct investment, or FDI (BKPM, 2012). The oil and gas sector accounts for 20% of Malaysia's FDI (MIDA, 2012). Almost 93% of Laos' total FDI comes from the mining sector (IISD, 2008). In terms of trade, Indonesia is the world's largest supplier of coal.

Owing to global, regional and national economic growth, especially the recent growth of China, India, and the ASEAN Member States themselves, there has been sharp increase in the exports of natural resources. The Energy Information Administration, for instance, records an increase in coal exports from Vietnam of 5,000 percent from 1981 to 2011. Indonesia, meanwhile, only exported 100 million tons of coal annually in the 1980s; by 2011 the figure had increased by 300,000% to around 340 thousand million tons. In the 1990s, the Philippines exported only about 19 million tons of coal per annum, a figure which had increased to 6400 million tons per annum by 2011 (EIA, 2011) Indonesia has also seen a wide-spread increase in mineral exports since 2009, including nickel ore (800%), iron ore (700%), and bauxite ore (500%) (ESDM, 2012). As such resources are limited, ASEAN member states should consider the impact of the current resource exploitation on future generations and future economic strategies.

Since natural resources play a critical role as both sources of investment and as trade commodities, ASEAN

member states should pay attention to emerging critical issues related to the management of these resources. The first challenge is one of governance. Despite their vast resources, ASEAN member states encounter a gap in governance as well as institutional difficulties in managing their natural resources. Rampant corruption, poor accountability and a lack of government transparency are all common in the EI sector. Governance indicators compiled by the World Bank show that all countries in Southeast Asia except Singapore have low indications of good governance (World Bank, 2010). Most ASEAN countries are ranked poorly, with scores hovering between 2 and 2.9 on Transparency International's Corruption Perceptions Index; this also indicates acute problems with corruption.

Corruption is a barrier blocking Southeast Asian countries from maximally enjoying the benefits of their resources. In the Philippines, for example, despite the country's status as the largest gold producer in the world and as an exporter of a number of minerals, the EI sector only accounts for 2% of the national GDP (ICMM, 2010). In Myanmar, meanwhile, natural resource sectors such as mining and oil account for 55% and 85% of total investment in EI (IE Singapore 2012), but these resources have contributed less than 2% of recent economic growth (PWC, 2012). The two countries attribute their lack of revenue to corruption and consider transparency to be important in promoting sustainable investment. As such, they have been enthusiastic regarding the potential of the Extractive Industries Transparency Initiative (EITI), an international

initiative which encourages transparency in the extractive sector, to boost their revenue from the extractive sector.

The region should also take the need to protect the rights of local people living near extractive projects. The survival of a large number of tribal peoples in Southeast Asia has increasingly been threatened by the development and implementation of large-scale infrastructure projects designed to maximize the extraction and utilization of natural resources. The presence of such projects challenges the sustainability of indigenous people's livelihood in many Southeast Asian countries. Poor management and law enforcement in the natural resources sector not only results in abuses of power and corruption in many Southeast Asian countries, but also human rights violations. A lack of information and transparency means that indigenous people and affected communities face tremendous losses.

To ensure that natural resource extraction benefits the people of ASEAN, it is paramount that the association urgently addresses problems in the extraction process. It should ensure that the rule of law will be upheld and prioritized in all extractive projects. ASEAN should also actively promote and protect rights-based access to resources in a manner which respects indigenous land rights and promotes both people's sovereignty over food, energy, forests, fisheries, land and water as well as sustainable farming practices. Large and transnational corporations must be compelled to protect human rights and adhere to international and national environmental human rights standards and conventions.

Developing a Standard for ASEAN Member States: Integrating Regional and Global Agendas

For the ASEAN Economic Community, fostering trade and investment is a major agenda. Under its Economic Community Blueprint, ASEAN recognizes this issue, stating: 'A free and open investment regime is key to enhancing ASEAN's competitiveness in attracting foreign direct investment (FDI) as well as intra-ASEAN investment. Sustained inflows of new investments and reinvestments will promote and ensure dynamic development of ASEAN economies'. (ASEAN Economic Blueprint: 2008).

