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Rugged regulatory landscapes

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By Dharma Djojonegoro

Indonesia's miners are adept at scaling the country's rugged regulatory landscape. But their legendary resilience may be put to the test in 2014

Indonesians will go to the polls at least twice in 2014. The first is a General Election, while the second is the much-awaited Presidential Election. As in the United States, the presidency is constitutionally restricted to a maximum of two terms, a legacy of the political reformation that followed the fall of President Suharto in 1998. An even more suspenseful than usual cliff-hanger now awaits investors in this resource-rich country. A possible shift in power away from the current ruling Democrat Party and a leap into uncharted political territory will also see a change in direction for the mining sector.

While the game changer for the mining sector in 2014 is undoubtedly the identity of the next president, the impact on the mining sector is less than clear.

Not all miners are created equal

Maintaining an open and investor-friendly natural resource sector is proving problematic: commodity prices have plummeted, and with them the profitability of many mining companies, large and small. But the greatest challenge for miners and investors alike is Law No 4/2009 (Mining). This stipulates that miners must process their mineral ore at their own smelters or at independent smelters as of January 2014—a little over three months away—before exporting their mineral production. Miners that do not have a smelter, or are reluctant to process their raw minerals at other smelters, will be banned from shipping their unprocessed ore overseas.

On the one hand, the new Mining Law sought to give added value to Indonesia's mining products as well as moderate mineral exploitation and ensure the sector remains sustainable. Or so the theory went.

On the other hand the same Law has sent shudders through the industry. One MNC has gone on record as saying that if the government proceeds with the ban, it might have to lay off hundreds of workers and would not be able to predict the impact if it does decide to close down!

Meanwhile the upheaval continues. Many of the marginal operators have been divided up or shut down. Others are just barely producing. And although the big boys are fine and are still producing lots, even they're trying to reduce costs.

My company is a market leader in the mining explosives and other solutions-oriented services sector. Our further growth depends on the price of coal and the performance of the major companies that form our client base. Our fortunes thus rise and fall in tandem with those of the mining sector.

The government is now preparing for a decline in revenue due to the ban on the exports of unprocessed mineral ore, set to take effect in 2014. This will not be an inconsiderable amount.

According to the Central Statistics Agency (BPS), the mining industry accounted for 11 percent of Indonesia's US \$220 billion economy in the third quarter of 2012.

There is lack of clarity, rules and regulations. What is needed is a clear and consistent policy that is implemented and enforced in a consistent manner. It matters less what the policy is, provided it is clear and consistent, something that Law No 4 is not.

Improving the investment climate will require closer cooperation and coordination between the government and the business sector. Nevertheless, I understand the inherent distrust between those stakeholders. The government sees the business sector as being too commercial, while the business sector will always accuse the government of being not commercial enough. But that kind of dialogue needs to happen, often and early. It's the only way to really make sensible regulations.

When the law doesn't make sense

Occasionally, regulatory sinkholes appear. A government may cave in, for example, when it sees the law doesn't make sense. While such a move would be strenuously resisted in many regimes, the ambiguity of the 2009 Mining Law was acknowledged in a November 2012 Supreme Court ruling challenging the ban on exports.

However, the last word on the matter must surely go to a statement from the Supreme Court itself, in which it "declined to confirm that the decision was final and binding", a statement that best sums up the continuing bafflement and confusion experienced within the industry!

Vague regulations and a lack of certainty have been around for many years. In fact, miners who've been here for a long time are okay about that. And while they may be 'comfortable with Indonesia and its ambiguities' new investors are not.

I've noticed of late that new chums are taking one look at the regulations, and then, with a perfunctory 'thanks but no thanks', they're off to South Africa or Kazakhstan as the case may be.

Dharma Djojonegoro is President Director of Indonesian mining services provider PT Multi Nitrotama Kimia (MNK). His views reflect his own.