This situation is in accordance with the fact that foreign investment, together with other forms of investment such as intra-ASEAN investment, plays a key role in oil, gas and mineral exploration and exploitation in the region. The establishment of ASEAN as a competitive production base in 2015, therefore, requires ASEAN member states to work collectively to promote sustainable investment in the EI sector. In this respect, the ASEAN member states should ensure sustainable energy supplies and utilization of mineral resources. The need to promote sustainable principles is recognised in many of ASEAN's policies and concrete initiatives, such as the ASEAN Charter, the ASEAN Community Blueprints, as well as the 2008 Manila Declaration which emphasized the need to enhance resource sustainability and maximize benefits to communities and the national economy.

Considering this situation, ASEAN member states should promote a new perspective in natural resource management

and in dealing with the multi-national companies operating in the region. This means developing a common framework for all ASEAN member states. Such a guideline should address the enormous challenges in natural resource extraction, both at the national and regional level.

Advocacy for a Regional Extractive Industries Framework

Toward a People-Centred ASEAN: Accommodating People's Recommendations in ASEAN Extractive Industries Management

ASEAN is a very formal organisation, consisting of multiple governments. It has three lanes of communication (Institute of Multi-Track Diplomacy):

- Government path. This path is the least effective and most commonly used. It usually involves a meeting of heads of state, ministers, and ministries. This path was also used to raise EI issues when Indonesia became the Chair of ASEAN and included the EI issues as part of its agenda.
- Academic path. This path is usually used by think tanks and universities to provide recommendations to governments. This path also used to develop discourse about extractive issues, raise common issues in a regional context, and promote dialogue to build awareness about the significance of EI Framework. The Institute for Essential Service Reform (IESR) cooperated with the ASEAN Study Center, University of Indonesia, by

introducing the topic of good governance and industry working groups.

- Civil society path. Representatives of civil society organisations are given the chance to conduct dialogue with heads of state and submit statements regarding the results of civil society conferences. This path, spearheaded in 2005, has been used when the need to create such a platform has been recognized by civil society organisations. The common challenges faced by most ASEAN member states have resulted in various civil society organisations across the region taking a common voice.

Through the annual ASEAN Peoples' Forum, citizens of ASEAN have actively expressed their concerns regarding the current situation. In the joint statements agreed upon at the end of each forum, the people of ASEAN have strongly affirmed their expectation that ASEAN will address the challenge. Since 2010, hundreds of civil society organisations united in the ASEAN People Forum have demanded that the association create the framework for EI governance reform to show it takes EI issues seriously.

During the 2010 ASEAN Peoples' Forum in Vietnam for instance, more than seven hundred civil society organisations gathered in Hanoi to call for ASEAN member states to create an extractive industries framework. They demanded that the upcoming ASEAN Extractive Industry Framework³⁷ encourage maximum transparency, meaningful public

37 With reference to the Extractives Industry Transparency Initiative (EITI).

participation, accountability, and a policy environment that promotes ecological sustainability as well as economic, social, and cultural rights. Given the complex regulatory conditions and development strategies of ASEAN governments, the proposed ASEAN Extractive Industry Framework should adopt internationally accepted standards and best practices.

Meanwhile, at the ASEAN Peoples' Forum held in Jakarta, Indonesia, in 2011, more than a thousand civil society representatives agreed that

... extractive industries (hydrocarbon, coal and mineral) are important in the South East Asian context as they are vital for the ongoing socio-economic investment and development in the region – and are likely to be so in future. The challenge now facing most countries is how to make the operations of extractive industries transparent and accountable across all stages of the extractive decision-chain. This is a challenge requiring the attention of all stakeholders: governments, citizens and corporations alike

In their final statement, they called for ASEAN to

... work toward and adopt a comprehensive framework on extractive industry transparency. This framework could be served as the basis for the harmonization of policies and practices of oil, gas, and mineral of the member countries of ASEAN, thus ensuring that the existing internationally recognized standards pertaining to human rights [and] the environment is upheld, and the benefits generated by the extractive industries extend to all citizens in ASEAN, now and in the future.

In 2012, hundreds of civil society organisations from various countries in Southeast Asia gathered in Pnom Penh during the annual ASEAN Peoples' Forum. They agreed that:

... extractive industries development, such as oil, coal and other minerals, has contributed to the economic growth of the ASEAN region. However, development has also caused harm to the environment and has taken a toll on human rights. Poor resource management, the limited capacity to govern this sector and the issue of corruption involved in each process of extractive industries development are sources of major concern.

Therefore, hundreds of civil society representatives recommend that ASEAN

... ensure, for any large scale development project, quality studies, correct information, public consultation processes, and due diligence, especially with affected communities before making a decision on development project in the most transparent and accountable manner; establish an ASEAN framework on Extractive Industries and adopt the Extractive Industries Transparency Initiative as effective regional mechanisms for corporate accountability, whereby corporate actors are held to answer for abuses wherever they operate; develop multi-stakeholder mechanisms to promote good governance and transparency in Extractive Industries and Natural Resources Management; [and] prioritise the promotion sustainable livelihoods over unsustainable, irresponsible and abusive business practices.

The framework should also:

- Strengthen public disclosure requirements relating to the allocation and management of extractive resources by encouraging that all countries implement EITI. This includes a) ensuring maximum transparency of EI contracts, payments to governments, and expenditures, b) assembling the best possible data on resource deposits, c) publishing all relevant legal frameworks guiding EI governance, d) disclosing EI investors' fund sources, track record, and ability to address external costs of EI projects, and e) supporting strong anti-corruption measures in EI transactions to safeguard public interests;
- Adopt rigorous indicators to ensure that EI projects genuinely contribute to poverty reduction and sustainable development in a just, ecologically sustainable, and gender-sensitive manner;
- Incorporate the principles and best practices of free, prior, and informed consent in designing and approving EI projects, including full recognition of indigenous peoples' customary and UN-sanctioned rights to ancestral land;³⁸
- Develop effective legal framework that requires full social and environmental corporate accountability to

38 See the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly 13 Sept. 2007. U.N. Doc. A/RES/61/295. See also the International Labor Organisation Convention concerning Indigenous and Tribal Peoples in Independent Countries, adopted on 15 September 1991.

reduce the environmental and social consequences of extractive investments;³⁹

- Promote the establishment of an independent body or a third party monitor with the appropriate technical expertise and integrity to assesses the long-term viability, sustainability, and cumulative impact of large EI projects before any extractive rights or concessions are awarded;⁴⁰
- Encourage informed legislative/parliamentary oversight of EI applications before they are awarded;
- Support communities, civil society organisations, the media, and other actors in their efforts to increase transparency and accountability in the governance of EI⁴¹ and natural resources in their country, while at the same time ensuring that these actors are safeguarded from state-sponsored and/or EI company-triggered violence;

39 The Equator Principle, a set of environmental and social standards for private banks and companies engaged in large-scale development and natural resource extraction projects, is a an important guide for this recommendation. See BankTrack, <http://www.banktrack.org>. Another complementary standard is the United Nations Global Compact, available at <http://www.unglobalcompact.org>.

40 See Voluntary Principles on Security and Human Rights, available at <http://www.voluntaryprinciples.org>. Also refer to Ruggie, John. 2008. "Protect, Respect and Remedy: A Framework for Business and Human Rights", Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises. U.N. Doc. A/HRC/8/5 (Human Rights Council).

41 See Rees (2008).

In general, the people of ASEAN have stressed the urgency of collaboration between member states in addressing various EI-related challenges. In various cases, civil society organisations have called for ASEAN to establish its own EI framework and adopt EITI as an effective regional mechanism for corporate accountability.

This has thus become an opportunity for ASEAN to embody the spirit of people engagement. ASEAN could develop multi-stakeholder mechanisms to promote good governance and transparency in EI and the natural resource management, thus accommodating the voices and concerns of civil society organisations across the region.⁴² As such, it is important for ASEAN to consider developing a framework covering these thematic issues:

The Promotion and Protection of Human Rights and Indigenous People

In many cases natural resource exploitation leads to the displacement of people, violation of indigenous and upland rural poor rights, and the disintegration of traditional livelihood opportunities. At a critical point, natural resource extraction can lead to violence which, if not taken seriously, has the possibility to develop into insurgency.

ASEAN member states have acknowledged the importance of protecting and promoting human rights

42 Joint Statement, ASEAN Civil Society Conference/ASEAN Peoples Forum 2012, Phnom Penh, Cambodia. The conference was attended by approximately 700 representatives from across Southeast Asia.

by creating the ASEAN Intergovernmental Commission on Human Rights (AICHR) and adopting the ASEAN Human Rights Declaration in 2013. The AICHR, the only governmental human rights body at the regional level, has acknowledged the importance of mainstreaming human rights issues in relation to the region's business activities. The AICHR has developed a case study on business and human rights which covers, among other things, the mining and energy sectors. This study is a good starting point for ASEAN member states to recognise the importance of human right promotion and protection within the natural resources extraction sectors.

ASEAN may also refer to the Voluntary Principle of Security and Human Rights (VPSHR), unveiled in December 2000 by the US State Department and the Foreign and Commonwealth Office of the United Kingdom after a year-long process involving government officials, oil and mining companies, and NGOs. VPSHR is intended to provide guiding principles for companies engaged in extractive industries operations in conflict areas and fragile states. It also provides guidance to EI companies on maintaining operations safety and security within an operating framework that ensures respect for human rights and fundamental freedoms.⁴³ A briefing paper developed by the VPSHR explained that this initiative was necessary because of widespread international concern over the way security forces operate

⁴³ Further information on the Voluntary Principles on Security and Human Rights is available at <http://www.voluntaryprinciples.org/>

while protecting oil and mining installations in many parts of the world (Tripathi, Godnick and Klein, 2008: 1).

ASEAN Member states could also address tensions between communities by applying Free, Prior, Informed Consent (FPIC) principles, a standard designed to protect indigenous peoples, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), while also recognising that “Everyone has the right to development”, as declared in the United Nations Declaration on the Right to Development. Development sustainability is related to people’s ability to control development objectives. Community participation in projects that affect them should thus be consistent with the principles underlying FPIC.

The Protection of the Environment and Livelihood of Local Communities

If managed improperly, mineral and energy industries can also lead to environmental degradation in areas deemed critical biodiversity areas. As mining projects are mostly located in remote forest areas, the presence of EI projects may harm sustainable biodiversity, trigger deforestation, and negatively impact water supplies. Meanwhile, in many Southeast Asian countries, mechanisms to make companies accountable for damage to the environment are weak. Measures to mitigate environmental degradation are underdeveloped, compensation for environmental accidents is often undelivered, and the cleaner technology that avoids or reduces the risk of environmental degradation is rarely applied.

The management of tailings is another critical concern which ASEAN member states should acknowledge at the regional level. Mercury use has been common in small scale mining activities in many ASEAN member states. This dangerous chemical contaminates rivers and causes various diseases in local communities. ASEAN should thus encourage its member to properly examine the economic, environmental and social impact of EI projects. ASEAN member states should also call for greater attention to corporate social responsibility issues, such as sustainability (Williams, 2000).

Implementing Good Governance Practices by Enhancing Transparency and Accountability

Other critical challenges are corruption and the lack of good governance, which make manifest the latent threat of the resource curse. Broadly, the resource curse is a phenomena in which resource-rich countries are trapped in poverty, unable to use revenue for the public good because of mismanagement and poor EI governance. The term thus refers to a condition in which a country has abundant oil, gas and mineral resources but lacks economic growth and human development. This issue remains an important one, as two-third of the world's poorest people live in resource-rich developing countries. Tackling the resource curse is important because revenues from EI industries, if managed responsibly, could provide the basis for broad economic growth and poverty reduction in these resource-rich developing countries.

ASEAN member states should thus work to ensure that the profit derived from EI is managed wisely by imposing the principles of transparency and accountability. ASEAN should also play a leading role in promoting good governance in managing resources, as such governance will, at a certain point, be decisive in securing sustainable resource production and the associated economic benefits (Søreide and Truex, 2011: 5).

Taking Up Opportunities

At the global level, concern over the negative impact of natural resource extraction has led to the creation of various global standards, including the Global Reporting Initiative (GRI), the Kimberly Process Certification Scheme (KPCS), the UN Global Compact, and the Extractive Industries Transparency Initiative (EITI). These standards are supported both by international institutions such as the World Bank, UNDP and IFC, as well as companies and various developed and developing countries. EITI, for example, an initiative which supports transparency in the revenue stream of the EI sector, has been implemented in more than forty developing countries and gained support from countries such as the UK, US, and Norway. This is strong evidence of a shift in the trend of natural resource governance.

What is the Extractive Industries Transparency Initiative (EITI)?

The Extractive Industries Transparency Initiative (EITI) is a global standard to promote openness and the accountable management of natural resources. It seeks to strengthen government and company systems, inform public debate, and enhance trust. In each implementing country it is supported by a coalition of governments, companies, and civil society working together.

Countries that implement the EITI Standard have to ensure full disclosure of taxes and other payments made by oil, gas and mining companies to governments. These payments are disclosed in an annual EITI Report. This report allows citizens to see for themselves how much their government is receiving from their country's natural resources. Therefore, the EITI Standard requires that EITI Reports are comprehensible, actively promoted and contribute to public debate (<https://eiti.org/eiti>).

Southeast Asia's response to this global trend has been very positive, and ASEAN member states have acknowledged the importance of good governance in natural resource management. Indonesia has played an important role in furthering this initiative at the regional level. In 2011, during its chairmanship in ASEAN, Indonesia promoted the initiative during a regional meeting on minerals and, because of its hard work, EITI was ultimately included in the ASEAN Minerals Cooperation Action Plan (AMCAP) for 2011–2015; this meant ASEAN endorsed EITI capacity building.

At the national level, at least five ASEAN members—Indonesia, Myanmar, the Philippines, Vietnam and Cambodia—have already extensively discussed EITI and its possibilities for the governance of their natural resources. Indonesia, the largest natural resource producer in the region, is presently in the process of fully implementing EITI

and thus transforming how it manages EI revenue. Myanmar, surprisingly, has announced its intention to implement EITI; by doing so, Myanmar has stated its commitment to improve transparency in the EI sector.

This could be a turning point in the way ASEAN manages its natural resources. For years, EI has been the region's most secretive sector. Public access to important data and information regarding extraction processes is severely limited. As EITI requires implementing countries to create a multi-stakeholder group representing civil society, the government, and the private sector to oversee the implementation of EITI, civil society will have greater opportunities to take an equal position and address concerns over the extraction of natural resources.

More, however, can be done by ASEAN member countries to ensure the good governance of their resources and improve the lives of their citizens. Implementing EITI is but the first step. Transparency and accountability in EI remain important, as they will ensure that resource extraction will ultimately benefit the people.

Challenges and Lesson Learned in Advocating EI Framework

Over its two years advocating good governance in extractive industries, IESR promoted discourse by raising awareness about the importance of good governance, as well as the importance of a common framework which will aid ASEAN in transforming itself into an integrated economic

region through the sharing of standards regarding the implementation of governance in some countries.

In 2011, IESR approached ASEAN through a governmental path, with Fabby Tumiwa representing the Indonesian delegation at a meeting of the ASEAN Minerals and Energy Cooperation. IESR attempted direct outreach with the ASEAN Secretariat, the ASEAN Business Council, and the Heads of ASEAN Power Utilities/Authorities (HAPUA). However, the issue of governance in EI remains complicated because of interacting issues. ASEAN is a very rigid body, still focusing predominantly on the issues of technological development and regional cooperation. Governance has yet to become a mainstream issue in ASEAN; it is thus returned to each country to deal with on its own.

Civil society groups in Southeast Asia need further preparation, as well as greater realization of the importance of good governance in EI. Only then can the issue of governance be addressed and the positive and negative effects of management in mining shown to the media; this would result in greater public awareness that good governance is key to encouraging social prosperity.

Advocacy is necessary to attain a proper understanding among the government, media, and civil society organisations. Furthermore, international and regional cooperation should be developed, in accordance with countries' characters. Experience shows that advocacy and capacity building can be more effective when done peer-to-peer, with government talking to government and civil society groups serving as facilitators or mediators.

In addition, civil society organisations must select themes and contexts that are tailored to the conditions or emerging issues in their country so they can be more easily accepted by the targeted parties. The position of civil society organisations in this region remains weak, as they are not regarded as being on equal footing with the government. It is necessary for such organisations to conduct outreach programs and engage with other parties to expand their coalitions and give greater coverage to these issues.

The IESR's experiences indicate that challenges faced in advocating for the mainstreaming of EI framework in ASEAN as a regional body are as follows:

- Politically, EI is sensitive issue, and thus all parties will respond carefully; it is thus difficult to develop the issue into a public one.
- IESR advocates in two ways: top-down and bottom-up. In advocacy, it is important to create urgency; if successful, there may be a request through bottom-up channels. However, civil society organizations in ASEAN rarely consider EI to be an urgent issue. As such, IESR's bottom-up advocacy has been less successful.
- It is difficult to find space for dialogue on EI issues. Because the issue is sensitive, mobilising support can only be done gradually.
- ASEAN covers a large area, and EI issues are highly complex. As such, it is difficult to gain the attention of ASEAN member countries.

IESR has several suggestions for civil society organisations which will conduct advocacy at the regional level.⁴⁴ First, civil society organisations should make clear strategic goals and focus on advocacy work. Second, there should be capacity building for civil society organisations in ASEAN, so that they can be considered equal to governments. Third, civil society organisations should be creative in finding space for dialogue and advocacy. Undertaking advocacy work at a regional level must also involve domestic advocacy and movements; a single strategy is not sufficient.

44 Interview with Fabby Tumiwa (Executive Director, IESR) and Yesi Maryam (Outreach Officer of Extractive Industries, IESR) 10 February 2015.

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PWYP

PWYP Indonesia is a coalition of civil societies for transparency and accountability of extractive resource governance in Indonesia. PWYP Indonesia was established in 2007, legalised under Indonesia's law in 2012 as Yayasan Transparansi Sumberdaya Ekstraktif, and affiliates to the network of PWYP global campaign. PWYP Indonesia works in transparency and accountability along the chain of extractive resource, from development phase of contract and mining operation (publish what you pay and how you extract), production phase and revenue from industries (publish what you pay), to the spending phase of revenue for sustainable development and social welfare (publish what you earn and how you spent).

NRGI

The Natural Resource Governance Institute (NRGI) helps people to realize the benefits of their countries' endowments of oil, gas and minerals. We do this through technical advice, advocacy, applied research, policy analysis, and capacity development. We work with innovative agents of change within government ministries, civil society, the media, legislatures, the private sector, and international institutions to promote accountable and effective governance in the extractive industries.

DPP

Department of Politics and Government (DPP) is a new name use after the restructurisation process in Universitas Gadjah Mada since April 2010. Prior to this name, DPP is known as *Jurusan Ilmu Pemerintahan* (JIP) or Department of Government Science which was only concentrating on academic activities for bachelor degree and research through a laboratorium of government science. Currently, DPP manages postgraduate programs for master and doctorate. In addition to the academic program, DPP has a research center to develop research activities, advocacy, and publications on political issues and better governance.

Polgov

PolGov (Research Centre for Politics and Government) is a research unit of the Department of Politics and Government (DPP), Faculty of Social and Political Science, Universitas Gadjah Mada. Established in 2009, PolGov is the result of a merger of the two laboratories that have long been managed separately by the Department of Politics and Government and Graduate Program of Local Politics and Region Autonomy/ Politics (PLOD/Politics) UGM. The merger is not only for complying with the agenda of institutional reorganization at UGM, but also as an effort to develop research activities, advocacy, and publications on political issues and better governance.

Regina

Resource Governance in Asia Pacific (RegINA) is the Asia Pacific knowledge hub for Better Governance on Extractive Industries. The Hub is managed by Department of Politics and Government (POLGOV), Faculty of Social and Political Sciences, Universitas Gadjah Mada, Indonesia in collaboration with Natural Resources Governance Institute (NRGI). Regina is a university-based hub allied with multi-stakeholders coalition to promote energy security, welfare, and sustainability through policy advocacy networks in Asia Pacific Region. The initiative builds collective capacity to monitor extractive sectors. This coalition for reform brought together actors and reformers from the civil society, governments, private sectors, experts as well as independent and professional think tanks to work towards greater good governance objectives. In supporting coalition for reform, we and our partners develop tools to build understanding of transparency and accountability dimensions as well as facilitate series course that challenged governance for extractive sectors that are often concealed in secrecy. Series of researchs providing knowledge and skill enhance policy networked-advocacy in the respective countries within Asia Pacific region.

